

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0609.01 Yelana Love x2295

HOUSE BILL 18-1212

HOUSE SPONSORSHIP

Kennedy and Landgraf,

SENATE SPONSORSHIP

(None),

House Committees

Health, Insurance, & Environment

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE LICENSING OF FREESTANDING EMERGENCY
102 DEPARTMENTS.

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 creates a new license, referred to as a "freestanding emergency department license", for the department of public health and environment (CDPHE) to issue on or after July 1, 2021, to a health facility that offers emergency care, that may offer primary and urgent care services, and that is either:

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.

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

The state board of health is to adopt rules regarding the new license, including rules to set licensure requirements and fees, safety and care standards, and staffing requirements.

A health facility with a freestanding emergency department license is limited in the amount of facility fees the facility can charge patients. CDPHE may fine or take action on the license of a freestanding emergency department that charges facility fees in violation of the limits established in the bill.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add 25-1.5-113** as
 3 follows:

4 **25-1.5-113. Freestanding emergency departments - licensure**
 5 **- requirements - rules - definitions.** (1) (a) ON OR AFTER DECEMBER 1,
 6 2020, A PERSON THAT WISHES TO OPERATE A FREESTANDING EMERGENCY
 7 DEPARTMENT MUST SUBMIT TO THE DEPARTMENT ON AN ANNUAL BASIS A
 8 COMPLETED APPLICATION FOR LICENSURE ASA FREESTANDING EMERGENCY
 9 DEPARTMENT. ON OR AFTER JULY 1, 2021, A PERSON SHALL NOT OPERATE
 10 A FREESTANDING EMERGENCY DEPARTMENT WITHOUT A LICENSE ISSUED
 11 BY THE DEPARTMENT. THE DEPARTMENT SHALL ISSUE A FREESTANDING
 12 EMERGENCY DEPARTMENT LICENSE TO A HEALTH FACILITY TO OPERATE A
 13 FREESTANDING EMERGENCY DEPARTMENT IF THE HEALTH FACILITY
 14 SATISFIES THE REQUIREMENTS OF THIS SECTION AND BOARD RULES
 15 ADOPTED IN ACCORDANCE WITH THIS SECTION.

16 (b) ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, A HEALTH
 17 FACILITY THAT IS OPERATING AS A LICENSED COMMUNITY CLINIC, AS

1 DESCRIBED IN SECTION 25-3-101 (2)(a)(I)(B), BUT MEETS THE DEFINITION
2 OF A FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN THIS
3 SECTION AND UNDER BOARD RULES MUST COMPLY WITH ALL
4 REQUIREMENTS OF THIS SECTION AND RULES ADOPTED UNDER THIS
5 SECTION AND OBTAIN A FREESTANDING EMERGENCY DEPARTMENT LICENSE
6 BY JULY 1, 2021, EXCEPT AS PROVIDED IN SUBSECTION (1)(b)(II) OF THIS
7 SECTION, IN ORDER TO CONTINUE OPERATING. ON AND AFTER JULY 1,
8 2021, A FACILITY SUBJECT TO THIS SUBSECTION (1)(b) SHALL NOT
9 OPERATE UNLESS THE FACILITY IS:

10 (I) LICENSED AS A FREESTANDING EMERGENCY DEPARTMENT; OR

11 (II) OFFERING SERVICES IN A GEOGRAPHICALLY UNDERSERVED
12 COMMUNITY, NOT PRIMARILY OFFERING EMERGENCY SERVICES, AND
13 LICENSED AS A COMMUNITY CLINIC AS DESCRIBED IN SECTION 25-3-101.

14 (2) (a) A FREESTANDING EMERGENCY DEPARTMENT LICENSED
15 PURSUANT TO THIS SECTION:

16 (I) SHALL NOT CHARGE A PATIENT A FACILITY FEE THAT EXCEEDS
17 THE COSTS REASONABLY RELATED TO THE OPERATING EXPENSES AT THE
18 FREESTANDING EMERGENCY DEPARTMENT WHERE TREATMENT WAS
19 PROVIDED; AND

20 (II) SHALL NOT CHARGE A PATIENT A FACILITY FEE IF THE PATIENT
21 WAS TRANSFERRED BY AMBULANCE TO ANOTHER FACILITY BECAUSE THE
22 FREESTANDING EMERGENCY DEPARTMENT WAS UNABLE TO STABILIZE THE
23 PATIENT.

24 (b) (I) BY JULY 1, 2021, AND BY EVERY JULY 1 THEREAFTER, A
25 FREESTANDING EMERGENCY DEPARTMENT SHALL SUBMIT A REPORT TO
26 THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING DETAILING
27 THE FACILITY FEES CHARGED DURING THE PRIOR YEAR AND THE

1 RELATIONSHIP BETWEEN THOSE FEES AND THE OVERHEAD COSTS AT THE
2 FACILITY WHERE THE TREATMENT WAS PROVIDED. IN DETERMINING THE
3 COST OF PROPERTY, A FREESTANDING EMERGENCY DEPARTMENT SHALL
4 DEPRECIATE ANY EXPENSE ON THE PROPERTY AS THE FREESTANDING
5 EMERGENCY DEPARTMENT WOULD FOR TAX PURPOSES.

6 (II) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
7 SHALL REVIEW THE ANNUAL REPORTS AND SUBMIT A REPORT TO THE
8 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT DETAILING ANY
9 FREESTANDING EMERGENCY DEPARTMENTS THAT HAVE CHARGED
10 FACILITY FEES IN VIOLATION OF SUBSECTION (2)(a) OF THIS SECTION.

11 (III) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
12 MAY FINE OR TAKE ACTION ON THE LICENSE OF ANY FREESTANDING
13 EMERGENCY DEPARTMENT THAT THE DEPARTMENT OF HEALTH CARE
14 POLICY AND FINANCING REPORTS AS VIOLATING SUBSECTION (2)(a) OF THIS
15 SECTION.

16 (3) (a) THE BOARD SHALL ADOPT RULES ESTABLISHING THE
17 REQUIREMENTS FOR LICENSURE OF, SAFETY AND CARE STANDARDS FOR,
18 AND FEES FOR LICENSING AND INSPECTING FREESTANDING EMERGENCY
19 DEPARTMENTS, WHICH FEES MUST BE SET IN ACCORDANCE WITH SECTION
20 25-3-105.

21 (b) THE RULES ADOPTED BY THE BOARD SHALL INCLUDE A
22 REQUIREMENT THAT ALL PATIENTS PRESENTING FOR EMERGENCY SERVICES
23 MUST RECEIVE A MEDICAL SCREENING. THE MEDICAL SCREENING SHALL
24 NOT BE DELAYED IN ORDER TO INQUIRE ABOUT THE INDIVIDUAL'S ABILITY
25 TO PAY OR INSURANCE STATUS.

26 (c) THE RULES ADOPTED BY THE BOARD MUST TAKE EFFECT BY
27 JULY 1, 2020, AND THEREAFTER, THE BOARD SHALL AMEND THE RULES AS

1 NECESSARY.

2 (4) THE DEPARTMENT SHALL NOT ISSUE A FREESTANDING
3 EMERGENCY DEPARTMENT LICENSE TO A HEALTH FACILITY THAT DOES NOT
4 SATISFY THE CRITERIA SPECIFIED IN THIS SECTION OR RULES ADOPTED BY
5 THE BOARD PURSUANT TO THIS SECTION.

6 (5) AS USED IN THIS SECTION:

7 (a) "BOARD" MEANS THE STATE BOARD OF HEALTH CREATED IN
8 SECTION 25-1-103.

9 (b) "FACILITY FEE" MEANS A FEE CHARGED OR BILLED BY A
10 FREESTANDING EMERGENCY DEPARTMENT FOR SERVICES PROVIDED IN THE
11 FACILITY, WHICH FEE IS:

12 (I) INTENDED TO COMPENSATE THE FREESTANDING EMERGENCY
13 DEPARTMENT FOR THE FACILITY'S OPERATING EXPENSES; AND

14 (II) SEPARATE AND DISTINCT FROM A PROFESSIONAL FEE AND
15 DIAGNOSTIC TESTING AND PROCEDURES FEES.

16 (c) "FREESTANDING EMERGENCY DEPARTMENT" MEANS A HEALTH
17 FACILITY THAT OFFERS EMERGENCY CARE, THAT MAY OFFER PRIMARY AND
18 URGENT CARE SERVICES, AND THAT IS EITHER:

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

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

26 **SECTION 2.** In Colorado Revised Statutes, 25-1.5-103, **amend**
27 (1)(a)(I)(A) and (2)(a.5)(II); and **add** (2)(a.5)(III) as follows:

1 **25-1.5-103. Health facilities - powers and duties of department**
2 **- limitations on rules promulgated by department - definitions.**

3 (1) The department has, in addition to all other powers and duties
4 imposed upon it by law, the powers and duties provided in this section as
5 follows:

6 (a) (I) (A) To annually license and to establish and enforce
7 standards for the operation of general hospitals, hospital units as defined
8 in section 25-3-101 (2), FREESTANDING EMERGENCY DEPARTMENTS AS
9 DEFINED IN SECTION 25-1.5-113, psychiatric hospitals, community clinics,
10 rehabilitation hospitals, convalescent centers, community mental health
11 centers, acute treatment units, facilities for persons with intellectual and
12 developmental disabilities, nursing care facilities, hospice care, assisted
13 living residences, dialysis treatment clinics, ambulatory surgical centers,
14 birthing centers, home care agencies, and other facilities of a like nature,
15 except those wholly owned and operated by any governmental unit or
16 agency.

17 (2) For purposes of this section, unless the context otherwise
18 requires:

19 (a.5) "Community clinic" has the same meaning as set forth in
20 section 25-3-101 and does not include:

21 (II) A rural health clinic, as defined in section 1861 (aa)(2) of the
22 federal "Social Security Act", 42 U.S.C. sec. 1395x (aa)(2); OR

23 (III) A FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN
24 AND LICENSED UNDER SECTION 25-1.5-113.

25 **SECTION 3.** In Colorado Revised Statutes, 25-3-101, **amend** (1)
26 and (2)(a)(III)(C); and **add** (2)(a)(III)(D) as follows:

27 **25-3-101. Hospitals - health facilities - licensed - definitions.**

1 (1) It is unlawful for any person, partnership, association, or corporation
2 to open, conduct, or maintain any general hospital, hospital unit,
3 FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN SECTION
4 25-1.5-113, psychiatric hospital, community clinic, rehabilitation hospital,
5 convalescent center, community mental health center, acute treatment
6 unit, facility for persons with developmental disabilities, as defined in
7 section 25-1.5-103 (2)(c), nursing care facility, hospice care, assisted
8 living residence, except an assisted living residence shall be assessed a
9 license fee as set forth in section 25-27-107, dialysis treatment clinic,
10 ambulatory surgical center, birthing center, home care agency, or other
11 facility of a like nature, except those wholly owned and operated by any
12 governmental unit or agency, without first having obtained a license from
13 the department of public health and environment.

14 (2) As used in this section, unless the context otherwise requires:

15 (a) (III) "Community clinic" does not include:

16 (C) A facility that functions only as an office for the practice of
17 medicine or the delivery of primary care services by other licensed or
18 certified practitioners; OR

19 (D) A FREESTANDING EMERGENCY DEPARTMENT LICENSED UNDER
20 SECTION 25-1.5-113.

21 **SECTION 4. Act subject to petition - effective date.** Sections
22 2 and 3 of this act take effect July 1, 2020, and the remainder of this act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2018 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor; except that
5 sections 2 and 3 of this act take effect July 1, 2020.