

## CHAPTER 2021-112

### Committee Substitute for House Bill No. 1157

An act relating to freestanding emergency departments; amending s. 395.002, F.S.; providing and revising definitions; conforming cross-references; amending s. 395.003, F.S.; removing an obsolete date related to a prohibition on new emergency departments located off the premises of licensed hospitals; amending s. 395.1041, F.S.; prohibiting a hospital-based off-campus emergency department from holding itself out to the public as an urgent care center; requiring a hospital-based off-campus emergency department to clearly identify itself as a hospital emergency department using certain signage; requiring a hospital-based off-campus emergency department to post signs in certain locations which contain specified statements; providing requirements for such signs; providing requirements for the advertisement of hospital-based off-campus emergency departments; requiring the Agency for Health Care Administration to post certain information on its website describing the differences between a hospital-based off-campus emergency department and an urgent care center; requiring the agency to update such information on its website at least annually; requiring a hospital to post a link to such information on its website; amending s. 627.6405, F.S.; removing legislative findings and intent; requiring a health insurer to post certain information regarding appropriate utilization of emergency care services on its website and update such information annually; revising a definition; amending ss. 385.211, 390.011, 394.4787, 395.701, 400.9935, 409.905, 409.975, 468.505, 627.64194, and 765.101, F.S.; conforming cross-references; providing an effective date.

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

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

395.002 Definitions.—As used in this chapter:

(10) “Hospital-based off-campus emergency department” means a facility that:

- (a) Provides emergency services and care;
- (b) Is owned and operated by a licensed hospital and operates under the license of the hospital; and
- (c) Is located on separate premises from the hospital.

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

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

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

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

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

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

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

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

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

395.003 Licensure; denial, suspension, and revocation.—

(1)

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

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

395.1041 Access to emergency services and care.—

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

(m)1. A hospital-based off-campus emergency department may not hold itself out to the public as an urgent care center and must clearly identify itself as a hospital emergency department, using, at a minimum, prominent lighted external signage that includes the word “EMERGENCY” or “ER” in conjunction with the name of the hospital. If a hospital-based off-campus emergency department is located on the same premises as an urgent care center, the signage may also identify the urgent care center.

2. A hospital-based off-campus emergency department shall conspicuously post signs at locations that are readily accessible to and visible by patients outside the entrance to the facility and in patient waiting areas which state the following: “THIS IS A HOSPITAL EMERGENCY DEPARTMENT.” Unless the hospital-based off-campus emergency department shares a premises and a public entrance with an urgent care center, the signs must also state the following: “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 the facility or a physician providing medical care at the facility may be an out-of-network provider. The signs must be at least 2 square feet in size and the text must be in at least 36 point type.

3. Except as provided in this subparagraph, any advertisement for a hospital-based off-campus emergency department must include the following statement: “This emergency department is part of (insert hospital name).” Unless the hospital-based off-campus emergency department is located on the same premises as an urgent care center that is advertised in the same advertisement, the advertisement must also include the following statement: “This is not an urgent care center. Its services and care are billed at hospital emergency department rates.” Any billboard advertising a hospital-based off-campus emergency department which measures at least 200 square feet must include the following statement in clearly legible contrasting color text at least 15 inches high: “(INSERT NAME OF HOSPITAL) EMERGENCY DEPARTMENT.” Unless the hospital-based off-campus emergency department is located on the same premises as an urgent care center that is advertised on the same billboard, such billboard must also include the following statement in clearly legible contrasting color text at least 15 inches high: “THIS IS NOT AN URGENT CARE CENTER.”

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

a. 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;

- b. An interactive tool to locate local urgent care centers; and
- c. What to do in the event of a true emergency.

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

627.6405 Decreasing inappropriate utilization of emergency care.—

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

~~(1)(2)~~ A health insurer insurers shall post provide on its website, and update annually, their websites information regarding appropriate utilization of emergency care services which shall include, but need not be limited to;

- (a) A list of alternative urgent care contracted providers;
- (b) The types of services offered by these providers;

(c) 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;

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

- (e) What to do in the event of a true emergency.

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

~~(3)(4)~~ As a disincentive for insureds to inappropriately use emergency department services for nonemergency care, health insurers may require

higher copayments for urgent care or primary care provided in an emergency department and higher copayments for use of out-of-network emergency departments. Higher copayments may not be charged for the utilization of the emergency department for emergency care. For the purposes of this section, the term “emergency care” has the same meaning as the term “emergency services and care” as defined provided in s. 395.002(9) s. 395.002 and includes ~~shall include~~ services provided to rule out an emergency medical condition.

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

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

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

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

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

(7) “Hospital” means a facility as defined in s. 395.002(13) s. 395.002(12) and licensed under chapter 395 and part II of chapter 408.

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

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

(7) “Specialty psychiatric hospital” means a hospital licensed by the agency pursuant to s. 395.002(28) s. 395.002(27) and part II of chapter 408 as a specialty psychiatric hospital.

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

395.701 Annual assessments on net operating revenues for inpatient and outpatient services to fund public medical assistance; administrative

finest for failure to pay assessments when due; exemption.—

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

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

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

400.9935 Clinic responsibilities.—

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

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

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

409.905 Mandatory Medicaid services.—The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(8) NURSING FACILITY SERVICES.—The agency shall pay for 24-hour-a-day nursing and rehabilitative services for a recipient in a nursing

facility licensed under part II of chapter 400 or in a rural hospital, as defined in s. 395.602, or in a Medicare certified skilled nursing facility operated by a hospital, as defined by s. 395.002(11) ~~s. 395.002(10)~~, that is licensed under part I of chapter 395, and in accordance with provisions set forth in s. 409.908(2)(a), which services are ordered by and provided under the direction of a licensed physician. However, if a nursing facility has been destroyed or otherwise made uninhabitable by natural disaster or other emergency and another nursing facility is not available, the agency must pay for similar services temporarily in a hospital licensed under part I of chapter 395 provided federal funding is approved and available. The agency shall pay only for bed-hold days if the facility has an occupancy rate of 95 percent or greater. The agency is authorized to seek any federal waivers to implement this policy.

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

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

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

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

1. Faculty plans of Florida medical schools.
2. Regional perinatal intensive care centers as defined in s. 383.16(2).
3. Hospitals licensed as specialty children's hospitals as defined in s. 395.002(28) ~~s. 395.002(27)~~.
4. Accredited and integrated systems serving medically complex children which comprise separately licensed, but commonly owned, health care providers delivering at least the following services: medical group home, in-home and outpatient nursing care and therapies, pharmacy services, durable medical equipment, and Prescribed Pediatric Extended Care.

Managed care plans that have not contracted with all statewide essential providers in all regions as of the first date of recipient enrollment must continue to negotiate in good faith. Payments to physicians on the faculty of nonparticipating Florida medical schools shall be made at the applicable Medicaid rate. Payments for services rendered by regional perinatal

intensive care centers shall be made at the applicable Medicaid rate as of the first day of the contract between the agency and the plan. Except for payments for emergency services, payments to nonparticipating specialty children’s hospitals shall equal the highest rate established by contract between that provider and any other Medicaid managed care plan.

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

468.505 Exemptions; exceptions.—

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

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

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

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

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

(b) “Facility” means a licensed facility as defined in s. 395.002(17) ~~s. 395.002(16)~~ and an urgent care center as defined in s. 395.002.

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

765.101 Definitions.—As used in this chapter:

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

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

Approved by the Governor June 16, 2021.

Filed in Office Secretary of State June 16, 2021.