

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE LICENSING OF FREESTANDING EMERGENCY**
102 **DEPARTMENTS, AND, IN CONNECTION THEREWITH, MAKING AN**
103 **APPROPRIATION.**

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) LICENSED AS A COMMUNITY CLINIC AS DESCRIBED IN SECTION
12 25-3-101 AND:

13 (A) IS OPERATING IN A RURAL AREA, AS DEFINED IN SECTION
14 39-30-103 (1.5); OR

15 (B) IS GRANTED A WAIVER BY THE DEPARTMENT IN ACCORDANCE
16 WITH SUBSECTION (2) OF THIS SECTION.

17 (2) THE DEPARTMENT MAY GRANT A WAIVER OF THE LICENSURE
18 REQUIREMENTS SET FORTH IN THIS SECTION AND IN RULES ADOPTED BY
19 THE BOARD FOR A COMMUNITY CLINIC SERVING AN UNDERSERVED
20 POPULATION IN THE STATE.

21 (3) (a) A FREESTANDING EMERGENCY DEPARTMENT LICENSED
22 PURSUANT TO THIS SECTION:

23 (I) SHALL NOT CHARGE A PATIENT A FACILITY FEE THAT EXCEEDS
24 THE COSTS REASONABLY RELATED TO THE OPERATING EXPENSES AT THE
25 FREESTANDING EMERGENCY DEPARTMENT WHERE TREATMENT WAS
26 PROVIDED; AND

27 (II) SHALL NOT CHARGE A PATIENT A FACILITY FEE IF THE PATIENT

1 WAS TRANSFERRED BY AMBULANCE TO ANOTHER FACILITY BECAUSE THE
2 FREESTANDING EMERGENCY DEPARTMENT WAS UNABLE TO STABILIZE THE
3 PATIENT.

4 (b) (I) BY JULY 1, 2021, AND BY EVERY JULY 1 THEREAFTER, A
5 FREESTANDING EMERGENCY DEPARTMENT SHALL SUBMIT A REPORT TO
6 THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING DETAILING
7 THE FACILITY FEES CHARGED DURING THE PRIOR YEAR AND THE
8 RELATIONSHIP BETWEEN THOSE FEES AND THE OVERHEAD COSTS AT THE
9 FACILITY WHERE THE TREATMENT WAS PROVIDED. IN DETERMINING THE
10 COST OF PROPERTY, A FREESTANDING EMERGENCY DEPARTMENT SHALL
11 DEPRECIATE ANY EXPENSE ON THE PROPERTY AS THE FREESTANDING
12 EMERGENCY DEPARTMENT WOULD FOR TAX PURPOSES. IN CONSULTATION
13 WITH THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE
14 MEDICAL SERVICES BOARD CREATED IN SECTION 25.5-1-301 SHALL
15 PROMULGATE RULES TO DETERMINE THE CONTENTS OF, AND THE
16 SUBMISSION PROCEDURE FOR, THE ANNUAL REPORTS THAT MUST BE
17 SUBMITTED IN ACCORDANCE WITH THIS SUBSECTION (2)(b)(I). THE
18 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL MAKE THE
19 ANNUAL REPORTS AVAILABLE TO THE PUBLIC.

20 (II) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
21 SHALL REVIEW THE ANNUAL REPORTS AND SUBMIT A REPORT TO THE
22 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT DETAILING ANY
23 FREESTANDING EMERGENCY DEPARTMENTS THAT HAVE CHARGED
24 FACILITY FEES IN VIOLATION OF SUBSECTION (3)(a) OF THIS SECTION. THE
25 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL REVIEW THE
26 ANNUAL REPORTS OF EACH FACILITY ONCE EVERY THREE YEARS
27 RESULTING IN ONE-THIRD OF TOTAL FACILITIES UNDER REVIEW EACH YEAR.

1 (III) THE BOARD SHALL, BY RULE, ESTABLISH THE FINES THAT THE
2 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MAY ASSESS AGAINST
3 ANY FREESTANDING EMERGENCY DEPARTMENT THAT THE DEPARTMENT OF
4 HEALTH CARE POLICY AND FINANCING REPORTS AS VIOLATING SUBSECTION
5 (3)(a) OF THIS SECTION. THE FINES MUST NOT EXCEED ONE THOUSAND
6 DOLLARS PER PATIENT OCCURRENCE. ANY PENALTY COLLECTED
7 PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE
8 TREASURER FOR DEPOSIT INTO THE GENERAL FUND.

9 (4) (a) THE BOARD SHALL ADOPT RULES ESTABLISHING THE
10 REQUIREMENTS FOR LICENSURE OF, SAFETY AND CARE STANDARDS FOR,
11 AND FEES FOR LICENSING AND INSPECTING FREESTANDING EMERGENCY
12 DEPARTMENTS, WHICH FEES MUST BE SET IN ACCORDANCE WITH SECTION
13 25-3-105.

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

19 (c) THE RULES ADOPTED BY THE BOARD MUST TAKE EFFECT BY
20 JULY 1, 2020, AND THEREAFTER, THE BOARD SHALL AMEND THE RULES AS
21 NECESSARY.

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

26 (6) AS USED IN THIS SECTION:

27 (a) "BOARD" MEANS THE STATE BOARD OF HEALTH CREATED IN

1 SECTION 25-1-103.

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

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

7 (II) SEPARATE AND DISTINCT FROM A PROFESSIONAL FEE AND
8 DIAGNOSTIC TESTING AND PROCEDURES FEES.

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

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

15 (II) INDEPENDENT FROM AND NOT OPERATED BY OR AFFILIATED
16 WITH A HOSPITAL OR HOSPITAL SYSTEM AND IS NOT ATTACHED TO OR
17 SITUATED WITHIN TWO HUNDRED FIFTY YARDS OF, OR CONTAINED WITHIN,
18 A HOSPITAL.

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

21 **25-1.5-103. Health facilities - powers and duties of department**
22 **- limitations on rules promulgated by department - definitions.**

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

26 (a) (I) (A) To annually license and to establish and enforce
27 standards for the operation of general hospitals, hospital units as defined

1 in section 25-3-101 (2), FREESTANDING EMERGENCY DEPARTMENTS AS
2 DEFINED IN SECTION 25-1.5-113, psychiatric hospitals, community clinics,
3 rehabilitation hospitals, convalescent centers, community mental health
4 centers, acute treatment units, facilities for persons with intellectual and
5 developmental disabilities, nursing care facilities, hospice care, assisted
6 living residences, dialysis treatment clinics, ambulatory surgical centers,
7 birthing centers, home care agencies, and other facilities of a like nature,
8 except those wholly owned and operated by any governmental unit or
9 agency.

10 (2) For purposes of this section, unless the context otherwise
11 requires:

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

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

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

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

20 **25-3-101. Hospitals - health facilities - licensed - definitions.**

21 (1) It is unlawful for any person, partnership, association, or corporation
22 to open, conduct, or maintain any general hospital, hospital unit,
23 FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN SECTION
24 25-1.5-113, psychiatric hospital, community clinic, rehabilitation hospital,
25 convalescent center, community mental health center, acute treatment
26 unit, facility for persons with developmental disabilities, as defined in
27 section 25-1.5-103 (2)(c), nursing care facility, hospice care, assisted

1 living residence, except an assisted living residence shall be assessed a
2 license fee as set forth in section 25-27-107, dialysis treatment clinic,
3 ambulatory surgical center, birthing center, home care agency, or other
4 facility of a like nature, except those wholly owned and operated by any
5 governmental unit or agency, without first having obtained a license from
6 the department of public health and environment.

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

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

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

12 (D) A FREESTANDING EMERGENCY DEPARTMENT LICENSED UNDER
13 SECTION 25-1.5-113.

14 **SECTION 4. Appropriation.** For the 2018-19 state fiscal year,
15 \$29,411 is appropriated to the department of public health and
16 environment for use by the health facilities and emergency medical
17 services division. This appropriation is from the health facilities general
18 licensure cash fund created in section 25-3-103.1 (1), C.R.S., and is based
19 on an assumption that the division will require an additional 0.4 FTE. To
20 implement this act, the division may use this appropriation for the nursing
21 facility survey.

22 **SECTION 5. Act subject to petition - effective date.** Sections
23 2 and 3 of this act take effect July 1, 2020, and the remainder of this act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

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