

FHA Guidance on Implementation of HB 1157: Transparency Requirements for Hospital-based Off Campus Emergency Departments

Overview

HB 1157, signed by Governor Ron DeSantis on June 21, 2021, sets forth new requirements for hospital off-campus emergency departments (HOEDs). These new requirements, effective July 1, 2021, are:

Hospital Signage Requirements

Amending Florida Statutes sections 395.002 “Hospitals and Other Licensed Facilities – Definitions” and 395.1041 “Access to emergency services and care”

1. A HOED must clearly identify itself as a hospital emergency department using, at a minimum, prominent lighted external signage which includes the word “EMERGENCY” or “ER” in conjunction with the name of the hospital.
2. If the HOED is located on the same premises as an urgent care center, the signage may also identify the urgent care center.
3. HOED are required to post signs outside the entrance to the facility and in the patient waiting areas which state the following:

“THIS IS A HOSPITAL EMERGENCY DEPARTMENT. THIS IS NOT AN URGENT CARE CENTER. HOSPITAL EMERGENCY DEPARTMENT RATES ARE BILLED FOR OUR SERVICES.”¹

4. 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 maybe be an out-of-network provider.
5. The signs must be at least two (2) square feet in size and the text must be at least 36-point type.

Compliance Notes

- **“Average Facility Fee” is Undefined**
Despite requiring the posting of a “facility fee,” 1157 does not define the term. Further, the term is not defined in statute and there is no common understanding among hospitals what that term could mean. Indeed, according to CMS guidance “a hospital may bill a visit code based on the hospital’s own coding guidelines which must

¹ If a HOED is located on the same premises as an urgent care center, the signage may also identify the urgent care center.

reasonably relate to the intensity of hospital resources to different levels of HCPCS codes.” There is no standard for hospital assignment of evaluation and management code levels for emergency departments and each hospital is required to establish its own facility billing guidelines. To the extent a hospital determines that they have an average facility fee to post², hospitals have flexibility in determining its calculation for “average facility fee” to comply with the statute. When appropriate hospitals may consider qualifying their “average facility fee” on their signage by adding context, including:

- a. *The average facility fee does not include diagnostic, ancillary, or professional services;*
 - b. *The average facility fee may not reflect a patient’s actual out of pocket expenses;*
or
 - c. *[some reference to the availability of charity care policies].*
- **Emergency Medical Treatment & Active Labor Act (EMTALA)**
EMTALA was enacted to ensure public access to emergency services regardless of ability to pay. CMS has expressed concern in the past that posting fees or prices could be conjured to discourage those without health insurance coverage from seeking care. While CMS is reviewing the new Florida requirement, they have shared that any signage showing a fee or price *must include language noting the hospital will treat the patient regardless of ability to pay that standard fee.*

Compliance Notes

- **Average Facility Fee Must Consider EMTALA**
The Agency for Health Care Administration (AHCA) has expressed to FHA that, in order to comply with CMS’s EMTALA survey obligation, they will evaluate whether the average facility fee is artificially high as a way to discourage care.

Advertisements for HOEDs

1. Any advertisement for a HOED must include the following statement: “This emergency department is part of [insert HOSPITAL name]” and must include the statement:

“THIS IS A HOSPITAL EMERGENCY DEPARTMENT. THIS IS NOT AN URGENT CARE CENTER. HOSPITAL EMERGENCY DEPARTMENT RATES ARE BILLED FOR OUR SERVICES.”*

2. Any billboard advertising a HOED (which measures at least 200 square feet) must including the following statement in clearly legible contrasting color text at least 15 inches high:

² HB 1157 specifies that posting average facility fees is a requirement only if the hospital has an average facility fee. Hospitals should evaluate the applicability of this requirement with relevant internal and external subject matter experts.

“(INSERT NAME OF HOSPITAL) EMERGENCY DEPARTMENT.” THIS IS NOT AN URGENT CARE CENTER.”*

3. Hospitals are required to post a link to materials on AHCA’s website which describes the differences between a hospital-based off-campus emergency department and an urgent care center.

Compliance Notes

- **AHCA Materials Under Construction**
AHCA has not published its materials related to the difference between HOEDs and urgent care centers. Once released, FHA will provide notice to its members.

AHCA Requirements

AHCA must post on its website information that describes the differences between a HOED and an urgent care center. This information must be updated annually. The description must include:

1. At least two (2) 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 those same services in an urgent care center;
2. An interactive tool to locate local urgent care centers;
3. What to do in the event of a true emergency.

Health Plan Requirements

A health insurer shall post on its website and update annually the following information:

1. A list of alternative urgent care contracted providers;
2. The types of services offered by these providers;
3. At least two (2) 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 those same services in an urgent care center;
4. An interactive tool to locate local in-network and out-of-network urgency care centers;
5. What to do in the event of a true emergency.

Effective Date

The law is effective July 1, 2021.

Noncompliance

Florida Statutes 395.1041(5) provides the following penalties for noncompliance:

- “The agency may deny, revoke, or suspend a license or impose an administrative fine, not to exceed \$10,000 per violation, for the violation of any provision of this section or rules adopted under this section.”

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