

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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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Senate Committees

Health & Human Services
Finance
Appropriations

House Committees

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, AND, IN CONNECTION THEREWITH,**
105 **MAKING AN 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 requires a freestanding emergency department (FSED), whether operated by a hospital at a separate, off-campus location or

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.

SENATE
3rd Reading Unamended
March 5, 2018

SENATE
Amended 2nd Reading
March 1, 2018

operating independently of a hospital system, to provide any individual 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 PATIENT INFORMATION

16 THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS
17 EMERGENCY MEDICAL CONDITIONS.

18 WE WILL SCREEN AND TREAT YOU REGARDLESS OF YOUR
19 ABILITY TO PAY.

20 YOU HAVE A RIGHT TO ASK QUESTIONS REGARDING YOUR
21 TREATMENT OPTIONS AND COSTS.

22 YOU HAVE A RIGHT TO RECEIVE PROMPT AND REASONABLE
23 RESPONSES TO QUESTIONS AND REQUESTS.

24 YOU HAVE A RIGHT TO REJECT TREATMENT.

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

1 THIS IS NOT A COMPLETE STATEMENT OF PATIENT
2 INFORMATION OR RIGHTS. YOU WILL RECEIVE A MORE
3 COMPREHENSIVE STATEMENT OF PATIENT'S RIGHTS UPON
4 THE COMPLETION OF A MEDICAL SCREENING EXAMINATION
5 THAT DOES NOT REVEAL AN EMERGENCY MEDICAL
6 CONDITION OR AFTER TREATMENT HAS BEEN PROVIDED TO
7 STABILIZE AN EMERGENCY MEDICAL CONDITION.

8 (II) (A) IF THE FREESTANDING EMERGENCY DEPARTMENT DOES
9 NOT HAVE OR INCLUDE WITHIN ITS FACILITY AN URGENT CARE CENTER OR
10 CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE
11 THE FOLLOWING STATEMENT IN THE NOTICE REQUIRED BY SUBSECTION
12 (1)(a)(I) OF THIS SECTION, IMMEDIATELY FOLLOWING THE SENTENCE THAT
13 READS "THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS
14 EMERGENCY MEDICAL CONDITIONS.":

15 THIS IS NOT AN URGENT CARE CENTER OR PRIMARY CARE
16 PROVIDER.

17 (B) IF THE FREESTANDING EMERGENCY DEPARTMENT HAS OR
18 INCLUDES WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE
19 FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE
20 FOLLOWING STATEMENT IN THE NOTICE REQUIRED BY SUBSECTION (1)(a)(I)
21 OF THIS SECTION, IMMEDIATELY FOLLOWING THE SENTENCE THAT READS
22 "THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS EMERGENCY
23 MEDICAL CONDITIONS.":

24 THIS FACILITY ALSO CONTAINS AN URGENT CARE CENTER
25 THAT OPERATES FROM (INSERT TIME URGENT CARE CENTER
26 OPENS) TO (INSERT TIME URGENT CARE CENTER CLOSES)
27 AND PROVIDES PRIMARY CARE SERVICES (AND INSERT, IF

1 APPLICABLE, THAT THE URGENT CARE CENTER OFFERS
2 PRIMARY CARE SERVICES BY APPOINTMENT).

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

7 (b) IN ADDITION TO GIVING AN INDIVIDUAL THE WRITTEN NOTICE
8 REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION, A FREESTANDING
9 EMERGENCY DEPARTMENT STAFF MEMBER OR HEALTH CARE PROVIDER
10 SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBSECTION (1)(a) OF
11 THIS SECTION TO THE INDIVIDUAL ORALLY.

12 (c) AS NECESSARY, THE STATE BOARD OF HEALTH, BY RULE, MAY
13 UPDATE THE INFORMATION REQUIRED TO BE INCLUDED IN THE WRITTEN
14 NOTICE OF PATIENT INFORMATION SET FORTH IN THIS SUBSECTION (1).

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

19 THIS IS AN EMERGENCY MEDICAL FACILITY THAT TREATS
20 EMERGENCY MEDICAL CONDITIONS.

21 (b) (I) IF THE FREESTANDING EMERGENCY DEPARTMENT DOES NOT
22 HAVE OR INCLUDE WITHIN ITS FACILITY AN URGENT CARE CENTER OR
23 CLINIC, THE FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE
24 THE FOLLOWING STATEMENT ON THE SIGN REQUIRED BY THIS SUBSECTION
25 (2), IMMEDIATELY FOLLOWING THE STATEMENT SPECIFIED IN SUBSECTION
26 (2)(a) OF THIS SECTION:

27 THIS IS NOT AN URGENT CARE CENTER OR PRIMARY CARE

1 PROVIDER.

2 (II) IF THE FREESTANDING EMERGENCY DEPARTMENT HAS OR
3 INCLUDES WITHIN ITS FACILITY AN URGENT CARE CENTER OR CLINIC, THE
4 FREESTANDING EMERGENCY DEPARTMENT SHALL INCLUDE THE
5 FOLLOWING STATEMENT ON THE SIGN REQUIRED BY THIS SUBSECTION (2),
6 IMMEDIATELY FOLLOWING THE STATEMENT SPECIFIED IN SUBSECTION
7 (2)(a) OF THIS SECTION:

8 THIS FACILITY ALSO CONTAINS AN URGENT CARE CENTER
9 THAT OPERATES FROM (INSERT TIME URGENT CARE CENTER
10 OPENS) TO (INSERT TIME URGENT CARE CENTER CLOSES)
11 AND PROVIDES PRIMARY CARE SERVICES (AND INSERT, IF
12 APPLICABLE, THAT THE URGENT CARE CENTER OFFERS
13 PRIMARY CARE SERVICES BY APPOINTMENT).

14

15 (3) (a) AFTER PERFORMING AN APPROPRIATE MEDICAL SCREENING
16 EXAMINATION AND DETERMINING THAT A PATIENT DOES NOT HAVE AN
17 EMERGENCY MEDICAL CONDITION OR AFTER TREATMENT HAS BEEN
18 PROVIDED TO STABILIZE AN EMERGENCY MEDICAL CONDITION, THE
19 FREESTANDING EMERGENCY DEPARTMENT SHALL PROVIDE TO THE PATIENT
20 A WRITTEN DISCLOSURE THAT:

21 (I) SPECIFIES WHETHER THE FREESTANDING EMERGENCY
22 DEPARTMENT ACCEPTS PATIENTS WHO ARE ENROLLED IN: THE STATE
23 MEDICAL ASSISTANCE PROGRAM UNDER ARTICLES 4, 5, AND 6 OF TITLE
24 25.5; MEDICARE, AS AUTHORIZED IN TITLE XVIII OF THE FEDERAL "SOCIAL
25 SECURITY ACT", AS AMENDED; THE CHILDREN'S BASIC HEALTH PLAN
26 ESTABLISHED UNDER ARTICLE 8 OF TITLE 25.5; OR A HEALTH PLAN
27 AUTHORIZED UNDER 10 U.S.C. SEC. 1071 ET SEQ.;

1 (II) LISTS THE SPECIFIC HEALTH INSURANCE PROVIDER NETWORKS
2 AND CARRIERS WITH WHICH THE FREESTANDING EMERGENCY DEPARTMENT
3 PARTICIPATES OR STATES THAT THE FREESTANDING EMERGENCY
4 DEPARTMENT IS NOT A PARTICIPATING PROVIDER IN ANY HEALTH
5 INSURANCE PROVIDER NETWORKS:

6 (III) SPECIFIES THE CHARGEMASTER OR FEE SCHEDULE PRICE FOR
7 THE TWENTY-FIVE MOST COMMON HEALTH CARE SERVICES PROVIDED BY
8 THE FREESTANDING EMERGENCY DEPARTMENT:

9 (IV) THE FACILITY FEES, AS LISTED ON THE FREESTANDING
10 EMERGENCY DEPARTMENT'S CHARGEMASTER OR FEE SCHEDULE, THAT THE
11 FREESTANDING EMERGENCY DEPARTMENT CHARGES THAT ARE
12 ATTRIBUTABLE TO THE TWENTY-FIVE MOST COMMON HEALTH CARE
13 SERVICES SPECIFIED IN ACCORDANCE WITH SUBSECTION (3)(a)(III) OF THIS
14 SECTION;

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

22 (VI) CONTAINS THE FOLLOWING STATEMENT OR A STATEMENT
23 CONTAINING SUBSTANTIALLY SIMILAR INFORMATION:

24 IF YOU ARE COVERED BY HEALTH INSURANCE, YOU ARE
25 STRONGLY ENCOURAGED TO CONSULT WITH YOUR HEALTH
26 INSURER TO DETERMINE ACCURATE INFORMATION ABOUT
27 YOUR FINANCIAL RESPONSIBILITY FOR A PARTICULAR _____

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

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

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

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

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

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

1 DEPARTMENT SERVES.

2 (6) NOTHING IN THIS SECTION AFFECTS OR OTHERWISE LIMITS A
3 HOSPITAL'S OR OTHER HEALTH FACILITY'S OBLIGATIONS UNDER SECTION
4 6-20-101 OR ARTICLE 49 OF THIS TITLE 25.

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

7 (8) AS USED IN THIS SECTION:

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

15 (b) "EMERGENCY MEDICAL CONDITION" HAS THE SAME MEANING
16 AS SET FORTH IN 42 U.S.C. SEC. 1395dd (e)(1).

17 (c) (I) "FREESTANDING EMERGENCY DEPARTMENT" MEANS A
18 HEALTH FACILITY THAT OFFERS EMERGENCY CARE, THAT MAY OFFER
19 PRIMARY AND URGENT CARE SERVICES, THAT IS LICENSED BY THE
20 DEPARTMENT PURSUANT TO SECTION 25-1.5-103, AND THAT IS EITHER:

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

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

1 (II) "FREESTANDING EMERGENCY DEPARTMENT" DOES NOT
2 INCLUDE A HEALTH FACILITY DESCRIBED IN SUBSECTION (8)(b)(I) OF THIS
3 SECTION THAT WAS LICENSED BY THE DEPARTMENT PURSUANT TO SECTION
4 25-1.5-103 AS A COMMUNITY CLINIC PRIOR TO JULY 1, 2010, IF THE
5 FACILITY IS SERVING A RURAL COMMUNITY OR A SKI AREA, AS DEFINED IN
6 STATE BOARD RULES.

7 **SECTION 3. Appropriation.** For the 2018-19 state fiscal year,
8 \$34,725 is appropriated to the department of public health and
9 environment for use by the health facilities and emergency medical
10 services division. This appropriation is from the health facilities general
11 licensure cash fund created in section 25-3-103.1 (1), C.R.S., and is based
12 on an assumption that the division will require an additional 0.5 FTE. To
13 implement this act, the division may use this appropriation for
14 administration and operations.

15 **SECTION 4. Act subject to petition - effective date.** This act
16 takes effect January 1, 2019; except that, if a referendum petition is filed
17 pursuant to section 1 (3) of article V of the state constitution against this
18 act or an item, section, or part of this act within the ninety-day period
19 after final adjournment of the general assembly, then the act, item,
20 section, or part will not take effect unless approved by the people at the
21 general election to be held in November 2018 and, in such case, will take
22 effect on January 1, 2019, or on the date of the official declaration of the
23 vote thereon by the governor, whichever is later.