

**HB19-1010: FREESTANDING EMERGENCY DEPARTMENTS LICENSURE**  
Concerning the licensing of freestanding emergency departments.

**Details**

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<b>Bill Sponsors:</b>	House – Mullica ( <i>D</i> ) and Landraf ( <i>R</i> ) Senate – ( <i>None</i> )
<b>Committee:</b>	House Health & Insurance Committee House Finance
<b>Bill History:</b>	1/4/2019 Introduced 1/17/2019- House Health & Insurance Refer Amended to House Finance
<b>Next Action:</b>	TBD Hearing in House Finance Committee
<b>Fiscal Note:</b>	<u>1/14/2019 Version</u>

**Bill Summary**

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The bill creates a new license, “freestanding emergency department license,” within the Colorado Department of Public Health and Environment (CDPHE), for health facilities that offer emergency care but are not attached to a hospital campus. A facility that was licensed under the “community clinics and emergency centers” license type before July 1, 2010 and operates in a rural community or serves a ski area is excluded from this new license type. CDPHE has the ability to waive the licensure requirements for a facility that serves or seeks to serve an underserved population within the state. The Colorado Board of Health must adopt new rules for the new licensure.

**Issue Summary**

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**Free Standing Emergency Departments (FSEDs)**

FSEDs are emergency rooms (ERs) that are not attached to hospitals, but which offer the same emergency services. As a newer plank in the spectrum of health care, FSEDs are proliferating nationwide. The concept of FSEDs began in the 1970s for rural areas to have increased access to emergency care.<sup>1</sup> In 1978 there were 55 FSEDs throughout the country; this number has grown to over 400 in 2015.<sup>1</sup> These facilities can be hospital-affiliated, hospital-owned, or independently operated. Since the independent FSEDs are not affiliated with a hospital they cannot participate in Medicare, Medicaid, or TRICARE; thus, they are not subject to relevant federal regulations.<sup>2</sup>

**FSEDs in Colorado**

Almost 50 FSEDs are operating in Colorado, with approximately 36 in the metro region.<sup>3,3</sup> Currently in Fort Collins, there is one FSED operated by UHealth and another one planned by an out-of-state group of doctors.<sup>4</sup> A 2018 analysis by the Colorado Health Institute found that more than 2.3 million residents in the

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<sup>1</sup> Gutierrez, C., Lindor, R., Baker, O., Cutler, D., and Schuur, J.D. (Oct. 2016). State Regulation of Freestanding Emergency Departments Varies Widely, Affecting Location, Growth, and Services Provided. *Health Affairs*.35(10). Retrieved from <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2016.0412>

<sup>2</sup> Zayne, R.D., Harish, N.J., and Wiler, J.L. (Feb. 18.2016). How the Freestanding Emergency Department Boom Can Help Patients. *NEJM Catalyst*. Retrieved from <https://catalyst.nejm.org/how-the-freestanding-emergency-department-boom-can-help-patients/>

<sup>3</sup> Colorado Hospital Association (Oct. 2016). *Colorado’s Freestanding Emergency Departments (FSED)*. Retrieved from <https://www.colorado.gov/pacific/sites/default/files/FSED%20Overview%20-%20Oct%202016.pdf>.

<sup>4</sup> Ferrier, P. (June 30, 2017). *State of Emergency: Murky billing policies add to ER uncertainty*. Retrieved from <https://www.coloradoan.com/story/money/business/2017/06/30/state-emergency-murky-billing-policies-add-er-uncertainty/410511001/>.

Front Range live in a Census tract that is within a five minute drive of a FSED.<sup>5</sup> The tracts with one FSED nearby have a median income of \$79,000, which is greater than the \$71,000 median income for those Front Range tracts where there is not a nearby FSED.<sup>5</sup> The poverty rates in the areas with one FSED average to 8 percent, compared to 10 percent in areas without an FSED.<sup>5</sup> Tracts that have three or more FSEDs within a short drive have a much higher median income, at \$101,000.<sup>5</sup> For patients, the distinction between FSEDs and other non-emergent care, such as urgent care, is not always readily apparent when seeking services. The cost of emergency care at an FSED is significantly higher than the cost of care at an urgent care center. There have been reported cases of patients expressing great surprise at bills received following care at an FSED.<sup>6</sup>

### Current FSED Licensing

In Colorado, FSEDs are currently licensed under the title, “Community Clinics and Emergency Centers” and are more specifically defined as community emergency centers.<sup>3</sup> The fee for the initial license is \$2,750, the renewal is \$1,350, and if the ownership of the facility changes the fee is \$3,100.<sup>7</sup> There currently is not a fiscal note attached to this bill to delineate the possible licensing fees that could be charged under this new type.

Other states have adopted requirements of FSEDs for their licensure or operation, but as this type of facility is newer to the health delivery market there is variation. Some of the policies that other states have implemented for FSEDs, that Colorado has not, include:

- Require certificate of need<sup>8</sup>
- Require hospital affiliation
- Require ambulance reception
- Require distinct licensure type

### Legislative History

During the 2018 session two bills, SB18-146 and HB18-1212, were proposed to address FSEDs. The Senate Bill dealt with consumer disclosures that the FSED is mandated to provider and was sponsored by Senator John Kefalas (D), Senator Jim Smallwood (R), Representative Lang Sias (R), and Representative Jonathan Singer (D). It was passed and signed into law on April 25, 2018 and took effect January 1, 2019. The House Bill was similar in content to this current iteration of licensing FSEDs, it failed to pass both chambers as it was postponed indefinitely by the Senate Committee on State, Veterans and Military Affairs.

### This Legislation

On or after December 1, 2021, those that wish to operate a FSED must annually submit to CDPHE an application of licensure as a FSED. On or after July 1, 2022, an FSED cannot be operated within that state without a license from CDPHE. CDPHE may grant a waiver of the licensure requirements and rules adopted by the Board of Health for a community clinic (currently licensed or seeking to be licensed) that is serving an underserved population.

The Board of Health will adopt rules that establish the requirements of the licensure, the waiver, the safety and care standards of licensed FSEDs, the fees for licensure and inspection of the FSEDs. The rules adopted by the Board shall require that each individual that seeks treatment at the FSED will receive a screening

<sup>5</sup> Colorado Health Institute (March 2018). *Targeted Growth: Freestanding EDs Cluster in Wealthiest Neighborhoods*. Retrieved from [https://www.coloradohealthinstitute.org/sites/default/files/file\\_attachments/FSED%20mapping%20paper%20March%202018.pdf](https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/FSED%20mapping%20paper%20March%202018.pdf)

<sup>6</sup> Olinger, D. (October 31, 2015). *Confusion about free-standing ER brings Colorado mom \$5,000 bill*. Denver Post. Retrieved from [http://www.denverpost.com/news/ci\\_29050451/confusion-about-free-standing-er-brings-colorado-mom](http://www.denverpost.com/news/ci_29050451/confusion-about-free-standing-er-brings-colorado-mom)

<sup>7</sup> 6 CCR 1011-1 Chap. 09 3.100

<sup>8</sup> Demonstration of a need to improve access to emergency care in areas with few other acute care services.

examination and prohibit the delay of medical screening to inquire about the individual's ability to pay or insurance status. The rules must take effect by July 1, 2021 and be amended as necessary.

A FSED that is licensed is subject to the consumer disclosure requirements mandated in C.R.S. 25-3-119.<sup>9</sup>

A FSED is defined (same as defined in C.R.S. 25-1.5-114(5)) as a health facility that offers emergency care, which may offer primary and urgent care services, that is either:

- Owned or operated by/affiliated with a hospital or hospital system and located more than 250 yards from the main campus
- Or is independent from a hospital or hospital system and not attached to, within 250 yards of, or contained within a hospital.

A FSED is not a community clinic licensed before July 1, 2010 and serving a rural area or a ski area.

The bill adds licensing, establishing standards, and enforcement of standards for FSEDs to the powers and duties of CDPHE. The bill amends current statute to add FSEDs into the facilities that are unlawful to be operated without licensure from CDPHE. The bill amends the current definition of community clinics as facilities that are not required to be licensed as FSEDs pursuant to this bill. The bill amends the definition of a FSED in statute regarding consumer disclosures by FSEDs to include the new statute number.

### Reasons to Support

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Licenses could allow for better distinction and regulation of FSEDs in the future, without impeding those CCECs that provide care to rural or ski resort areas. As analyses in Colorado and in other states show, FSEDs tend to cluster in higher-income areas with lower poverty rates, translating to residents being more likely to be covered by private insurance and less likely to be covered by a public plan like Medicaid. Most FSEDs in Colorado are constructed in areas that have the likelihood to make the most money, not areas to serve vulnerable or underserved populations.

### Supporters

- Any support has not been made publically available at this time.

### Reasons to Oppose

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Some may argue that creating a separate licensure category could create a burden on FSEDs. This resource strain could make FSEDs less nimble and unable to innovate with payment models, delivery systems, and care processes.

### Opponents

- Any opposition has not been made publically available at this time.

### Other Considerations

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Besides the mandate that the state board of health adopt the rule on the screening requirement, the bill does not address any other policies that could be tied to FSED licensure. For example, if the bill outlined a certificate-of-need as a requirement for licensure, these facilities would be constructed in rural areas that lack access to emergency care. Additionally, if the bill mandated the rules required hospital affiliation it could address the proliferation of independent FSEDs. Furthermore, it does not include a limit on facility fees that was included in a similar bill in the 2018 legislative session.

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<sup>9</sup> These consumer notices are effective January 1, 2019 and were passed during the 2018 session with SB18-146.

**About this Analysis**

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This analysis 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. This analysis is accurate to staff knowledge as of date printed. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at [awilliams@healthdistrict.org](mailto:awilliams@healthdistrict.org).