

Date: February 23, 2018	POLICY ANALYSIS PREPARED FOR THE BOARD OF DIRECTORS	
Staff: Alyson Williams		

HB18-1212 FREESTANDING EMERGENCY DEPARTMENTS LICENSURE

Concerning the licensing of freestanding emergency departments

Details

Bill Sponsors:	House – <i>Kennedy (D) and Landgraf (R)</i>
Committee:	House Committee on Health, Insurance, & Environment
Bill History:	2/5/2018- Introduced in House- Assigned to Health, Insurance, & Environment
Next Action:	3/8/2018- Hearing in House Health, Insurance, & Environment

Bill Summary

This bill creates a new type of license, “freestanding emergency department license,” which will be issued by the Colorado Department of Public Health and Environment (CDPHE). The Colorado Board of Health will adopt rules for this license type including requirements and fees. Facilities that are licensed under this new category would be limited in the amount of facility fees they are allowed to charge patients.

Background

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.¹ In 1978 there were 55 FSEDs throughout the country; this number has grown to over 400 in 2015.¹ 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.²

FSEDs in Colorado

Almost 50 FSEDs are operating in Colorado, with approximately 36 in the metro region.^{3,3} Currently in Fort Collins, there is one FSED operated by UHealth and another one planned by an out-of-state group of doctors.⁴ 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.⁵

During the 2017 session a bill, SB17-064, was proposed to license FSEDs and require consumer notices. This bill was sponsored by Senator John Kefalas (D) and Representative Susan Lontine (D), it was assigned to the Senate Committee on State, Veterans, and Military Affairs and was postponed indefinitely along party lines.⁶

¹ 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>

² 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/>

³ 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>

⁴ 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/>

⁵ 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

⁶ Colorado General Assembly (2017). SB17-064: *License Freestanding Emergency Departments*. Retrieved from <https://leg.colorado.gov/bills/sb17-064>

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.³ 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 \$3,100.⁷ 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 need⁸
- Require hospital affiliation
- Require ambulance reception
- Require distinct licensure type

Facility Fees

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.⁹ Typically, urgent care facilities do not charge a facility fee for care.

This Legislation

This bill requires all FSEDs to apply yearly for a license to operate on or after December 1, 2020. By July 21, 2021, all FSEDs must have a license to operate. FSEDs that are issued a license shall not charge a facility fee that exceeds the costs reasonably related to the operating expenses at the FSED where treatment was provided or charge a facility fee if the patient was transferred because the FSED could not stabilize the patient. By July 1, 2021, and yearly thereafter, FSEDs must submit a report to the Colorado Department of Health Care Policy and Financing (HCPF) that details facility fees charged and the relationship between fees and overhead costs at the facility during the prior year. HCPF will perform an analysis of these annual reports and submit to CDPHE any violations of the facility fee rules mandated above. If a FSED is in violation of the facility fee requirements, CDPHE may fine or take action on the license of the FSED.

The state board of health is to adopt rules regarding license requirements, the license fees, and the inspection of FSEDs. The rules adopted must include a requirement that all patients that present for emergency services must receive a medical screening that should not be delayed in order to inquire about insurance coverage or ability to pay.

Reasons to Support

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. By requiring the reporting of facility fees and overhead costs of FSEDs, more data can be gathered about health care pricing and costs in Colorado. Additionally, as the relationship between facility fees and overhead costs is currently profitable for entities, this could detract independent FSEDs from joining the health care services spectrum for the sake of profit.

⁷ 6 CCR 1011-1 Chap. 09 3.100

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

⁹ Ayers, A.A. (n.d.), *Dissecting the Cost of a Freestanding Emergency Department Visit*. Retrieved from https://c.ymcdn.com/sites/ucaoa.site-ym.com/resource/resmgr/Alan_Ayers_Blog/UCAOA_Ayers_Blog_FSED_Pricin.pdf

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Supporters

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

Reasons to Oppose

Some may argue that creating a separate licensure category along with the facility fee reporting would 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. Furthermore, by maintaining the facility fees typically associated with hospitals but having lower overhead costs, FSEDs can pioneer those pricing models that could ultimately save patients and payers money.

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. 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.

This bill does not address consumer knowledge about the possible financial cost of accessing care through FSEDs. As consumers may not know the difference between hospital-affiliated or owned FSEDs and independent FSEDs they may not realize that independent facilities do not accept Medicaid, Medicare, or TRICARE. For those with nonemergent medical conditions that access care through an FSED, they are likely to face more expensive bills than if they had visited an urgent care center.¹⁰ Without addressing consumer knowledge regarding FSEDs, it decreases the likelihood of stemming the cost of unnecessary or inappropriate care.

Opponents

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

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.

¹⁰ A bill, SB18-146, currently proceeding through the Colorado General Assembly during the 2018 legislative session is attempting to address consumer knowledge about FSEDs.