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CS/HB 1157, Engrossed 1

2021 Legislature

1
2 An act relating to freestanding emergency departments;
3 amending s. 395.002, F.S.; providing and revising
4 definitions; conforming cross-references; amending s.
5 395.003, F.S.; removing an obsolete date related to a
6 prohibition on new emergency departments located off
7 the premises of licensed hospitals; amending s.
8 395.1041, F.S.; prohibiting a hospital-based off-
9 campus emergency department from holding itself out to
10 the public as an urgent care center; requiring a
11 hospital-based off-campus emergency department to
12 clearly identify itself as a hospital emergency
13 department using certain signage; requiring a
14 hospital-based off-campus emergency department to post
15 signs in certain locations which contain specified
16 statements; providing requirements for such signs;
17 providing requirements for the advertisement of
18 hospital-based off-campus emergency departments;
19 requiring the Agency for Health Care Administration to
20 post certain information on its website describing the
21 differences between a hospital-based off-campus
22 emergency department and an urgent care center;
23 requiring the agency to update such information on its
24 website at least annually; requiring a hospital to
25 post a link to such information on its website;

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26 | amending s. 627.6405, F.S.; removing legislative
 27 | findings and intent; requiring a health insurer to
 28 | post certain information regarding appropriate
 29 | utilization of emergency care services on its website
 30 | and update such information annually; revising a
 31 | definition; amending ss. 385.211, 390.011, 394.4787,
 32 | 395.701, 400.9935, 409.905, 409.975, 468.505,
 33 | 627.64194, and 765.101, F.S.; conforming cross-
 34 | references; providing an effective date.

35 |

36 | Be It Enacted by the Legislature of the State of Florida:

37 |

38 | Section 1. Subsections (10) through (32) of section
 39 | 395.002, Florida Statutes, are renumbered as subsections (11)
 40 | through (33), respectively, present subsections (10), (27), and
 41 | (29) are amended, and a new subsection (10) is added to that
 42 | section, to read:

43 | 395.002 Definitions.—As used in this chapter:

44 | (10) "Hospital-based off-campus emergency department"

45 | means a facility that:

46 | (a) Provides emergency services and care;

47 | (b) Is owned and operated by a licensed hospital and
 48 | operates under the license of the hospital; and

49 | (c) Is located on separate premises from the hospital.

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50 (11)~~(10)~~ "General hospital" means any facility which meets
 51 the provisions of subsection (13) ~~(12)~~ and which regularly makes
 52 its facilities and services available to the general population.

53 (28)~~(27)~~ "Specialty hospital" means any facility which
 54 meets the provisions of subsection (13) ~~(12)~~, and which
 55 regularly makes available either:

56 (a) The range of medical services offered by general
 57 hospitals, but restricted to a defined age or gender group of
 58 the population;

59 (b) A restricted range of services appropriate to the
 60 diagnosis, care, and treatment of patients with specific
 61 categories of medical or psychiatric illnesses or disorders; or

62 (c) Intensive residential treatment programs for children
 63 and adolescents as defined in subsection (16) ~~(15)~~.

64 (30)~~(29)~~ "Urgent care center" means a facility or clinic
 65 that provides immediate but not emergent ambulatory medical care
 66 to patients. ~~The term includes an offsite emergency department~~
 67 ~~of a hospital that is presented to the general public in any~~
 68 ~~manner as a department where immediate and not only emergent~~
 69 ~~medical care is provided.~~ The term also includes:

70 (a) An offsite facility of a facility licensed under this
 71 chapter, or a joint venture between a facility licensed under
 72 this chapter and a provider licensed under chapter 458 or
 73 chapter 459, that does not require a patient to make an
 74 appointment and is presented to the general public in any manner

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75 | as a facility where immediate but not emergent medical care is
 76 | provided.

77 | (b) A clinic organization that is licensed under part X of
 78 | chapter 400, maintains three or more locations using the same or
 79 | a similar name, does not require a patient to make an
 80 | appointment, and holds itself out to the general public in any
 81 | manner as a facility or clinic where immediate but not emergent
 82 | medical care is provided.

83 | Section 2. Paragraph (c) of subsection (1) of section
 84 | 395.003, Florida Statutes, is amended to read:

85 | 395.003 Licensure; denial, suspension, and revocation.—

86 | (1)

87 | ~~(c) Until July 1, 2006, additional emergency departments~~
 88 | ~~located off the premises of licensed hospitals may not be~~
 89 | ~~authorized by the agency.~~

90 | Section 3. Paragraph (m) is added to subsection (3) of
 91 | section 395.1041, Florida Statutes, to read:

92 | 395.1041 Access to emergency services and care.—

93 | (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
 94 | FACILITY OR HEALTH CARE PERSONNEL.—

95 | (m)1. A hospital-based off-campus emergency department may
 96 | not hold itself out to the public as an urgent care center and
 97 | must clearly identify itself as a hospital emergency department,
 98 | using, at a minimum, prominent lighted external signage that
 99 | includes the word "EMERGENCY" or "ER" in conjunction with the

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100 name of the hospital. If a hospital-based off-campus emergency
 101 department is located on the same premises as an urgent care
 102 center, the signage may also identify the urgent care center.

103 2. A hospital-based off-campus emergency department shall
 104 conspicuously post signs at locations that are readily
 105 accessible to and visible by patients outside the entrance to
 106 the facility and in patient waiting areas which state the
 107 following: "THIS IS A HOSPITAL EMERGENCY DEPARTMENT." Unless the
 108 hospital-based off-campus emergency department shares a premises
 109 and a public entrance with an urgent care center, the signs must
 110 also state the following: "THIS IS NOT AN URGENT CARE CENTER.
 111 HOSPITAL EMERGENCY DEPARTMENT RATES ARE BILLED FOR OUR
 112 SERVICES." The signs must also specify the facility's average
 113 facility fee, if any, and notify the public that the facility or
 114 a physician providing medical care at the facility may be an
 115 out-of-network provider. The signs must be at least 2 square
 116 feet in size and the text must be in at least 36 point type.

117 3. Except as provided in this subparagraph, any
 118 advertisement for a hospital-based off-campus emergency
 119 department must include the following statement: "This emergency
 120 department is part of (insert hospital name)." Unless the
 121 hospital-based off-campus emergency department is located on the
 122 same premises as an urgent care center that is advertised in the
 123 same advertisement, the advertisement must also include the
 124 following statement: "This is not an urgent care center. Its

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125 services and care are billed at hospital emergency department
 126 rates." Any billboard advertising a hospital-based off-campus
 127 emergency department which measures at least 200 square feet
 128 must include the following statement in clearly legible
 129 contrasting color text at least 15 inches high: "(INSERT NAME OF
 130 HOSPITAL) EMERGENCY DEPARTMENT." Unless the hospital-based off-
 131 campus emergency department is located on the same premises as
 132 an urgent care center that is advertised on the same billboard,
 133 such billboard must also include the following statement in
 134 clearly legible contrasting color text at least 15 inches high:
 135 "THIS IS NOT AN URGENT CARE CENTER."

136 4. The agency shall post on its website, and annually
 137 update, information that describes the differences between a
 138 hospital-based off-campus emergency department and an urgent
 139 care center. Each hospital shall post a link to such information
 140 in a prominent location on its website. Such description must
 141 include:

142 a. At least two examples illustrating the impact on
 143 insured and insurer paid amounts of inappropriate utilization of
 144 nonemergent services and care in a hospital emergency department
 145 setting compared to utilization of nonemergent services and care
 146 in an urgent care center;

147 b. An interactive tool to locate local urgent care
 148 centers; and

149 c. What to do in the event of a true emergency.

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150 Section 4. Section 627.6405, Florida Statutes, is amended
 151 to read:

152 627.6405 Decreasing inappropriate utilization of emergency
 153 care.—

154 ~~(1) The Legislature finds and declares it to be of vital~~
 155 ~~importance that emergency services and care be provided by~~
 156 ~~hospitals and physicians to every person in need of such care,~~
 157 ~~but with the double digit increases in health insurance~~
 158 ~~premiums, health care providers and insurers should encourage~~
 159 ~~patients and the insured to assume responsibility for their~~
 160 ~~treatment, including emergency care. The Legislature finds that~~
 161 ~~inappropriate utilization of emergency department services~~
 162 ~~increases the overall cost of providing health care and these~~
 163 ~~costs are ultimately borne by the hospital, the insured~~
 164 ~~patients, and, many times, by the taxpayers of this state.~~
 165 ~~Finally, the Legislature declares that the providers and~~
 166 ~~insurers must share the responsibility of providing alternative~~
 167 ~~treatment options to urgent care patients outside of the~~
 168 ~~emergency department. Therefore, it is the intent of the~~
 169 ~~Legislature to place the obligation for educating consumers and~~
 170 ~~creating mechanisms for delivery of care that will decrease the~~
 171 ~~overutilization of emergency service on health insurers and~~
 172 ~~providers.~~

173 (1)(2) A health insurer insurers shall post provide on its
 174 website, and update annually, their websites information

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175 regarding appropriate utilization of emergency care services
 176 which shall include, but need not be limited to:~~;~~
 177 (a) A list of alternative urgent care contracted
 178 providers;~~;~~
 179 (b) The types of services offered by these providers;~~;~~
 180 (c) At least two examples illustrating the impact on
 181 insured and insurer paid amounts of inappropriate utilization of
 182 nonemergent services and care in a hospital emergency department
 183 setting compared to utilization of nonemergent services and care
 184 in an urgent care center;
 185 (d) An interactive tool to locate local in-network and
 186 out-of-network urgent care centers; and
 187 (e) What to do in the event of a true emergency.
 188 (2)~~(3)~~ Health insurers shall develop community emergency
 189 department diversion programs. Such programs may include, at the
 190 discretion of the insurer, but not be limited to, enlisting
 191 providers to be on call to insurers after hours, coordinating
 192 care through local community resources, and providing incentives
 193 to providers for case management.
 194 (3)~~(4)~~ As a disincentive for insureds to inappropriately
 195 use emergency department services for nonemergency care, health
 196 insurers may require higher copayments for urgent care or
 197 primary care provided in an emergency department and higher
 198 copayments for use of out-of-network emergency departments.
 199 Higher copayments may not be charged for the utilization of the

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200 emergency department for emergency care. For the purposes of
201 this section, the term "emergency care" has the same meaning as
202 the term "emergency services and care" as defined ~~provided~~ in s.
203 395.002(9) ~~s. 395.002~~ and includes ~~shall include~~ services
204 provided to rule out an emergency medical condition.

205 Section 5. Subsection (2) of section 385.211, Florida
206 Statutes, is amended to read:

207 385.211 Refractory and intractable epilepsy treatment and
208 research at recognized medical centers.—

209 (2) Notwithstanding chapter 893, medical centers
210 recognized pursuant to s. 381.925, or an academic medical
211 research institution legally affiliated with a licensed
212 children's specialty hospital as defined in s. 395.002(28) ~~s.~~
213 ~~395.002(27)~~ that contracts with the Department of Health, may
214 conduct research on cannabidiol and low-THC cannabis. This
215 research may include, but is not limited to, the agricultural
216 development, production, clinical research, and use of liquid
217 medical derivatives of cannabidiol and low-THC cannabis for the
218 treatment for refractory or intractable epilepsy. The authority
219 for recognized medical centers to conduct this research is
220 derived from 21 C.F.R. parts 312 and 316. Current state or
221 privately obtained research funds may be used to support the
222 activities described in this section.

223 Section 6. Subsection (7) of section 390.011, Florida
224 Statutes, is amended to read:

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225 390.011 Definitions.—As used in this chapter, the term:
 226 (7) "Hospital" means a facility as defined in s.
 227 395.002(13) ~~s. 395.002(12)~~ and licensed under chapter 395 and
 228 part II of chapter 408.

229 Section 7. Subsection (7) of section 394.4787, Florida
 230 Statutes, is amended to read:

231 394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788,
 232 and 394.4789.—As used in this section and ss. 394.4786,
 233 394.4788, and 394.4789:

234 (7) "Specialty psychiatric hospital" means a hospital
 235 licensed by the agency pursuant to s. 395.002(28) ~~s. 395.002(27)~~
 236 and part II of chapter 408 as a specialty psychiatric hospital.

237 Section 8. Paragraph (c) of subsection (1) of section
 238 395.701, Florida Statutes, is amended to read:

239 395.701 Annual assessments on net operating revenues for
 240 inpatient and outpatient services to fund public medical
 241 assistance; administrative fines for failure to pay assessments
 242 when due; exemption.—

243 (1) For the purposes of this section, the term:

244 (c) "Hospital" means a health care institution as defined
 245 in s. 395.002(13) ~~s. 395.002(12)~~, but does not include any
 246 hospital operated by a state agency.

247 Section 9. Paragraph (i) of subsection (1) of section
 248 400.9935, Florida Statutes, is amended to read:

249 400.9935 Clinic responsibilities.—

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250 (1) Each clinic shall appoint a medical director or clinic
 251 director who shall agree in writing to accept legal
 252 responsibility for the following activities on behalf of the
 253 clinic. The medical director or the clinic director shall:

254 (i) Ensure that the clinic publishes a schedule of charges
 255 for the medical services offered to patients. The schedule must
 256 include the prices charged to an uninsured person paying for
 257 such services by cash, check, credit card, or debit card. The
 258 schedule may group services by price levels, listing services in
 259 each price level. The schedule must be posted in a conspicuous
 260 place in the reception area of any clinic that is considered an
 261 urgent care center as defined in s. 395.002(30)(b) ~~s.~~
 262 ~~395.002(29)(b)~~ and must include, but is not limited to, the 50
 263 services most frequently provided by the clinic. The posting may
 264 be a sign that must be at least 15 square feet in size or
 265 through an electronic messaging board that is at least 3 square
 266 feet in size. The failure of a clinic, including a clinic that
 267 is considered an urgent care center, to publish and post a
 268 schedule of charges as required by this section shall result in
 269 a fine of not more than \$1,000, per day, until the schedule is
 270 published and posted.

271 Section 10. Subsection (8) of section 409.905, Florida
 272 Statutes, is amended to read:

273 409.905 Mandatory Medicaid services.—The agency may make
 274 payments for the following services, which are required of the

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275 | state by Title XIX of the Social Security Act, furnished by
 276 | Medicaid providers to recipients who are determined to be
 277 | eligible on the dates on which the services were provided. Any
 278 | service under this section shall be provided only when medically
 279 | necessary and in accordance with state and federal law.
 280 | Mandatory services rendered by providers in mobile units to
 281 | Medicaid recipients may be restricted by the agency. Nothing in
 282 | this section shall be construed to prevent or limit the agency
 283 | from adjusting fees, reimbursement rates, lengths of stay,
 284 | number of visits, number of services, or any other adjustments
 285 | necessary to comply with the availability of moneys and any
 286 | limitations or directions provided for in the General
 287 | Appropriations Act or chapter 216.

288 | (8) NURSING FACILITY SERVICES.—The agency shall pay for
 289 | 24-hour-a-day nursing and rehabilitative services for a
 290 | recipient in a nursing facility licensed under part II of
 291 | chapter 400 or in a rural hospital, as defined in s. 395.602, or
 292 | in a Medicare certified skilled nursing facility operated by a
 293 | hospital, as defined by s. 395.002(11) ~~s. 395.002(10)~~, that is
 294 | licensed under part I of chapter 395, and in accordance with
 295 | provisions set forth in s. 409.908(2)(a), which services are
 296 | ordered by and provided under the direction of a licensed
 297 | physician. However, if a nursing facility has been destroyed or
 298 | otherwise made uninhabitable by natural disaster or other
 299 | emergency and another nursing facility is not available, the

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300 agency must pay for similar services temporarily in a hospital
 301 licensed under part I of chapter 395 provided federal funding is
 302 approved and available. The agency shall pay only for bed-hold
 303 days if the facility has an occupancy rate of 95 percent or
 304 greater. The agency is authorized to seek any federal waivers to
 305 implement this policy.

306 Section 11. Paragraph (b) of subsection (1) of section
 307 409.975, Florida Statutes, is amended to read:

308 409.975 Managed care plan accountability.—In addition to
 309 the requirements of s. 409.967, plans and providers
 310 participating in the managed medical assistance program shall
 311 comply with the requirements of this section.

312 (1) PROVIDER NETWORKS.—Managed care plans must develop and
 313 maintain provider networks that meet the medical needs of their
 314 enrollees in accordance with standards established pursuant to
 315 s. 409.967(2)(c). Except as provided in this section, managed
 316 care plans may limit the providers in their networks based on
 317 credentials, quality indicators, and price.

318 (b) Certain providers are statewide resources and
 319 essential providers for all managed care plans in all regions.
 320 All managed care plans must include these essential providers in
 321 their networks. Statewide essential providers include:

- 322 1. Faculty plans of Florida medical schools.
- 323 2. Regional perinatal intensive care centers as defined in
- 324 s. 383.16(2).

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325 3. Hospitals licensed as specialty children's hospitals as
326 defined in s. 395.002(28) ~~s. 395.002(27)~~.

327 4. Accredited and integrated systems serving medically
328 complex children which comprise separately licensed, but
329 commonly owned, health care providers delivering at least the
330 following services: medical group home, in-home and outpatient
331 nursing care and therapies, pharmacy services, durable medical
332 equipment, and Prescribed Pediatric Extended Care.

333
334 Managed care plans that have not contracted with all statewide
335 essential providers in all regions as of the first date of
336 recipient enrollment must continue to negotiate in good faith.
337 Payments to physicians on the faculty of nonparticipating
338 Florida medical schools shall be made at the applicable Medicaid
339 rate. Payments for services rendered by regional perinatal
340 intensive care centers shall be made at the applicable Medicaid
341 rate as of the first day of the contract between the agency and
342 the plan. Except for payments for emergency services, payments
343 to nonparticipating specialty children's hospitals shall equal
344 the highest rate established by contract between that provider
345 and any other Medicaid managed care plan.

346 Section 12. Paragraph (1) of subsection (1) of section
347 468.505, Florida Statutes, is amended to read:

348 468.505 Exemptions; exceptions.—

349 (1) Nothing in this part may be construed as prohibiting

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350 or restricting the practice, services, or activities of:

351 (1) A person employed by a nursing facility exempt from
 352 licensing under s. 395.002(13) ~~s. 395.002(12)~~, or a person
 353 exempt from licensing under s. 464.022.

354 Section 13. Paragraph (b) of subsection (1) of section
 355 627.64194, Florida Statutes, is amended to read:

356 627.64194 Coverage requirements for services provided by
 357 nonparticipating providers; payment collection limitations.—

358 (1) As used in this section, the term:

359 (b) "Facility" means a licensed facility as defined in s.
 360 395.002(17) ~~s. 395.002(16)~~ and an urgent care center as defined
 361 in s. 395.002.

362 Section 14. Subsection (2) of section 765.101, Florida
 363 Statutes, is amended to read:

364 765.101 Definitions.—As used in this chapter:

365 (2) "Attending physician" means the physician who has
 366 primary responsibility for the treatment and care of the patient
 367 while the patient receives such treatment or care in a hospital
 368 as defined in s. 395.002(13) ~~s. 395.002(12)~~.

369 Section 15. This act shall take effect July 1, 2021.