

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 Appropriations

BILL: PCS/SB 1976 (410084)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services) and Senator Brodeur

SUBJECT: Freestanding Emergency Departments

DATE: April 21, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>McKnight</u>	<u>Kidd</u>	<u>AHS</u>	<u>Recommend: Fav/CS</u>
3.	<u>McKnight</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1976 amends multiple sections of law to establish a stronger distinction between freestanding emergency departments (FED) and urgent care centers (UCC). The bill:

- Establishes specific transparency requirements for FEDs, including requirements to post certain information in and around the facility that clearly identifies it as a FED, as well as information related to facility fees and network providers.
- Provides requirements for FED advertisements.
- Clarifies that FEDs operating as hospital-based UCCs and providing urgent care services that are not billed at emergency department rates are exempt from some of the sign and advertisement requirements.
- Requires the Agency for Health Care Administration (AHCA) to publish the following information on its website, and update at least annually:
 - A description of the differences between a FED and UCC;
 - At least two examples illustrating the cost difference between non-emergent care provided in a hospital emergency department setting and a UCC;
 - An interactive tool to locate local UCCs; and
 - Information on what to do in the event of a true emergency.
- Requires hospitals to post a link to the information AHCA publishes on its website in a prominent location on their websites.

- Creates an emergency room billing acknowledgement form with specific disclosure requirements and requires FEDs that bill for urgent care services to provide the form to patients receiving emergency medical treatment.
- Requires a health insurer to publish the following information on its website, 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 illustrating the cost difference between non-emergent care provided in a hospital emergency department setting and a UCC; and
 - An interactive tool to locate local in-network and out-of-network UCCs.

The bill has an insignificant negative impact to state expenditures that the AHCA can absorb with existing agency resources. *See* Section V of this analysis.

The bill takes effect on July 1, 2021.

II. Present Situation:

Off-Site Emergency Departments

With an increasing demand for emergency medical services and issues of overcrowding in existing emergency facilities, hospitals have begun to expand their emergency department services to off-site locations. Off-site emergency departments provide 24-hour emergency medical services at a distinct location, separate from the facility's central campus. Any Florida-licensed hospital that has a dedicated emergency department may provide emergency services in a location off of the hospital's main premises. Off-site emergency departments 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.

Basic services include, but are not limited to:

- Ambulance delivery.
- Integrated hospital services.
- Distribute medications.
- Continuous operations (available 24-hours a day, 365 days a year).
- Medical screenings, examinations and evaluations by a physician, or authorized personnel under the supervision of a physician.¹

There are no additional rules or standards specific for emergency departments located off the premises of the licensed hospital.²

Hospitals desiring to offer off-site emergency departments must meet the physical plant review requirements of s. 395.0163, F.S. The Agency for Health Care Administration (AHCA) must review the facility's plans and specifications before any construction begins. Reviews are also

¹ Agency for Health Care Administration (AHCA), *Consumer Guides, Emergency and Urgent Care*, available at <https://www.floridahealthfinder.gov/reports-guides/urgent-care-guide.aspx#OffSiteED> (last visited Apr. 1, 2021).

² AHCA, *House Bill 1157 Fiscal Analysis* (Feb. 23, 2021) (on file with the Senate Committee on Health Policy).

conducted during the construction phase, and final physical plant approval is granted when the facility is determined to meet all applicable hospital building codes.³

There are currently 86 off-site emergency departments operated by 58 hospitals in Florida.⁴

Emergency Department Utilization and Charges

Although the total number of patients treated in an emergency department (ED)⁵ has increased since 2008, the number of patients treated who were considered low-acuity⁶ 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.⁷

Despite the fact that the percentage of patients using EDs for low-acuity problems 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 charges billed. For example, 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.⁸

Urgent Care Centers

There is no specific licensure program for urgency care centers (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.⁹

There are currently 212 UCCs in Florida.¹⁰ In 2018, the average charge for a patient seen in a UCC was \$193.¹¹

³ AHCA, *Emergency Services*, available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/Hospitals/EmergencyServices.shtml, (last visited Mar. 19, 2021).

⁴ AHCA, *House Bill 1157 Fiscal Analysis* (Feb. 23, 2021) (on file with the Senate Committee on Health Policy).

⁵ In all emergency departments (EDs), not just off-site EDs.

⁶ 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 AHCA, *Emergency Department Utilization Report 2018*, p. 22, available at <https://fhfstore.blob.core.windows.net/documents/researchers/documents/ED%20Report%202018%20Final.pdf> (last visited Mar. 19, 2021).

⁷ *Id.* at pp. 8 and 9.

⁸ *Id.* at p. 10.

⁹ AHCA, *House Bill 1157 Fiscal Analysis* (Feb. 23, 2021) (on file with the Senate Committee on Health Policy).

¹⁰ See Florida Health Finder report, available at <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx>, (last visited Mar. 19, 2021).

¹¹ See <https://www.unitedhealthgroup.com/content/dam/UHG/PDF/2019/UHG-Avoidable-ED-Visits.pdf> (last visited Mar. 19, 2021).

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.

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.¹²

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.

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.¹³

¹² AHCA, *Consumer Guides, Emergency and Urgent Care*, available at <https://www.floridahealthfinder.gov/reports-guides/urgent-care-guide.aspx#OffSiteED> (last visited Apr. 1, 2021).

¹³ *Id.*

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.¹⁴

III. Effect of Proposed Changes:

The bill amends multiple sections of law related to freestanding emergency departments (FEDs) and urgent care centers (UCCs).

Section 1 amends s. 395.002, F.S., to define “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.
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The bill also removes off-site emergency departments from the definition of a UCC and makes other conforming changes.

Section 2 amends s. 395.003, F.S., to repeal obsolete language prohibiting the Agency for Health Care Administration (AHCA) from approving any FEDs prior to July 1, 2006.

Section 3 amends s. 395.1041, F.S., to:

- Prohibit FEDs from holding themselves out to the public as UCCs, unless that site is operating as a hospital-based UCC and providing urgent care services that are not billed at emergency department rates.
- 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 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 two square feet and the text must be in at least 36 point type. The signs must include the following statements:
 - “THIS IS A HOSPITAL EMERGENCY DEPARTMENT”;
 - “THIS IS NOT AN URGENT CARE CENTER”;
 - “EMERGENCY DEPARTMENT RATES ARE BILLED FOR OUR SERVICES.”

¹⁴ *Id.*

- Allow a FED that shares a location and public entrance with a UCC that operates as a hospital-based UCC and provides urgent care services that are not billed at emergency department rates to also state “AND URGENT CARE SERVICES” in addition to any other FED required sign statements.
- Require any advertisement for a FED that does not provide and bill for urgent care services as a hospital-based UCC 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 billboard advertising a FED that does not provide and bill for urgent care services as a hospital-based UCC 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 hospitals to post a link to the information AHCA publishes on its website in a prominent location on their websites.
- Creates an emergency room billing acknowledgement form with specific disclosure requirements and requires FEDs that bill for urgent care services to provide the form to patients receiving emergency medical treatment. The form must include the following:
 - “Your visit today will be billed as an emergency room visit”; and
 - “I, (insert patient’s name), understand that today’s visit will be BILLED AS AN EMERGENCY ROOM VISIT. I certify that the (insert hospital name) has not withheld, delayed, or conditioned a medical screening examination or stabilizing care based upon any payment related concerns. I understand that I may qualify for financial assistance if I am unable to pay for my care today.”

• **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:

PCS/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.¹⁵

VI. Technical Deficiencies:

None.

¹⁵ AHCA, *House Bill 1157 Fiscal Analysis* (Feb. 23, 2021) (on file with the Senate Committee on Health Policy).

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.)

PCS (410084) by Appropriations (Recommended by Appropriations Subcommittee on Health and Human:

The committee substitute:

- Clarifies that freestanding emergency departments (FED) operating as hospital-based urgent care centers (UCC) and providing urgent care services that are not billed at emergency department rates are:
 - Exempts from some of the sign and advertisement requirements; and
 - Allowed to state “AND URGENT CARE SERVICES” on required signs if they share a location and public entrance with a UCC.
- Creates an emergency room billing acknowledgement form with specific disclosure requirements and requires FEDs that bill for urgent care services to provide the form to patients receiving emergency medical treatment.
- Makes technical changes.

B. Amendments:

None.