Date:	April 4, 2016	**POLICY BRIEF**	Health District OF NORTHERN LARIMER COUNTY
Staff:	Dan Sapienza	**PREPARED FOR THE BOARD OF DIRECTORS**	

HB16-1374 - REQUIRED NOTICE & DISCLOSURES FREESTANDING ERS:

Concerning disclosure requirements applicable to a licensed community clinic providing emergency services to patients at a site that is not attached to a hospital.

Details

Bill Sponsors:	House – McCann (D) Senate – Kefalas (D)
Committee:	House Health Insurance and Environment Committee
Bill History:	03/16/2016 Introduced In House - Assigned to Health, Insurance, & Environment
Next Action:	House HIE Hearing – April 14, 2016

Bill Summary

This bill creates signage, transparency, and notice requirements for freestanding emergency rooms (ERs). Most notably, following the diagnosis of a non-emergency medical condition and prior to continuing treatment, the bill requires that the freestanding ER inform the patient that its rates are similar to ERs in hospitals, that the ER's or physicians' services may not be covered by the patient's health plan, and that the patient might want to instead be seen by his or her primary care physician. After providing this information, if the patient signs the document, then treatment may proceed at the ER.

Issue Summary

Freestanding emergency rooms are emergency rooms unattached to hospitals, but which offer the same emergency services and charge facility fees. Facility fees are fees traditionally charged at hospital ERs to cover the large overhead associated with being capable of handling the diverse situations that may present and to offset the hospital costs of covering non-paying (indigent) or low-paying (Medicaid) clients.[1] While some argue that freestanding ERs have capabilities similar to hospital ERs, some payers (and patients) question whether the facility fees are appropriate, as freestanding ERs have significantly different cost structures and some do not accept Medicaid or might refer those without private insurance to hospital ERs.

Freestanding ERs are proliferating nationwide and dozens have opened in Colorado since 2014.[2] Highlighting the issue that these facilities siphon off well-paying patients from hospitals (yet still charge comparable facility fees to cover costs), many of these have opened in affluent neighborhoods and near high-end restaurants and shopping. In Denver, the influx of free-standing ERs has led to situations such as Parker, where residents can choose from seven ERs within a 15 minute drive, while lower income parts of the metro area might only have a single large hospital for a much larger area. Freestanding ERs often do not accept Medicaid or Medicare, nor are they trauma centers, so the largest proportion of their patients is insured payers.[3]

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[1] Alan A. Ayers, MBA, MAcc, Board of Directors and Content Advisor, Urgent Care Association of America. Dissecting the Cost of a Freestanding Emergency Department Visit. https://c.ymcdn.com/sites/ucaoa.site-ym.com/resource/resmgr/Alan_Ayers_Blog/UCAOA_Ayers_Blog_FSED_Pricin.pdf

[2] David Olinger. Free-standing ERs abound in affluent Colorado neighborhoods. Denver Post, September 25, 2015. Accessed April 4, 2016 at: http://www.denverpost.com/news/ci_28874739/freestanding-ers-abound-affluent-colorado-neighborhoods

[3] Michael Booth. Colorado for-profit ERs next to Starbucks: convenience and controversy. Denver Post, July 30, 2013. Accessed April 4, 2016 at: http://www.denverpost.com/ci_23756641/colorado-profit-ers-next-starbucks-convenience-and-controversy

The driver of this large growth is a combination of customer convenience and higher charges than other facilities, such as urgent care facilities. Janet Pogar, regional vice president at Anthem Blue Cross and Blue Shield, says an urgent-care clinic visit may cost $125 to $200, whereas an ER visit averages "probably over $2,000 a visit."[4]

Unfortunately for patients, the distinction between freestanding ERs and other non-emergency care is not always readily apparent to patients seeking services. There have been reported cases of patients expressing great surprise at bills received following care at freestanding ERs:[5]

> The Marshalls had walked into a stand-alone emergency room, one of dozens that have popped up recently in Colorado, which imposes few restrictions on building new medical facilities that often look like urgent care clinics.
>
> The charges for two visits totaled more than $8,000. After insurance payments and adjustments, the Marshalls were billed for a balance of almost $5,000.
>
> "I don't know if the average American understands the difference between urgent care and emergency care, but I didn't," Carol Marshall said. "I still don't, other than cost."

This legislation

This legislation seeks to reduce consumer confusion by increasing the minimum signage around all freestanding ERs and imposing notice requirements prior to patients' receiving non-emergency treatment.

This facility is a freestanding emergency room. We provide emergency services to patients with emergency medical conditions and are not an urgent care center or primary care provider.

First, all freestanding ERs must post clear notices as demonstrated above, clearly telling patients that the facility is not an urgent care facility or primary care provider. At a minimum, these 8.5" by 11" notices must be at each entrance, in each waiting area and treatment room, at each payment location, and on the facility's website.

Second, after performing an "appropriate medical screening examination to determine whether a patient has an emergency medical condition," all patients who do not have emergency medical conditions must be notified of the following information in writing and orally and sign a consent form for treatment.

- The freestanding ER charges rates similar to hospital ERs, including a facility fee of X dollars.
- The freestanding ER or a physician providing care may not be a participating provider in the patient's health insurance plan and may be out of network.
- The physician and the freestanding ER may bill the patient separately.
- The patient may wish to instead consult his or her primary care physician or other provider for nonemergency treatment.

[4] David Olinger. Free-standing ERs abound in affluent Colorado neighborhoods. Denver Post, September 25, 2015. Accessed April 4, 2016 at: http://www.denverpost.com/news/ci_28874739/freestanding-ers-abound-affluent-colorado-neighborhoods

[5] David Olinger. Confusion about free-standing ER brings Colorado mom $5,000 bill. Denver Post, October 31, 2015. Accessed April 4, 2016 at: http://www.denverpost.com/news/ci_29050451/confusion-about-free-standing-er-brings-colorado-mom

Compatibility with EMTALA

The Emergency Medical Treatment and Labor Act (EMTALA) was passed in 1986 to ensure that patients have access to emergency services regardless of their ability to pay. The relevant portions of EMTALA impose on all Medicare participating hospitals specific responsibilities that apply to all patients. The three important provisions are, according to the American Academy of Emergency Medicine:[6]

1. The hospital must provide an appropriate medical screening exam to anyone coming to the ER seeking medical care;
2. For anyone that comes to the hospital and the hospital determines that the individual has an emergency medical condition, the hospital must treat and stabilize the emergency medical condition, or the hospital must transfer the individual; and
3. A hospital must not transfer an individual with an emergency medical condition that has not been stabilized unless several conditions are met that includes effecting an appropriate transfer.

The requirements of EMTALA only apply to hospitals that accept Medicare and would also likely apply to freestanding ERs that are associated with a hospital or hospital system. However, many freestanding ERs are independent facilities with no connection to hospitals and no need to comply with these EMTALA requirements.

For those freestanding ERs that are required to follow EMTALA, the requirements of HB16-1374 appear to be compatible, in that it uses identical language in defining "appropriate medical screening" and "emergency medical condition." The legislation would require the informational session and consent to take place following the diagnosis of a non-emergency medical condition after the medical screening. If an emergency medical condition were diagnosed, EMTALA would require treatment and stabilization immediately; if not, this legislation would require the intervening step of information and consent.

About this Summary

This summary was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Dan Sapienza, Policy Coordinator, at (970) 224-5209, or e-mail at dsapienza@healthdistrict.org.

[6] American Academy of Emergency Medicine. Regulatory Resources: EMTALA. Accessed April 4, 2016 at: http://www.aaem.org/em-resources/regulatory-issues/emtala