

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0633.01 Christy Chase x2008

SENATE BILL 18-146

SENATE SPONSORSHIP

Kefalas and Smallwood, Martinez Humenik, Aguilar, Coram, Crowder, Donovan, Garcia, Gardner, Jahn, Moreno, Tate, Todd, Williams A.

HOUSE SPONSORSHIP

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A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT THAT A FREESTANDING EMERGENCY
102 DEPARTMENT INFORM A PERSON WHO IS SEEKING MEDICAL
103 TREATMENT ABOUT THE HEALTH CARE OPTIONS THAT ARE
104 AVAILABLE TO THE PERSON.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires a freestanding emergency department (FSED), whether operated by a hospital at a separate, off-campus location or operating independently of a hospital system, to provide any individual

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

that enters the FSED seeking treatment a written statement of patient's rights, which an FSED staff member or health care provider must explain orally and which must indicate that:

- ! 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.

Additionally, a FSED must post a sign specifying:

- ! Whether the facility accepts patients enrolled in medicaid, medicare, the children's basic health plan, or TRICARE;
- ! The particular health insurance plans in which the FSED is a participating provider or that the FSED is not a participating provider in any plan networks; and
- ! The price listed on the FSED's chargemaster or other fee schedule for the 25 most common health care services it provides.

After conducting an initial screening and determining that a patient does not have an emergency medical condition, the FSED must provide the patient a written disclosure that includes the information posted on the sign, as well as the following:

- ! The price listed on the FSED's chargemaster or other fee schedule for the facility fees associated with the 25 most common health care services the FSED provides;
- ! 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;
- ! A statement urging a person covered by health insurance to contact his or her health insurer for information about his or her financial responsibility and a person who is uninsured to contact the FSED's financial services office to discuss payment options and the availability of financial assistance prior to receiving nonemergency health care services;

- ! Information about the facility fees that the FSED charges;
and
- ! The FSED's website address where the disclosure may be located.

The FSED must also post the information in the written disclosure on its website and update the written and web-based disclosure at least once every 6 months. Additionally, the FSED must provide all information in a clear and understandable manner and in languages appropriate to the communities and patients it serves.

The state board of health is authorized to adopt rules to implement and enforce the requirements of the bill.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Colorado struggles to control the cost of health care, which is
5 consistent with national trends;

6 (b) The cost of health care benefits, including health insurance
7 policies and monthly premiums, is directly related to the costs of health
8 care services, products, and medications used by Colorado residents to
9 maintain their health, whether addressing acute health needs or managing
10 chronic health conditions;

11 (c) The costs of receiving health care services for treating a
12 specific condition vary significantly based on the setting or facility at
13 which the health care services are delivered to the patient;

14 (d) Emergency departments, including freestanding emergency
15 departments, which are often referred to as "FSEDs", have been widely
16 recognized as the most expensive setting for receiving nonemergency
17 health care services, and evidence shows that utilization of FSEDs for
18 nonemergency health care services significantly drives up health care
19 costs for Colorado residents;

1 (e) Data from the all payer claims database indicate that seven of
2 the top ten reasons for visiting a FSED were for nonemergency services;

3 (f) FSEDs have proliferated, primarily along the Front Range,
4 with thirty-seven FSEDs in operation in 2016, and Colorado is one of the
5 top three states in terms of the number of FSEDs operating in the state;

6 (g) Colorado health care providers, facilities, and insurers have a
7 shared responsibility to inform and educate Colorado health care
8 consumers regarding their health care options and costs associated with
9 those options so that consumers can make informed health care decisions
10 regarding where they choose to receive their health care, what the costs
11 will be, and the costs for which they will be responsible;

12 (h) While initially introduced in Colorado as facilities necessary
13 to address critical health care coverage gaps existing across diverse
14 geographic regions, particularly rural regions, FSEDs are increasingly
15 located in more suburban and urban areas with adequate access to health
16 care facilities;

17 (i) Significant differences also exist in terms of the costs patients
18 incur for receiving nonemergency health care services at FSEDs
19 compared to receiving similar care at urgent care centers or a primary care
20 physician's office;

21 (j) FSED facility fees significantly increase patients' costs
22 compared to costs associated with receiving nonemergency care at an
23 urgent care center or primary care physician's office;

24 (k) The price of hospital facility fees rose eighty-nine percent
25 between 2009 and 2015, twice as much as the price of outpatient health
26 care and four times as much as overall health care spending; and

27 (l) The intent of this bill is to:

1 (I) Require transparency and disclosure to consumers by FSEDs
2 or off-campus emergency departments for the purpose of helping health
3 care consumers make informed decisions; and

4 (II) Authorize the Colorado department of public health and
5 environment to oversee and enforce a comprehensive set of consumer
6 protections through the implementation of transparency and disclosure
7 measures.

8 **SECTION 2.** In Colorado Revised Statutes, **add** 25-3-118 as
9 follows:

10 **25-3-118. Freestanding emergency departments - required**
11 **notices - disclosures - rules - definitions.** (1) (a) (I) A FREESTANDING
12 EMERGENCY DEPARTMENT SHALL GIVE TO EVERY INDIVIDUAL SEEKING
13 TREATMENT AT THE FACILITY A WRITTEN NOTICE CONTAINING THE
14 FOLLOWING STATEMENTS IMMEDIATELY UPON REGISTRATION:

15 STATEMENT OF PATIENT'S RIGHTS

16 WE WILL SCREEN AND TREAT YOU REGARDLESS OF YOUR
17 ABILITY TO PAY.

18 YOU HAVE A RIGHT TO ASK QUESTIONS REGARDING YOUR
19 TREATMENT OPTIONS AND COSTS.

20 YOU HAVE A RIGHT TO RECEIVE PROMPT AND REASONABLE
21 RESPONSES TO QUESTIONS AND REQUESTS.

22 YOU HAVE A RIGHT TO REJECT TREATMENT.

23 HOWEVER, WE ENCOURAGE YOU TO DEFER YOUR QUESTIONS
24 UNTIL AFTER WE SCREEN YOU FOR AN EMERGENCY MEDICAL
25 CONDITION.

26 THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS
27 EMERGENCY MEDICAL CONDITIONS.

1 (II) (A) IF THE FREESTANDING EMERGENCY DEPARTMENT DOES
2 NOT HAVE OR INCLUDE WITHIN ITS FACILITY AN URGENT CARE CENTER OR
3 CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE
4 THE FOLLOWING STATEMENT IN THE NOTICE REQUIRED BY SUBSECTION
5 (1)(a)(I) OF THIS SECTION:

6 THIS IS NOT AN URGENT CARE CENTER OR PRIMARY CARE
7 PROVIDER.

8 (B) IF THE FREESTANDING EMERGENCY DEPARTMENT HAS OR
9 INCLUDES WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE
10 FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE
11 FOLLOWING STATEMENT IN THE NOTICE REQUIRED BY SUBSECTION (1)(a)(I)
12 OF THIS SECTION:

13 THIS FACILITY ALSO CONTAINS AN URGENT CARE CENTER
14 THAT OPERATES FROM (INSERT TIME URGENT CARE CENTER
15 OPENS) TO (INSERT TIME URGENT CARE CENTER CLOSES)
16 AND PROVIDES PRIMARY CARE SERVICES (AND INSERT, IF
17 APPLICABLE, THAT THE URGENT CARE CENTER OFFERS
18 PRIMARY CARE SERVICES BY APPOINTMENT).

19 (III) IF THE INDIVIDUAL SEEKING TREATMENT IS A MINOR WHO IS
20 ACCOMPANIED BY AN ADULT, THE FREESTANDING EMERGENCY
21 DEPARTMENT SHALL PROVIDE THE WRITTEN NOTICE REQUIRED BY THIS
22 SUBSECTION (1)(a) TO THE ACCOMPANYING ADULT.

23 (b) IN ADDITION TO GIVING AN INDIVIDUAL THE WRITTEN NOTICE
24 REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION, A FREESTANDING
25 EMERGENCY DEPARTMENT STAFF MEMBER OR HEALTH CARE PROVIDER
26 SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBSECTION (1)(a) OF
27 THIS SECTION TO THE INDIVIDUAL ORALLY.

1 (2) (a) A FREESTANDING EMERGENCY DEPARTMENT SHALL POST A
2 SIGN THAT IS PLAINLY VISIBLE IN THE AREA WITHIN THE FACILITY WHERE
3 AN INDIVIDUAL SEEKING CARE REGISTERS OR CHECKS IN AND THAT:

4 (I) SPECIFIES WHETHER THE FREESTANDING EMERGENCY
5 DEPARTMENT ACCEPTS PATIENTS WHO ARE ENROLLED IN THE STATE
6 MEDICAL ASSISTANCE PROGRAM UNDER ARTICLES 4, 5, AND 6 OF TITLE
7 25.5, MEDICARE, AS AUTHORIZED IN TITLE XVIII OF THE FEDERAL "SOCIAL
8 SECURITY ACT", AS AMENDED, THE CHILDREN'S BASIC HEALTH PLAN
9 ESTABLISHED UNDER ARTICLE 8 OF TITLE 25.5, OR A HEALTH PLAN
10 AUTHORIZED UNDER 10 U.S.C. SEC. 1071 ET SEQ.

11 (II) (A) LISTS THE SPECIFIC HEALTH BENEFIT PLANS IN WHICH THE
12 FREESTANDING EMERGENCY DEPARTMENT IS A PARTICIPATING PROVIDER
13 IN THE HEALTH BENEFIT PLANS' PROVIDER NETWORKS AND STATES THAT
14 THE PLANS COVER EMERGENCY AND NONEMERGENCY HEALTH CARE
15 SERVICES THAT COULD BE PROVIDED AT THE FREESTANDING EMERGENCY
16 DEPARTMENT; OR

17 (B) STATES THAT THE FREESTANDING EMERGENCY DEPARTMENT
18 IS NOT A PARTICIPATING PROVIDER IN ANY HEALTH BENEFIT PLAN
19 PROVIDER NETWORK; AND

20 (III) SPECIFIES THE CHARGEMASTER OR FEE SCHEDULE PRICE FOR
21 THE TWENTY-FIVE MOST COMMON HEALTH CARE SERVICES PROVIDED BY
22 THE FREESTANDING EMERGENCY DEPARTMENT.

23 (b) UNLESS THE INFORMATION IS UNCHANGED, THE FREESTANDING
24 EMERGENCY DEPARTMENT SHALL UPDATE THE INFORMATION CONTAINED
25 IN THE SIGN POSTED PURSUANT TO THIS SUBSECTION (2) EVERY SIX
26 MONTHS AND SHALL INCLUDE THE DATE OF THE MOST RECENT UPDATE ON
27 THE SIGN.

1 (3) (a) AFTER PERFORMING AN APPROPRIATE MEDICAL SCREENING
2 EXAMINATION AND DETERMINING THAT A PATIENT DOES NOT HAVE AN
3 EMERGENT MEDICAL CONDITION, THE FREESTANDING EMERGENCY
4 DEPARTMENT SHALL PROVIDE TO THE PATIENT A WRITTEN DISCLOSURE
5 CONTAINING:

6 (I) THE INFORMATION SPECIFIED IN SUBSECTION (2)(a) OF THIS
7 SECTION;

8 (II) THE FACILITY FEES, AS LISTED ON THE FREESTANDING
9 EMERGENCY DEPARTMENT'S CHARGEMASTER OR FEE SCHEDULE, THAT THE
10 FREESTANDING EMERGENCY DEPARTMENT CHARGES THAT ARE
11 ATTRIBUTABLE TO THE TWENTY-FIVE MOST COMMON HEALTH CARE
12 SERVICES SPECIFIED IN ACCORDANCE WITH SUBSECTION (2)(a)(III) OF THIS
13 SECTION;

14 (III) A STATEMENT SPECIFYING THAT THE PRICE LISTED ON THE
15 FREESTANDING EMERGENCY DEPARTMENT'S CHARGEMASTER OR FEE
16 SCHEDULE FOR ANY GIVEN HEALTH CARE SERVICE IS THE MAXIMUM
17 CHARGE THAT ANY PATIENT WILL BE BILLED FOR THE SERVICE AND THAT
18 THE ACTUAL CHARGE FOR ANY HEALTH CARE SERVICE RENDERED MAY BE
19 LOWER DEPENDING ON APPLICABLE HEALTH INSURANCE BENEFITS AND THE
20 AVAILABILITY OF DISCOUNTS OR FINANCIAL ASSISTANCE;

21 (IV) THE FOLLOWING STATEMENT OR A STATEMENT CONTAINING
22 SUBSTANTIALLY SIMILAR INFORMATION:

23 IF YOU ARE COVERED BY HEALTH INSURANCE, YOU ARE
24 STRONGLY ENCOURAGED TO CONSULT WITH YOUR HEALTH
25 INSURER TO DETERMINE ACCURATE INFORMATION ABOUT
26 YOUR FINANCIAL RESPONSIBILITY FOR A PARTICULAR
27 NONEMERGENCY HEALTH CARE SERVICE PROVIDED AT THIS

1 FREESTANDING EMERGENCY DEPARTMENT. IF YOU ARE NOT
2 COVERED BY HEALTH INSURANCE, YOU ARE STRONGLY
3 ENCOURAGED TO CONTACT (INSERT NAME AND TELEPHONE
4 NUMBER FOR OFFICE RESPONSIBLE FOR FINANCIAL
5 SERVICES) TO DISCUSS PAYMENT OPTIONS AND THE
6 AVAILABILITY OF FINANCIAL ASSISTANCE PRIOR TO
7 RECEIVING A NONEMERGENCY HEALTH CARE SERVICE FROM
8 THIS FREESTANDING EMERGENCY DEPARTMENT.

9 (V) INFORMATION ABOUT THE FACILITY FEES THAT THE
10 FREESTANDING EMERGENCY DEPARTMENT CHARGES, INDICATING THE
11 RANGE OF FACILITY FEES BASED ON THE LEVEL OF CARE THAT MAY BE
12 PROVIDED BY THE FREESTANDING EMERGENCY DEPARTMENT; AND

13 (VI) THE FREESTANDING EMERGENCY DEPARTMENT'S WEBSITE
14 ADDRESS WHERE THE INFORMATION CONTAINED IN THE DISCLOSURE
15 REQUIRED BY THIS SUBSECTION (3) MAY BE FOUND.

16 (b) A FREESTANDING EMERGENCY DEPARTMENT SHALL UPDATE
17 THE INFORMATION CONTAINED IN THE WRITTEN DISCLOSURE REQUIRED BY
18 THIS SUBSECTION (3) AT LEAST ONCE EVERY SIX MONTHS.

19 (4) A FREESTANDING EMERGENCY DEPARTMENT SHALL POST THE
20 DISCLOSURE REQUIRED BY SUBSECTION (3) OF THIS SECTION ON ITS
21 WEBSITE AND UPDATE THE DISCLOSURE POSTED ON ITS WEBSITE AT LEAST
22 ONCE EVERY SIX MONTHS.

23 (5) A FREESTANDING EMERGENCY DEPARTMENT SHALL PROVIDE
24 THE INFORMATION REQUIRED BY THIS SECTION IN A CLEAR AND
25 UNDERSTANDABLE MANNER AND IN LANGUAGES APPROPRIATE TO THE
26 COMMUNITIES AND PATIENTS THE FREESTANDING EMERGENCY
27 DEPARTMENT SERVES.

1 (6) NOTHING IN THIS SECTION AFFECTS OR OTHERWISE LIMITS A
2 HOSPITAL'S OR OTHER HEALTH FACILITY'S OBLIGATIONS UNDER SECTION
3 6-20-101 OR ARTICLE 49 OF THIS TITLE 25.

4 (7) THE STATE BOARD OF HEALTH MAY ADOPT RULES AS
5 NECESSARY TO IMPLEMENT AND ENFORCE THIS SECTION.

6 (8) AS USED IN THIS SECTION:

7 (a) "CHARGEMASTER OR FEE SCHEDULE", WHICH IS OFTEN
8 REFERRED TO AS "CHARGE DESCRIPTION MASTER" OR "CDM", MEANS A
9 UNIFORM SCHEDULE OF CHARGES REPRESENTED BY A HEALTH FACILITY AS
10 THE FACILITY'S GROSS BILLED CHARGE, OR MAXIMUM CHARGE THAT ANY
11 PATIENT WILL BE BILLED, FOR A GIVEN HEALTH CARE SERVICE,
12 REGARDLESS OF PAYER AND BEFORE ANY DISCOUNTS OR NEGOTIATIONS
13 ARE APPLIED.

14 (b) "FREESTANDING EMERGENCY DEPARTMENT" MEANS A HEALTH
15 FACILITY THAT RECEIVES INDIVIDUALS AND PROVIDES EMERGENCY
16 SERVICES, IS LICENSED BY THE DEPARTMENT PURSUANT TO SECTION
17 25-3-101, AND IS EITHER:

18 (I) OWNED OR OPERATED BY, OR AFFILIATED WITH, A HOSPITAL OR
19 HOSPITAL SYSTEM AND IS LOCATED MORE THAN TWO HUNDRED FIFTY
20 YARDS FROM THE MAIN CAMPUS OF THE HOSPITAL; OR

21 (II) INDEPENDENT FROM AND NOT OPERATED BY OR AFFILIATED
22 WITH A HOSPITAL OR HOSPITAL SYSTEM AND IS NOT ATTACHED TO OR
23 SITUATED WITHIN TWO HUNDRED FIFTY YARDS OF, OR CONTAINED WITHIN,
24 A HOSPITAL.

25 **SECTION 3. Act subject to petition - effective date.** This act
26 takes effect January 1, 2019; except that, if a referendum petition is filed
27 pursuant to section 1 (3) of article V of the state constitution against this

1 act or an item, section, or part of this act within the ninety-day period
2 after final adjournment of the general assembly, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2018 and, in such case, will take
5 effect on January 1, 2019, or on the date of the official declaration of the
6 vote thereon by the governor, whichever is later.