

By Senator Brodeur

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1 A bill to be entitled
2 An act relating to freestanding emergency departments;
3 amending s. 395.002, F.S.; defining and revising
4 terms; amending s. 395.003, F.S.; deleting an obsolete
5 provision relating to a prohibition on new emergency
6 departments located off the premises of licensed
7 hospitals; amending s. 395.1041, F.S.; prohibiting a
8 freestanding emergency department from holding itself
9 out to the public as an urgent care center; requiring
10 a freestanding emergency department to clearly
11 identify itself as a hospital emergency department
12 using certain signage; requiring a freestanding
13 emergency department to post signs in certain
14 locations which contain specified statements;
15 providing requirements for such signs; providing
16 requirements for the advertisement of freestanding
17 emergency departments; requiring the Agency for Health
18 Care Administration to post information on its website
19 describing the differences between a freestanding
20 emergency department and an urgent care center;
21 requiring the agency to update such information on its
22 website at least annually; requiring hospitals to post
23 a link to such information on their websites; amending
24 s. 627.6405, F.S.; deleting legislative findings and
25 intent; requiring health insurers to post certain
26 information regarding appropriate use of emergency
27 care services on their websites and update such
28 information at least annually; revising the definition
29 of the term "emergency care"; amending ss. 385.211,

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30 390.011, 394.4787, 395.701, 400.9935, 409.905,
31 409.975, 468.505, 627.64194, and 765.101, F.S.;
32 conforming cross-references; providing an effective
33 date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Present subsections (10) through (32) of section
38 395.002, Florida Statutes, are redesignated as subsections (11)
39 through (33), respectively, a new subsection (10) is added to
40 that section, and present subsections (10), (27), and (29) are
41 amended, to read:

42 395.002 Definitions.—As used in this chapter:

43 (10) "Freestanding emergency department" means a facility
44 that:

45 (a) Provides emergency services and care;

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

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

49 (11)~~(10)~~ "General hospital" means any facility which meets
50 the provisions of subsection (13) ~~(12)~~ and which regularly makes
51 its facilities and services available to the general population.

52 (28)~~(27)~~ "Specialty hospital" means any facility which
53 meets the provisions of subsection (13) ~~(12)~~, and which
54 regularly makes available either:

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

58 (b) A restricted range of services appropriate to the

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59 diagnosis, care, and treatment of patients with specific
60 categories of medical or psychiatric illnesses or disorders; or

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

63 (30) ~~(29)~~ "Urgent care center" means a facility or clinic
64 that provides immediate but not emergent ambulatory medical care
65 to patients. ~~The term includes an offsite emergency department~~
66 ~~of a hospital that is presented to the general public in any~~
67 ~~manner as a department where immediate and not only emergent~~
68 ~~medical care is provided.~~ The term also includes:

69 (a) An offsite facility of a facility licensed under this
70 chapter, or a joint venture between a facility licensed under
71 this chapter and a provider licensed under chapter 458 or
72 chapter 459, that does not require a patient to make an
73 appointment and is presented to the general public in any manner
74 as a facility where immediate but not emergent medical care is
75 provided.

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

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

84 395.003 Licensure; denial, suspension, and revocation.—

85 (1)

86 ~~(c) Until July 1, 2006, additional emergency departments~~
87 ~~located off the premises of licensed hospitals may not be~~

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88 ~~authorized by the agency.~~

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

91 395.1041 Access to emergency services and care.—

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

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

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

114 3. Except as provided in this paragraph, any advertisement
115 for a freestanding emergency department must include the
116 following statement: "This emergency department is not an urgent

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117 care center. It is part of (insert hospital name) and its
118 services and care are billed at hospital emergency department
119 rates." Any billboard advertising a freestanding emergency
120 department which measures at least 200 square feet must include
121 the following statement in clearly legible contrasting color
122 text at least 15 inches high: "(INSERT NAME OF HOSPITAL)
123 EMERGENCY DEPARTMENT. THIS IS NOT AN URGENT CARE CENTER."

124 4.a. The agency shall post on its website information that
125 provides a description of the differences between a freestanding
126 emergency department and an urgent care center. Such description
127 must include:

128 (I) At least two examples illustrating the impact on
129 insured and insurer paid amounts of inappropriate utilization of
130 nonemergent services and care in a hospital emergency department
131 setting compared to utilization of nonemergent services and care
132 in an urgent care center;

133 (II) An interactive tool to locate local urgent care
134 centers; and

135 (III) What to do in the event of a true emergency.

136 b. The agency shall update the information required in sub-
137 paragraph a. at least annually. Each hospital shall post a
138 link to such information in a prominent location on its website.

139 Section 4. Section 627.6405, Florida Statutes, is amended
140 to read:

141 627.6405 Decreasing inappropriate utilization of emergency
142 care.—

143 ~~(1) The Legislature finds and declares it to be of vital~~
144 ~~importance that emergency services and care be provided by~~
145 ~~hospitals and physicians to every person in need of such care,~~

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146 ~~but with the double digit increases in health insurance~~
147 ~~premiums, health care providers and insurers should encourage~~
148 ~~patients and the insured to assume responsibility for their~~
149 ~~treatment, including emergency care. The Legislature finds that~~
150 ~~inappropriate utilization of emergency department services~~
151 ~~increases the overall cost of providing health care and these~~
152 ~~costs are ultimately borne by the hospital, the insured~~
153 ~~patients, and, many times, by the taxpayers of this state.~~
154 ~~Finally, the Legislature declares that the providers and~~
155 ~~insurers must share the responsibility of providing alternative~~
156 ~~treatment options to urgent care patients outside of the~~
157 ~~emergency department. Therefore, it is the intent of the~~
158 ~~Legislature to place the obligation for educating consumers and~~
159 ~~creating mechanisms for delivery of care that will decrease the~~
160 ~~overutilization of emergency service on health insurers and~~
161 ~~providers.~~

162 ~~(2) A health insurer insurers shall post provide on its~~
163 ~~website their websites~~ information regarding appropriate
164 utilization of emergency care services which shall include, but
165 need not be limited to:~~;~~

166 (a) A list of alternative urgent care contracted
167 providers;

168 (b) The types of services offered by these providers;

169 (c) A comparison of statewide average in-network and out-
170 of-network urgent care center and freestanding emergency
171 department charges for the 30 most common urgent care center
172 services;

173 (d) At least two examples illustrating the impact on
174 insured and insurer paid amounts of inappropriate utilization of

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175 nonemergent services and care in a hospital emergency department
176 setting compared to utilization of nonemergent services and care
177 in an urgent care center;

178 (e) An interactive tool to locate local in-network and out-
179 of-network urgent care centers; and

180 (f) What to do in the event of a true emergency.

181

182 Health insurers shall update the information required in this
183 subsection on its website at least annually.

184 (2)-(3) Health insurers shall develop community emergency
185 department diversion programs. Such programs may include, at the
186 discretion of the insurer, but not be limited to, enlisting
187 providers to be on call to insurers after hours, coordinating
188 care through local community resources, and providing incentives
189 to providers for case management.

190 (3)-(4) As a disincentive for insureds to inappropriately
191 use emergency department services for nonemergency care, health
192 insurers may require higher copayments for urgent care or
193 primary care provided in an emergency department and higher
194 copayments for use of out-of-network emergency departments.
195 Higher copayments may not be charged for the utilization of the
196 emergency department for emergency care. For the purposes of
197 this section, the term "emergency care" has the same meaning as
198 the term "emergency services and care" as defined provided in s.
199 395.002(9) s. 395.002 and includes shall include services
200 provided to rule out an emergency medical condition.

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

203 385.211 Refractory and intractable epilepsy treatment and

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204 research at recognized medical centers.—

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

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

221 390.011 Definitions.—As used in this chapter, the term:

222 (7) "Hospital" means a facility as defined in s.
223 395.002(13) ~~s. 395.002(12)~~ and licensed under chapter 395 and
224 part II of chapter 408.

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

227 394.4787 Definitions; ss. 394.4786, 394.4787, 394.4788, and
228 394.4789.—As used in this section and ss. 394.4786, 394.4788,
229 and 394.4789:

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

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233 Section 8. Paragraph (c) of subsection (1) of section
234 395.701, Florida Statutes, is amended to read:

235 395.701 Annual assessments on net operating revenues for
236 inpatient and outpatient services to fund public medical
237 assistance; administrative fines for failure to pay assessments
238 when due; exemption.—

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

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

243 Section 9. Paragraph (i) of subsection (1) of section
244 400.9935, Florida Statutes, is amended to read:

245 400.9935 Clinic responsibilities.—

246 (1) Each clinic shall appoint a medical director or clinic
247 director who shall agree in writing to accept legal
248 responsibility for the following activities on behalf of the
249 clinic. The medical director or the clinic director shall:

250 (i) Ensure that the clinic publishes a schedule of charges
251 for the medical services offered to patients. The schedule must
252 include the prices charged to an uninsured person paying for
253 such services by cash, check, credit card, or debit card. The
254 schedule may group services by price levels, listing services in
255 each price level. The schedule must be posted in a conspicuous
256 place in the reception area of any clinic that is considered an
257 urgent care center as defined in s. 395.002(30)(b) ~~s.~~
258 ~~395.002(29)(b)~~ and must include, but is not limited to, the 50
259 services most frequently provided by the clinic. The posting may
260 be a sign that must be at least 15 square feet in size or
261 through an electronic messaging board that is at least 3 square

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262 feet in size. The failure of a clinic, including a clinic that
263 is considered an urgent care center, to publish and post a
264 schedule of charges as required by this section shall result in
265 a fine of not more than \$1,000, per day, until the schedule is
266 published and posted.

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

269 409.905 Mandatory Medicaid services.—The agency may make
270 payments for the following services, which are required of the
271 state by Title XIX of the Social Security Act, furnished by
272 Medicaid providers to recipients who are determined to be
273 eligible on the dates on which the services were provided. Any
274 service under this section shall be provided only when medically
275 necessary and in accordance with state and federal law.

276 Mandatory services rendered by providers in mobile units to
277 Medicaid recipients may be restricted by the agency. Nothing in
278 this section shall be construed to prevent or limit the agency
279 from adjusting fees, reimbursement rates, lengths of stay,
280 number of visits, number of services, or any other adjustments
281 necessary to comply with the availability of moneys and any
282 limitations or directions provided for in the General
283 Appropriations Act or chapter 216.

284 (8) NURSING FACILITY SERVICES.—The agency shall pay for 24-
285 hour-a-day nursing and rehabilitative services for a recipient
286 in a nursing facility licensed under part II of chapter 400 or
287 in a rural hospital, as defined in s. 395.602, or in a Medicare
288 certified skilled nursing facility operated by a hospital, as
289 defined by s. 395.002(11) ~~s. 395.002(10)~~, that is licensed under
290 part I of chapter 395, and in accordance with ~~provisions set~~

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291 ~~forth in~~ s. 409.908(2) (a), which services are ordered by and
292 provided under the direction of a licensed physician. However,
293 if a nursing facility has been destroyed or otherwise made
294 uninhabitable by natural disaster or other emergency and another
295 nursing facility is not available, the agency must pay for
296 similar services temporarily in a hospital licensed under part I
297 of chapter 395 provided federal funding is approved and
298 available. The agency shall pay only for bed-hold days if the
299 facility has an occupancy rate of 95 percent or greater. The
300 agency is authorized to seek any federal waivers to implement
301 this policy.

302 Section 11. Paragraph (b) of subsection (1) of section
303 409.975, Florida Statutes, is amended to read:

304 409.975 Managed care plan accountability.—In addition to
305 the requirements of s. 409.967, plans and providers
306 participating in the managed medical assistance program shall
307 comply with the requirements of this section.

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

314 (b) Certain providers are statewide resources and essential
315 providers for all managed care plans in all regions. All managed
316 care plans must include these essential providers in their
317 networks. Statewide essential providers include:

- 318 1. Faculty plans of Florida medical schools.
- 319 2. Regional perinatal intensive care centers as defined in

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320 s. 383.16(2).

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

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

329

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

342 Section 12. Paragraph (1) of subsection (1) of section
343 468.505, Florida Statutes, is amended to read:

344 468.505 Exemptions; exceptions.—

345 (1) Nothing in this part may be construed as prohibiting or
346 restricting the practice, services, or activities of:

347 (1) A person employed by a nursing facility exempt from
348 licensing under s. 395.002(13) ~~s. 395.002(12)~~, or a person

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349 exempt from licensing under s. 464.022.

350 Section 13. Paragraph (b) of subsection (1) of section
351 627.64194, Florida Statutes, is amended to read:

352 627.64194 Coverage requirements for services provided by
353 nonparticipating providers; payment collection limitations.—

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

355 (b) "Facility" means a licensed facility as defined in s.
356 395.002(17) ~~s. 395.002(16)~~ and an urgent care center as defined
357 in s. 395.002.

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

360 765.101 Definitions.—As used in this chapter:

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

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