HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1157 Freestanding Emergency Departments
SPONSOR(S): Koster
TIED BILLS: **IDEN./SIM. BILLS:** SB 1976

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	15 Y, 0 N	Guzzo	Lloyd
2) Health Care Appropriations Subcommittee	14 Y, 0 N	Nobles	Clark
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Hospitals are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 395, F.S. A licensed hospital may provide emergency services in a location that is off of the hospital's main premises in a freestanding emergency department (FED). FEDs are not required to obtain a separate license from AHCA.

Consumers sometimes mistake FEDs for urgent care centers because these facilities can often look and feel like urgent care centers. As a result, consumers are often surprised when they receive a bill that is significantly higher than they might have expected. Unlike an urgent care center, which provides non-emergent care and only charges a physician fee, a FED provides emergent care and charges a physician fee and a facility fee. The average cost for primary care at an urgent care center is $193, compared to over $2,000 in an emergency room.

HB 1157 addresses the issue of identity transparency by requiring a FED to post certain information in and around the facility that clearly identifies it as a FED. The bill also includes identity transparency requirements for all FED advertising.

The bill requires AHCA to publish the following information on its website, which must be updated at least annually:

- A description of the differences between a FED and an urgent care center;
- At least two examples illustrating the cost differences between non-emergent care provided in a hospital emergency department setting and an urgent care center;
- An interactive tool for consumers to locate local urgent care centers; and
- Steps to take in the event of a true emergency.

Hospitals must post a link to the information provided by AHCA on a prominent location on their websites.

The bill requires a health insurer to post on its website a link to the information provided by AHCA and a comparison of statewide average in-network and out-of-network urgent care center and FED charges for the 30 most common urgent care center services. The information must be updated at least annually.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Freestanding Emergency Departments (FEDs)

A FED is a facility that receives individuals for emergency care and is structurally separate from a hospital.[1] These facilities have grown rapidly in recent years, with the majority of FEDs having opened since 2010. According to a report[2] by the Medicare Payment Advisory Commission, this growth has been driven by competition for patient market share and payment systems that reward treating lower severity cases in the higher paying emergency department setting. While the report does recognize FEDs as a potentially efficient way to expand access to emergency department services in rural and underserved areas, few FEDs are located in rural areas. According to the report, in 2016, almost all of the 566 FEDs in the United States were located in metropolitan areas that had existing emergency department capacity and were often located in more affluent ZIP codes with higher household incomes and higher shares of privately insured patients.[3]

FEDs in Florida

In Florida, any licensed hospital which has a dedicated emergency department may provide emergency services in a location separate from the hospital's main premises. There are no additional rules or standards specific for FEDs; in fact, the term FED is not currently defined in statute or rule. The Agency for Health Care Administration (AHCA) interprets existing law to allow a licensed hospital to establish and operate a FED as part of facility operations, similar to other hospital outpatient departments, without a separate license. However, a hospital that wishes to establish a FED is required to get approval from AHCA's Office of Plans and Construction.[4]

Since 2016, the number of FEDs in Florida increased 45 percent, while the number of visits to FEDs increased by 83 percent.[5] Currently, 87 FEDs operate under the licenses of 59 hospitals.[6]

FEDs vs. Urgent Care Centers

Consumers sometimes mistake freestanding emergency departments for urgent care centers. This can be attributed to a general lack of educational outreach to inform the public of the differences between a FED and an urgent care center.[7] However, it may also be attributed to deliberate strategies of hospitals relating to location, perception, marketing, and advertising.[8] Urgent care centers and FEDs sometimes look and feel the same. However, after receiving treatment for non-emergent conditions, some consumers are surprised to receive hospital bills, billed at hospital emergency department rates, which

[1] There is no single definition of FED, and there are different requirements as well as different names for FEDs depending on which state they are located in.
[2] Medicare Payment Advisory Commission, *Report to the Congress: Medicare and the Health Care Delivery System, ch. 8, Stand-alone Emergency Departments,* June 2017, available at http://www.medpac.gov/docs/default-source/reports/jun17_ch8.pdf (last visited Mar. 3, 2021).
[3] Id.
[4] Rule 59A-3.066(2)(e), F.A.C.
[5] Florida Agency for Health Care Administration, FloridaHealthFinder.gov, Data Summaries and Reports, *Emergency Department Visits and Admissions by Facility 2016-219,* available at https://www.floridahealthfinder.gov/researchers/QuickStat/quickstat.aspx (last visited March 15, 2021).
[6] Florida Agency for Health Care Administration, Hospital and Outpatient Services Unit, *List of Florida Licensed Hospitals with Off-site Emergency Departments as of Feb. 1, 2021,* available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/Reports.shtml (last visited March 15, 2021).
[7] Kevin Corvo, "Knowledge is Power when Choosing 'Right" Medical Facility", *Akron Beacon Journal,* Nov. 24, 2017, available at https://www.beaconjournal.com/news/20171124/knowledge-is-power-when-choosing-right-medical-facility (last visited March 15, 2021).
[8] Sabriya Rice, "Lawsuit Claims Freestanding Emergency Room Operator Scams Patients", *The Dallas Morning News,* Jan. 11, 2017, available at https://www.dallasnews.com/business/health-care/2017/01/11/lawsuit-claims-freestanding-emergency-room-operator-scams-patients/ (last visited March 15, 2021).

include unexpected facility fees and potentially higher deductibles. For example, a patient in Colorado received a bill for $5,000 for a visit to a FED where her two daughters were treated for flu-like symptoms.[9]

Unlike an urgent care center, which only charges a physician fee, a FED charges a physician fee and a facility fee. The facility fee originated under the Medicare program and was intended to compensate hospitals for the operational expenses of maintaining an outpatient facility, but facility fees are also charged to patients with private insurance coverage.[10] Studies indicate that the cost of care in a FED can range from 10 to 19 times higher than the cost of care in an urgent care center.[11] In 2018, the average cost for non-emergent conditions treated in an urgent care center was $193 compared to over $2,000 for treatment in a FED.[12]

A 2015 study[13] surveyed patients at a new FED in Gainesville, Florida, to better understand patient expectations in terms of the level of medical care available, their perception of the cost of services at a FED, and reasons why patients chose a FED over an urgent care center. At the time there were two hospital-based emergency departments and six urgent care centers in the surrounding area. Patients were given a 19-item survey containing questions related to knowledge, expectations, and costs for FEDs compared to other types of emergency departments.

Results of the study are as follows:

- Over 40 percent of patients thought they could be seen by a specialist at the FED, when in fact the patient would require transfer to the main campus' emergency department for specialist evaluation.
- Over 55 percent of patients did not know they would require transfer to the main hospital campus for admission if their condition required hospitalization.
- 42 percent of patients indicated that an alternate location for emergency or urgent care was closer to them than the subject FED.
- 74 percent of patients either did not know or believed their cost of care would be lower than a hospital-based emergency department. This could suggest that patients have a perception that the costs at a FED are more in line with an urgent care center or doctor's office visit as opposed to a standard emergency department bill for services.

The study concluded that patients do not have a full understanding of the level of service and cost associated with FEDs in comparison to alternate urgent or emergency care options.

FED Ownership

Unlike Florida, some states do not require FEDs to be owned and operated by a hospital. Those states allow for the operation of what is known as an independent freestanding emergency department (IFED). An IFED is an emergency department that is not owned by a hospital, but rather some other entity not affiliated with a hospital. The federal Centers for Medicare and Medicaid Services (CMS) does not recognize IFEDs as emergency departments and does not reimburse facility fees charged by IFEDs.[14]

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[9] Olinger D. "Confusion About Freestanding ER Brings Colorado Mom $5,000 Bill", *Denver Post,* Oct. 30, 2015, available at https://www.denverpost.com/2015/10/30/confusion-about-free-standing-er-brings-colorado-mom-5000-bill/ (last visited March 15, 2021).
[10] Supra note 2.
[11] Id., and United Health Group, *Freestanding Emergency Departments Treating Common Conditions at Emergency Prices,* Dec. 2017, available at https://www.unitedhealthgroup.com/content/dam/UHG/PDF/2017/Freestanding-ER-Cost-Analysis.pdf (last visited March 15, 2021).
[12] United Health Group, *The High Cost of Avoidable Hospital Emergency Department Visits,* Jul. 22, 2019, available at https://www.unitedhealthgroup.com/newsroom/posts/2019-07-22-high-cost-emergency-department-visits.html (last visited March 15, 2021).
[13] Christopher Bucciarelli, et al. "Survey of Patient Knowledge and Expectations about a Free-Standing Emergency Department", *Advances in Emergency Medicine,* vol. 2015, Article ID 867094, Sep. 2015. Doi:10.1155/2015/867094, available at https://www.hindawi.com/journals/aem/2015/867094/ (last visited March 15, 2021).
[14] American College of Emergency Physicians, *Freestanding Emergency Departments: An Information Paper*, Developed by Members of the Emergency Medicine Practice Committee, Jul. 2013.

Currently, 35 states allow hospital-affiliated FEDs, and six of those states allow IFEDs. The three states with the largest number of FEDs and IFEDs are Texas, Ohio, and Colorado. The table below provides a state-by-state comparison of FED ownership regulations.

State	Hospital Affiliated	Independent	Not Authorized
Alabama	X		
Alaska			X
Arizona	X		
Arkansas	X		
California			X
Colorado	X	X	
Connecticut	X		
Delaware	X	X	
Florida	X		
Georgia	X	X	
Hawaii			X
Idaho	X		
Illinois	X		
Indiana	X		
Iowa			X
Kansas	X		
Kentucky			X
Louisiana	X		
Maine			X
Maryland	X		
Massachusetts	X		
Michigan	X		
Minnesota	X		
Mississippi	X		
Missouri			X

State	Hospital Affiliated	Independent	Not Authorized
Montana			X
Nebraska			X
Nevada	X		
New Hampshire	X		
New Jersey	X		
New Mexico			X
New York	X		
North Carolina	X		
North Dakota			X
Ohio	X		
Oklahoma	X		
Oregon			X
Pennsylvania			X
Rhode Island	X	X	
South Carolina	X		
South Dakota	X		
Tennessee	X		
Texas	X	X	
Utah	X		
Vermont			X
Virginia	X		
Washington	X		
West Virginia			X
Wisconsin	X		
Wyoming	X	X	
Totals	**35**	**6**	**15**

IFEDs have been the subject of much of the concern when it comes to identity transparency, most notably in Texas, which has the most IFEDs.[15]

FED Identity and Price Transparency Requirements

As previously discussed, consumers sometimes have difficulty distinguishing a FED from an urgent care center. If you couple that confusion with a consumer's lack of knowledge or information concerning the difference in the cost of care provided at these facilities, this could explain why a consumer might chose to seek care for a non-emergent medical condition at a FED instead of an urgent care center.

Currently, Florida does not have transparency requirements for FEDs relating to identity or price. Some states have recently passed legislation to address the issues of identity and price transparency, including Texas, Colorado, Connecticut, and Ohio.

Texas

[15] BlueCross BlueShield of Texas, Shara McClure, "What Happens When an Urgent Care Center Becomes a Freestanding ER?" *BlueCross BlueShield of Texas* Jun. 3, 2019, available at https://connect.bcbstx.com/in-the-community/b/weblog/posts/what-happens-when-an-urgent-care-center-becomes-a-freestanding-er (last visited March 15, 2021). *See also,* "The Emergency Room Hustle", *The American Prospect,* Dec. 23, 2019, available at https://prospect.org/health/the-emergency-room-hustle/ (last visited Mar. 4, 2021).

Texas recently passed legislation[16] to address the issues of identity and price transparency in FEDs. The regulations, which apply to hospital-affiliated FEDs and IFEDs, require FEDs to post a notice that states:

- The facility is a FED;
- The facility may charge rates comparable to a hospital emergency room and may charge a facility fee;
- The facility or a physician providing medical care at the facility may be an out-of-network provider;
- A physician providing medical care at the facility may bill separately from the facility for the medical care provided at the facility; and, either:
    - Lists the health benefit plan in which the facility is an in-network provider in the health benefit plan's provider network; or
    - States the facility is an out-of-network provider for all health benefit plans.[17]

The notice with the information detailed above must be posted prominently and conspicuously:

- At the primary entrance to the facility;
- In each patient treatment room;
- At each location within the facility at which a person pays for health care services; and
- On the homepage of the facility's website.[18]

In addition to the notice requirements above, Texas requires a FED to provide certain information to a patient or their representative by either a written disclosure statement or posting the information on the facility's website, which if applicable, must include:

- Notice that the facility charges a facility fee for medical treatment;
- The facility's median facility fee;
- A range of possible facility fees;
- The facility fees for each level of care at the facility;
- "This facility charges an observation fee for medical treatment"; [19]
- The facility's median observation fee;
- A range of possible observation fees;
- The observation fees for each level of care provided at the facility; and
- A list of the health benefit plans in which the facility is a network provider or state that the facility is an out-of-network provider for all health benefit plans.[20]

The disclosure statement must be printed in at least 16-point boldface type in a contrasting color using a font that is easily readable, and must be in English and Spanish.

Colorado

Colorado also recently passed legislation[21] relating to identity and price transparency. The regulations apply to hospital-affiliated FEDs and IFEDs. Colorado requires FEDs to provide any individual who enters the FED seeking treatment a written statement of patient information, which must also be explained by a staff member, and must indicate that:

- The facility is an emergency medical facility that treats emergency medical conditions;

[16] Texas 84th Legislature, ch. 185 (S.B. 425), ss. 2 and 3, eff. Sep. 1, 2015, enforced by Texas Health and Safety Code s. 254.155, *see also* Texas 86th Legislature, ch. 1093 (H.B. 2041), ss. 5 and 6, eff. Sep. 1, 2019, enforced by Texas Health Safety Code ss. 254.155 and 254.156.
[17] Id.
[18] Id.
[19] An observation fee is another term for a physician fee, which all outpatient facilities charge.
[20] Supra note 12.
[21] Colorado General Assembly, 2018, S.B. 18-146, Colo. Rev. Stat. §25-3-119, available at https://leg.colorado.gov/sites/default/files/images/olls/crs2020-title-25.pdf at page 213 (last visited March 15, 2021).

- The facility is not an urgent care center or primary care provider, unless there is an urgent care center on the premises, in which case the statement must indicate that there is an on-site urgent care center and include the hours of operation of the urgent care center;
- The facility 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 facility encourages the individual to defer questions until after being screened for an emergency medical condition; and
- The facility will provide the patient a more comprehensive statement of patient's rights after initial screening or treatment, as applicable.[22]

Colorado also requires FEDs to post a sign within the facility where an individual seeking care registers or check in. The sign must state "This is an emergency medical facility that treats emergency medical conditions", and must also indicate whether the facility contains an urgent care center.[23]

After conducting a medical screening and determining that a patient does not have an emergency medical condition or after treatment has been provided to stabilize an emergency medical condition, the FED is required to provide the patient a written disclosure which must include information on the following practices of the facility:

- Acceptance of patients enrolled in public health plans;
- Participation in health insurer provider networks;
- Separate billing by multiple physicians providing services at the facility;
- The maximum price for common health care services provided by the facility; and
- Facility fees charged by the FED.[24]

The FED is also required to post the information in the written disclosure on its website and update the information at least every 6-months.[25]

Ohio

In 2019, Ohio passed legislation[26] that requires hospital-affiliated FEDs and IFEDs to provide notice that identifies the facility as a FED. The notice may be provided by posting it in an area of the facility that is accessible to the public or posting it on the facility's website.

Connecticut

In 2018, Connecticut passed legislation[27] relating to identity transparency for FEDs. Like Florida, Connecticut does not allow the establishment of IFEDs, so the regulations apply only to hospital-affiliated FEDs. This is worth noting because of the four states that recently passed legislation addressing identity and price transparency, Connecticut is the only state that does not allow IFEDs, and as previously noted, IFEDs have been at the center of the concerns relating to identity and price transparency. This suggests that Connecticut believes hospital-affiliated FEDs have the same potential as IFEDs to confuse a consumer trying to distinguish a FED from an urgent care center.

[22] Id.
[23] Id.
[24] Id.
[25] Id.
[26] Ohio 133rd General Assembly, 2019 House Bill 166, s. 3727.49, available at https://codes.ohio.gov/orc/3727.49 (last visited March 15, 2021).
[27] Connecticut General Assembly 2018, Substitute Senate Bill 303, Public Act No. 18-149, s. 19a-493d, available at https://www.cga.ct.gov/current/pub/chap_368v.htm#sec_19a-493d (last visited March 15, 2021).

Connecticut requires FEDs to clearly identify themselves as hospital emergency departments. At a minimum, they are required to display prominent lighted external signs that include the word "emergency" in the hospital's name. Connecticut also requires FEDs to post signs at locations that are accessible and visible by patients, including the entrance and patient waiting areas. The signs are required to include the following statements and information:

- "THIS IS A HOSPITAL EMERGENCY DEPARTMENT";
- "THIS IS NOT AN URGENT CARE OR PRIMARY CARE CENTER", if applicable; and
- If the facility has an urgent care center, it must include the center's location, hours, contact information, and services.

Emergency Medical Treatment and Labor Act

The Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals with emergency departments to provide a medical screening examination to any individual who comes to the emergency department and requests such an examination, and prohibits hospitals with emergency departments from refusing to examine or treat individuals with an emergency medical condition.[28] CMS can issue civil monetary penalties to hospitals and physicians for each violation of this provision and can exclude a physician from participation in any federal health care program.[29] The penalty amounts are adjusted annually for inflation. Penalty amounts for the 2020 calendar year are as follows:

- $111,597 for a hospital or responsible physician in a hospital with more than 100 beds; and
- $55,800 for a hospital or responsible physician in a hospital with fewer than 100 beds.[30]

Pursuant to CMS guidance on EMTALA regulations, hospitals should not delay providing a medical screening examination or necessary stabilizing treatment by inquiring about an individual's ability to pay for care.[31] However, hospitals may follow reasonable registration processes for individuals presenting with an emergency medical condition. Reasonable registration processes may include asking whether an individual is insured and, if so, what the insurance is, as long as the inquiry does not delay screening, treatment or unduly discourage the individual from remaining for further evaluation.

To date, the federal government has not pursued hospitals in the states with FED transparency laws under EMTALA.

[28] 42 U.S. Code §1395dd and 42 C.F.R, § 489.24.
[29] 42 C.F.R., § 1003.510
[30] 42 C.F.R., § 102.3
[31] CMS State Operations Manual, Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases, Interpretive Guidelines for §489.24(d)(4)(i),(ii),(iii) and (iv), available at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf (last visited March 15, 2021).

Effect of the Bill

HB 1157 subjects FEDs to identity and price transparency requirements in an effort to help consumers distinguish a FED from an urgent care center, thereby creating cost savings by virtue of receiving care for non-emergent medical conditions in non-emergent outpatient settings.

The bill prohibits a FED from holding itself out to the public as an urgent care center and requires a FED to clearly identify itself to the public as a hospital emergency department with a prominent, lighted external sign that includes the word "Emergency" in conjunction with the name of the hospital.

The bill also requires FEDs to post signs outside the entrance to the facility and in patient waiting areas that must specify the facility's average facility fee, and notify the public that the facility or a physician providing care at the facility may be an out-of-network provider. The signs must measure at least 2 square feet and the text must be in at least 36 point type. Further, the signs must include the following statements:

- "THIS IS A HOSPITAL EMERGENCY DEPARTMENT";
- "THIS IS NOT AN URGENT CARE CENTER"; and
- "EMERGENCY DEPARTMENT RATES ARE BILLED FOR OUR SERVICES".

The bill requires billboard advertisements of a FED, which measure at least 200 square feet, to include a statement to notify the public that it is not an urgent care center. The statement must read, in clearly legible contrasting color text, at least 15 inches high, "(INSERT NAME OF HOSPITAL) EMERGENCY DEPARTMENT. THIS IS NOT AN URGENT CARE CENTER." All advertisements, other than billboard advertisements, must: specify the hospital the FED is affiliated with; provide notice that services and care will be billed at hospital emergency department rates; and provide notice that the facility is not an urgent care center.

The bill requires AHCA to publish the following information on its website, which must be updated at least annually:

- A description of the differences between a FED and an urgent care center;
- At least two examples illustrating the cost differences between non-emergent care provided in a hospital emergency department setting and an urgent care center;
- An interactive tool for consumers to locate local urgent care centers; and
- Steps to take in the event of a true emergency.

Hospitals must post a link to the information provided by AHCA on a prominent location on their websites.

Finally, the bill requires a health insurer to post on its website a link to the information provided by AHCA and a comparison of statewide average in-network and out-of-network urgent care center and FED charges for the 30 most common urgent care center services. The information must be updated at least annually.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 395.002, F.S., relating to definitions.
Section 2: Amends s. 395.003, F.S., relating to licensure; denial, suspension, and revocation.
Section 3: Amends s. 395.1041, F.S., relating to access to emergency services and care.
Section 4: Amends s. 627.6405, F.S., relating to decreasing inappropriate utilization of emergency care.
Section 5: Amends s. 385.211, F.S., relating to refractory and intractable epilepsy treatment and research at recognized medical centers.
Section 6: Amends s. 390.011, F.S., relating to definitions.

Section 7: Amends s. 394.4787, F.S., relating to definitions.
Section 8: Amends s. 395.701, F.S., relating to annual assessments on net operating revenues for inpatient and outpatient services to fund public medical assistance; administrative fines for failure to pay assessments when due; exemption.
Section 9: Amends s. 400.9935, F.S., relating to clinic responsibilities.
Section 10: Amends s. 409.905, F.S., relating to mandatory Medicaid services.
Section 11: Amends s. 409.975, F.S., relating managed care plan accountability.
Section 12: Amends s. 468.505, F.S., relating to exemptions; exceptions.
Section 13: Amends s. 627.64194, F.S., relating to coverage requirements for services provided by nonparticipating providers; payment collection limitations.
Section 14: Amends s. 765.101, F.S., relating to definitions.
Section 15: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The creation of an interactive tool for consumers to locate local urgent care centers will result in the expenditure of $15,000 non-recurring to cover contracted services. However, AHCA indicates that it can absorb the cost within existing resources.[32]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to have an indeterminate negative fiscal impact on hospitals that own and operate freestanding emergency departments resulting from costs associated with updating current advertisements and installing signage as required by the bill.

The bill will also have an indeterminate, yet likely insignificant negative fiscal impact on health insurers resulting from costs associated with gathering and posting information on insurer websites.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[32] Agency for Health Care Administration, 2021 Legislative Bill Analysis – HB 1157, Feb. 23, 2021 (on file with Finance & Facilities Subcommittee staff).

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Sufficient rule-making authority exists for AHCA to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES