

Date: February 13, 2018	POLICY ANALYSIS PREPARED FOR THE BOARD OF DIRECTORS	
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SB18-146 FREESTANDING EMERGENCY DEPARTMENTS REQUIRED CONSUMER NOTICES

Concerning a requirement that a freestanding emergency department inform a person who is seeking medical treatment about the health care options that are available to the person

Details

Bill Sponsors:	Senate – <i>Kefalas (D) and Smallwood (R)</i> , Martinez Humenik (R), Aguilar (D), Coram (R), Crowder (R), Donovan (D), Garcia (D), Gardner (R), Jahn (I), Moreno (D), Tate (R), Todd (D), Williams A. (D) House – <i>Sias (R) and Singer (D)</i> , Hansen (D), Kennedy (D)
Committee:	Senate Committee on Health and Human Services
Bill History:	1/29/2018- Introduced in Senate- Assigned to Health and Human Services
Next Action:	2/14/2018- Hearing in Senate Health and Human Services

Bill Summary

This bill requires a freestanding emergency department (FSED) to provide a person seeking treatment with a written statement of the patient’s rights, with the content that is dictated by the bill. The FSED must post a sign regarding the public and private insurance it accepts as well as the chargemaster¹ price for the 25 most common health services it provides. After it has been determined that the individual does not have an emergency medical condition, the FSED must provide a written disclosure that includes the information from the sign as well as facility fee information and urging discussion between the patient and their insurer and/or the FSED’s financial services. The information contained in this written disclosure must be posted on the FSED’s website. Updates to the written and online disclosure must occur every 6 months and the information on the disclosure must be presented in a clear manner and in languages appropriate to the communities/patients it serves.

Background

FSEDs in Colorado

FSEDs are emergency rooms (ER) 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 and almost 50 are operating in Colorado, with approximately 36 in the metro region.^{2,3} Currently in Fort Collins, there is one FSED operated by UHealth and another one planned by an out-of-state group of doctors.³

When accessing care at an FSED an individual will be charged a facility fee. 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 or low-paying clients.⁴ 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.

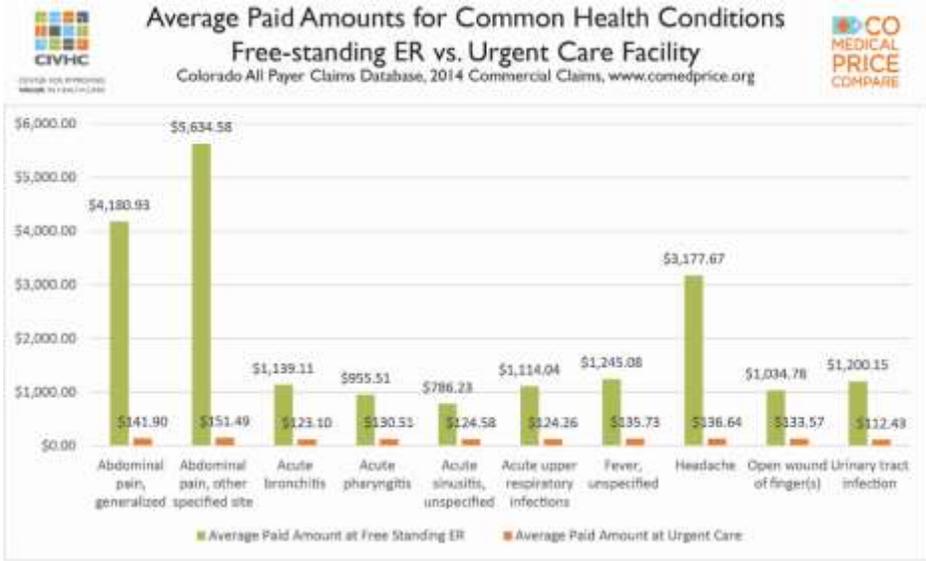
¹ Defined as: a uniform schedule of charges represented by a health facility as the facility’s gross billed charge, or maximum charge that any patient will be billed, for a given health care service, regardless of payer and before any discounts or negotiations are applied.

² 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>.

³ 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/>.

⁴ Ayers, A.A. (n.d.), *Dissecting the Cost of a Freestanding Emergency Department Visit*. Retrieved from https://c.yimcdn.com/sites/ucaoa.site-ym.com/resource/resmgr/Alan_Ayers_Blog/UCAOA_Ayers_Blog_FSED_Pricin.pdf

Information from the Colorado All Payer Claims Database (APCD) demonstrates that in 2014 the average amount paid to treat a common health condition in a FSED was frequently more than what it would cost at an urgent care facility.⁵



For patients, the distinction between FSEDs and other non-emergent care is not always readily apparent when seeking services. There have been reported cases of patients expressing great surprise at bills received following care at an FSED.⁶

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:⁷

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 FSEDs 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. The Colorado Department of Public Health and Environment (CDPHE) regulates both

⁵ Center for Improving Value in Health Care (2017). *Average Paid Amounts for Common Health Conditions Free-standing ER vs. Urgent Care Facility*. Retrieved from <http://www.civhc.org/wp-content/uploads/2017/07/Average-Paid-Amounts-for-Common-Health-Conditions-FSED-vs-Urgent-Care.jpg>.

⁶ 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

⁷ American Academy of Emergency Medicine. *Regulatory Resources: EMTALA*. Accessed April 4, 2016 at: <http://www.aem.org/em-resources/regulatory-issues/emtala>

hospital-affiliated and independent FSEDs with an EMTALA look-alike rule that mandates that these entities adhere to the core concept of the three provisions listed above.⁸

This Legislation

This bill requires a FSED, either hospital affiliated or independent, to provide a written statement of the patient's rights, which must also be explained orally by a staff member. The statement must include:

- The FSED will screen and treat the individual regardless of ability to pay;
- The individual has a right to ask questions about treatment options and costs and to receive prompt and reasonable responses;
- The individual has a right to reject treatment;
- The FSED encourages the individual to defer questions until after being screened for an emergency medical condition; and
- The facility is an emergency medical facility that treats emergency medical conditions, and, for FSEDs that do not include an urgent care clinic on site, that the facility is not an urgent care center or primary care provider.

A plainly visible sign must also be posted by the FSED in the registration/check-in area of the facility. This sign must specify if the facility accepts patients enrolled in Medicaid, Medicare, the Children's Basic Health Plan (i.e. CHP+, Children's Health Insurance Program), or TRICARE as well as health insurance plans in which the FSED is a participating provider. The sign must include the price listed on the FSED's chargemaster or other fee schedule for the 25 most common health care services it provides.

Once it is determined that the patient does not have an emergency medical condition, a FSED must provide a written disclosure that includes the information on the sign, plus the following components. First, it must include the facility fees that are attributable to the 25 most common health care services it provides. The disclosure must have a statement specifying that the price listed on the chargemaster or fee schedule for any given health care service is the maximum charge that any patient will be billed and that the actual charge for a health care service may be lower based on health insurance benefits and the availability of discounts and financial assistance. Finally, the following statement, or something substantially similar must be included:

- If you are covered by health insurance, you are strongly encouraged to consult with your health insurer to determine accurate information about your financial responsibility for a particular nonemergency health care service provided at this freestanding emergency department. If you are not covered by health insurance, you are strongly encouraged to contact (name and telephone number for facility's financial services) to discuss payment options and the availability of financial assistance prior to receiving a nonemergency health care service from this freestanding emergency department.

All of this information is to be presented in a clear and understandable manner as well as in languages appropriate for the community and patients served. Furthermore, this information must be posted on the FSED's website and both the written and online content must be updated every six months. The state board of health is to develop and implement rules to enforce this legislation.

⁸ 6 CCR 1011-1 Chapter 9 18.102(2)

Reasons to Support

Providing patients with the statement that clearly delineates the facility as an emergency department may clarify that it is not an urgent care facility, which could provide an impetus for patients to seek the most appropriate care for their condition. Accessing an urgent care or primary care provider when emergency care is not needed can save money for patients and insurers. When patients and insurers save money it also controls health care costs for all, high costs are borne not just by the individual but by the community as well. Patients will know if the facility is an in-network provider with their insurance, which can eliminate surprise bills after care and discharge. Even if the FSED is not in-network, the price disclosure mandate can provide patients with the maximum amount they may have to pay out of pocket for a common health care service.

Supporters

- Cigna
- Center for Health Progress
- Colorado Children's Campaign
- Colorado Community Health Network
- Colorado Consumer Health Initiative
- Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)
- National Hemophilia Foundation, Colorado Chapter
- One Colorado Education Fund
- United Health Care/United Health Group

Reasons to Oppose

The signage required by the bill could be seen as an EMTALA and/or CDPHE regulation violation as the signage could discourage patients from screening for an emergent medical condition. By posting the chargemaster price, the patient may be confused, since this price is the maximum price that can be charged for the service, not the actual price after insurance or financial assistance. There are different routes to educating patients regarding where to access appropriate care. As more private insurers have created reimbursement schedules for FSEDs this will structure and reduce costs to the consumer.

Opponents

- Colorado Hospital Association

About this Document

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. 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.