

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1976

INTRODUCER: Senator Brodeur

SUBJECT: Freestanding Emergency Departments

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1976 amends multiple sections of law related to freestanding emergency departments (FED) to draw a stronger distinction between FEDs and urgent care centers (UCC). The bill modifies the definition of a UCC to no longer include FEDs and adds a separate definition of a “freestanding emergency department” as a facility that:

- Provides emergency services and care;
- Is owned and operated by a licensed hospital and operates under the hospital’s license; and
- Is located on separate premises from the hospital.

The bill prohibits FEDs from holding themselves out to the public as UCCs. The bill requires FEDs to have signage in and around their premises stating that the FED is a hospital emergency department, that the FED is not a UCC,¹ and that hospital emergency department rates apply within the FED. The signs must also specify the facility’s average facility fee, if any. The bill also requires any advertisements for the FED to specify that the FED is an emergency department and not a UCC.

The bill requires the Agency for Health Care Administration (AHCA) to post on its website information that provides a description of the differences between FEDs and UCCs. The bill also amends the Insurance Code to require health insurers to post on their websites, and update at least annually, a comparison of average in-network and out-of-network UCC and FED charges for the 30 most common UCC services, at least two examples of the impact on insured and insurer paid amounts of the inappropriate utilization of emergency departments for nonemergent services, and an interactive tool to locate local in-network and out-of-network UCCs.

¹ Unless the FED shares a location and public entrance with a UCC.

The bill repeals legislative intent language regarding emergency services and care; repeals obsolete language prohibiting the AHCA from authorizing FEDs prior to July 1, 2006; and makes other conforming changes.

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

II. Present Situation:

Off-Site Emergency Departments

Any Florida-licensed hospital that has a dedicated emergency department may provide emergency services in a location off of the hospital's main premises. The off-site emergency department must be under the same direction, offer the same services, and comply with the same regulatory requirements as the emergency department located on the hospital's main premises. There are no additional rules or standards specific for emergency departments located off the premises of the licensed hospital.

Hospitals desiring to offer off-site emergency departments must meet the physical plant review requirements of s. 395.0163, F.S. The AHCA must review the facility's plans and specifications before any construction can begin. Reviews are also conducted during the construction phase, and final physical plant approval is granted when the facility is determined to meet all applicable hospital building codes.²

As of February 24, 2021, there were 86 off-site emergency departments operated by 58 hospitals.³

Emergency Department Utilization and Charges

Although the total number of patients treated in an emergency department (ED)⁴ has increased since 2008, the number of patients treated who were considered low-acuity⁵ has dropped nearly 60 percent. In 2008, the number of patients treated in an ED who reported with a low-acuity problem was nearly 33 percent of all patients seen. By 2018, those numbers had dropped to approximately 12 percent.⁶

Despite the fact that the percentage of patients using EDs for low-acuity problems and is trending downward, the overall volume of patients is still high. In 2018, EDs saw an approximate total of 9 million patients. At 12 percent, this indicates that just over 1 million patients used EDs for nonemergent medical issues. Patients using EDs for such problems could see significant

² Emergency Services, AHCA, available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/Hospitals/EmergencyServices.shtml, (last visited Mar. 19, 2021).

³ Agency for Health Care Administration, *House Bill 1157 Fiscal Analysis* (Feb. 23, 2021) (on file with the Senate Committee on Health Policy.)

⁴ In all EDs, not just in off-site emergency departments.

⁵ Requiring only straightforward or low complexity medical decision making and usually presenting with problems that are minor or are of low to moderate severity. See Emergency Department Utilization Report 2018, AHCA, p. 22, available at <https://fhfstore.blob.core.windows.net/documents/researchers/documents/ED%20Report%202018%20Final.pdf> (last visited Mar. 19, 2021).

⁶ Id. at pp. 8 and 9.

charges billed. For example, also in 2018, treatment for an upper respiratory infection averaged a \$2,772 charge; treatment for abdominal pain averaged a \$10,506 charge; and treatment for a urinary tract infection averaged a \$7,598 charge.⁷

Urgent Care Centers

There is no specific licensure program for UCCs. A UCC may be operated by a hospital, one or more clinicians, or by other persons or entities. Hospitals report off-site emergency departments, outpatient surgical locations, and other wholly-owned off-site outpatient locations through the hospital licensure process. The hospital's other outpatient locations are identified by name and address only, not services. Clinicians, other persons, and entities operating a UCC may be licensed as a health care clinic under ch. 400, Part X, F.S., or meet an exemption to the health care clinic licensure requirements.⁸

As of March 19, 2021, there were 212 UCCs in Florida.⁹ In 2018, the average charge for a patient seen in a UCC was \$193.¹⁰

Hospital-based Urgent Care Centers

Hospital-based UCCs are walk-in clinics owned and operated by a hospital and offer ambulatory care services outside of the traditional emergency room setting. Unlike emergency departments, UCCs typically operate during designated business hours and do not offer ambulance delivery services to the general public. However, based on their proximity to the hospital, hospital-based UCCs have the capacity to afford integrated hospital services to patients under their direct care. The basic services include, but are not limited to:

- Ambulatory care (outpatient medical care, including, but not limited to, diagnosis, observation, treatment, consultation, intervention, and rehabilitation services).
- Prescriptions for medications.
- Arrangements for additional or long-term health care services.
- Integrated hospital services.

While the AHCA does not license hospital-based UCCs separately, they must comply with the ambulatory care requirements found in hospital licensure regulations. Hospital-based UCCs are required to publish a schedule of charges for medical services offered to patients. Posted schedules must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be at least 15 square feet in size, displayed in a conspicuous location within the reception area of the UCC, and must include the 50 services most frequently provided by the clinic.¹¹

⁷ Id. at p. 10.

⁸ Id.

⁹ See Florida Health Finder report, available at <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx>, (last visited Mar. 19, 2021).

¹⁰ See <https://www.unitedhealthgroup.com/content/dam/UHG/PDF/2019/UHG-Avoidable-ED-Visits.pdf> (last visited Mar. 19, 2021).

¹¹ AHCA Consumer Awareness Series, *Emergency and Urgent Care*, available at <https://fhfstore.blob.core.windows.net/documents/reports-guides/documents/English%20-%20Urgent%20Care%20Guide.pdf>, (last visited Mar. 19, 2021).

Physician-based Urgent Care Centers

Physician-based UCCs are owned and operated by a physician or group of physicians and offer ambulatory medical treatment for non-life-threatening conditions on a walk-in basis. A typical physician-based UCC is a freestanding office operating during designated business hours, usually staffed by at least one physician, several medical assistants, nurses, and other health care professionals. These facilities are usually not equipped to offer integrated hospital services to individuals and will normally refer patients to either a primary care physician or specialist for advanced testing and/or treatment. The basic services include, but are not limited to:

- Ambulatory care (diagnosis and treatment of non-life-threatening conditions, such as minor cuts or burns, the flu, or sinus infections).
- Prescriptions for medications.
- Arrangements for advanced or long-term health care services.

While the AHCA does license and regulate health care clinics, there are currently no separate licensure requirements for UCCs. However, a physician-based UCC may hold and maintain a health care clinic license, depending on the nature of its operation. Like all UCCs, physician-based UCCs are subject to the same charge schedule publishing requirements outlined above.¹²

Health Care Clinic-based Urgent Care Center

Much like physician-based urgent care facilities, health care clinic-based UCCs typically offer ambulatory medical treatment for members of the community on a walk-in basis. These facilities usually provide medical care services to individuals at little to no cost and could potentially be a viable option for members of the community that are either uninsured or cannot afford treatment.

Additionally, while the AHCA does license and regulate health care clinics, there are currently no separate licensure requirements for UCCs. However, a health care clinic-based UCC must maintain an active health care clinic license.¹³

III. Effect of Proposed Changes:

SB 1976 amends multiple sections of law related to FEDs and UCCs.

Section 1 amends s. 395.002, F.S., to define for “freestanding emergency department” as a facility that:

- Provides emergency services and care;
- Is owned and operated by a licensed hospital and operates under the hospital’s license; and
- Is located on separate premises from the hospital.

The bill also strikes language including off-site emergency departments in the definition of a UCC.

Section 2 amends s. 395.003, F.S., to repeal obsolete language prohibiting the AHCA from approving any FEDs prior to July 1, 2006.

¹² Id.

¹³ Id.

Section 3 amends s. 395.104, F.S., to:

- Prohibit FEDs from holding themselves out to the public as UCCs.
- Require FEDs to identify themselves as hospital emergency departments using, at a minimum, prominent, lighted signage with the word “EMERGENCY” and the name of the hospital.
- Require FEDs to post conspicuous signs at locations readily accessible and visible to patients outside entrances and in waiting areas stating: “THIS IS A HOSPITAL EMERGENCY DEPARTMENT” and, unless the FED shares a location and a public entrance with a UCC, stating “THIS IS NOT AN URGENT CARE CENTER. HOSPITAL EMERGENCY DEPARTMENT RATES ARE BILLED FOR OUR SERVICES.” The signs must also specify the facility’s average facility fee, if any, and notify the public that care at the facility may be out-of-network. The signs must be at least two square feet and the text must be no smaller than 36 point font.
- Require any FED advertisements to include the statement “This emergency department is not an urgent care center. It is part of (insert hospital name) and its services and care are billed at hospital emergency department rates.” Additionally, any FED billboard advertising which measures at least 200 square feet must include the following statement at least 15 inches high “(INSERT NAME OF HOSPITAL) EMERGENCY DEPARTMENT. THIS IS NOT AN URGENT CARE CENTER.”
- Require the AHCA to post on its website, and update annually, information that provides a description of the difference between FEDs and UCCs, including:
 - At least two examples illustrating the impact on insured and insurer paid amounts of inappropriate utilization of nonemergent services and care in a hospital emergency department setting compared to utilization of nonemergent services and care in an urgent care center;
 - An interactive tool to locate local urgent care centers; and
 - What to do in the event of a true emergency.
- Require each hospital to post a link to the information on the AHCA website on its own website.

Section 4 amends s. 627.6405, F.S., to eliminate legislative intent language regarding the inappropriate use of EDs and to require health insurers to post on their websites, and update at least annually, a comparison of average in-network and out-of-network UCC and FED charges for the 30 most common UCC services, at least two examples of the impact on insured and insurer paid amounts of the inappropriate utilization of emergency departments for nonemergent services, and an interactive tool to locate local in-network and out-of-network UCCs.

Sections 5 through 12 amend ss. 385.211, 390.011, 394.4787, 395.701, 400.9935, 409.905, 409.975, 468.505, 627.64194, and 765.101, F.S., to make conforming changes.

Section 15 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1976 may have an indeterminate negative fiscal impact on hospitals with FEDs due to the increased requirements of signage. The bill may have an indeterminate positive fiscal impact on patients who pay for health care out of pocket and if they decide to seek treatment for low-acuity health issues at UCCs rather than FEDs. The bill may have an indeterminate positive fiscal impact on health insurers if insureds choose to use lower-cost UCCs rather than FEDs for low-acuity health issues.

C. Government Sector Impact:

The AHCA indicates that the bill's requirement for an interactive tool to be placed on the agency's website will require approximately \$15,000 to cover contracted services, but this amount can be absorbed within existing agency resources.¹⁴

VI. Technical Deficiencies:

None.

¹⁴ Supra n. 3.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 395.002, 395.003, 395.1041, 627.6405, 385.211, 390.011, 394.4787, 395.701, 400.9935, 409.905, 409.975, 468.505, 627.64194, and 765.101.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.