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### “Waving a bloody shirt...” The Free Standing Emergency Room Issue

This draft is being provided to stimulate thought and direction. It should not be our only decision making tool.

As with most aspects of our current health care system, obvious problems defy easy answers or solutions. What follows is a factual summary taken from a recent conversation with Mr. Randy Kuykendall, at CDPE. CDPHE has the responsibility of regulation Free Standing Emergency Rooms for CMS (federal) and the state.

To understand the environment, here is a brief summary of my conversation with Mr. Kuykendall. His comments were the result of my questions. He took no position on this aspect of health care delivery itself.

#### History

The licensing of Free Standing Centers Providing Emergent Care is not new. The state has five (5) long term centers of this type. All are rural and severing the needs of local communities where they reside. These are access points designed to fill a need in that community. The facility in Telluride is an example of this long-standing centers.

As communities have grown at rates that outpace the supply of physicians and other health care professionals, these centers were created to serve the needs of the population and thus improve outcomes.

#### Licensure

Technically, Colorado’s licensing is for what is referred to as “a community health care center with emergency services.” There is no specific “Emergency Room” licensure, per se. The licensing requirements are not specific as to staffing or the equipment required for a center to call itself an emergency center.

Licensing can be both federal (CMS) and state, but to be federally licensed the center must accept Medicare, Medicaid, and Tri-Care patients. A center can be either not for profit, or for profit (tax paying).

There are three types of these emergency centers in operation in Colorado toady.

1. COMMUNITY CENTER WITH EMERGENCY CAPABILITY- these are the five previously mentioned centers, and all are licensed federally and with the state. They take all patients. There are 5 of these currently.
2. EMERGENCY CENTERS AFFILIATED WITH A HOSPITAL-although all centers must have referral relationships with a hospital(s) for care they cannot render, it is most

common to find a Free Standing Emergency center that is owned by a facility. Centura's Free Standing Emergency centers are an example. They take all patients and operate 24x7x365. There are 15 of these currently.

3. Independent Emergency Centers-these are those who have a referral relationship with some facility but they are otherwise unaffiliated with any hospital (i.e., they are independent). It is these centers where we have seen the most expansion of late.

Although similar to the type listed in #1, above, they are not federally licensed and thus do not serve Medicare, Medicaid, or Tri-care patients.

There are 24 of these currently.

### The Issue

Why has the proliferation of such centers become an issue for some?

There are two potential issues associated with Free Standing Emergency Rooms. First, patients may not understand that this is an "emergency room" when they seek treatment; i.e., a location for service which charges emergency room prices and a facility fee. Second, there is a theoretical issue that may not yet be fully evidence based, that such centers may not have the full capability of what a "traditional" (hospital based) Emergency Room provides and may not accept all patients. In fact, someone who seeks treatment may therefore need to be transported to a facility with the type of care needed and thus may have incurred needless delays in care, which could result in dire consequences.

The attached location map demonstrates that the majority of these new centers are not in areas that are underserved.

There are currently (as of 08/04/16) 39 such centers in the state, with 7 more pending approval.

### Urgent Care Centers

It is interesting to note that there is no separate licensure for Urgent Care centers. These centers may be physician, hospital, or independently owned (e.g., MedExpress) and their charges are normally priced between that of an office visit and a standard Emergency Room.

Some facilities affiliate Free Standing Emergency centers have an internal triage system that directs patients to the most effective care setting (at lower cost; i.e., Urgent Care) versus those needing more comprehensive (and therefore typically more expensive) forms of care.

### What are our Options as a state?

It is important to acknowledge that if Free Standing Emergency Rooms were not permitted to operate (as is the case in some states) access to care would be impacted. Data indicates that after-hours and weekend access to primary care is important for patients, especially for those

living out-state. And, to the degree that a primary care physician shortage exists, these centers help fill that void.

Options:

There are various options that the Commission might consider exploring if it is determined that Free Standing Emergency centers are creating issues. These include, but are not limited to:

1. Free Standing Emergency centers could be outlawed entirely. A question would arise as to how currently operating centers might be handled.
2. Free Standing Emergency centers could be outlawed unless they are owned by a hospital. A law might even require them to be within a specific distance of a full-scale affiliated hospital.
3. Standards for Free Standing Emergency Rooms could be increased to require a specific level of care that would be provided; e.g., requiring a surgeon to be on-site 24x7x365 before emergency room charges could be levied. Those that do not comply could then be designated as "Urgent Care centers.

Presumably this would apply initially for all new centers, and could be phased in overtime for all. Arguably, it would important to consider how the long-standing "Community Centers with Emergency" capability would be impacted by such a change.

4. Licensure could require all such centers to be federally licensed, and thus able to treat Medicare, Medicaid and Tri-Care patients.
5. Requiring price disclosure or a simple warning at the door that emergency room charges will apply which charge more than that of a physician's office, or urgent care center. This has been proposed but because it potentially encourages patients to go elsewhere for care, this has been considered a violation of the federal law (EMTALA).

The attached materials from CDPHE list the number and location of existing centers.

Encl.