



Free Standing Emergency Departments: Options for New York State

Executive Summary

The American Hospital Association (AHA) defines a Free Standing Emergency Department (FED) as a facility that provides unscheduled outpatient services to patients whose conditions require immediate care in a setting that is geographically removed from a hospital. FEDs have the potential to help alleviate emergency department (ED) overcrowding, increase patient access to emergency services, and provide a needed public service. However, consideration must be given to regulatory issues and concerns surrounding cost, quality of care and patient safety.

I. Options

The options presented below are potential strategies for State oversight and regulation as well as operating standards for the FEDs. The pros and cons of each strategy and approaches used by other states are provided. The options should not be considered mutually exclusive and may be combined or blended.

1. Maintain Licensure and Certificate of Need

While the Committee could consider not requiring licensure or Certificate of Need, maintenance of a comparable regulatory footing for hospital-based and freestanding emergency departments seems indicated, since both are subject to Article 28 regulations governing operations, physical plant, surveillance, quality improvement and SPARCS reporting.

Pros:

- Prevention of an undue proliferation of FEDs and possible over-utilization of costly emergency medical services;
- Assurance of operator character and competence, and of acceptable ownership and governance arrangements for FEDs.
- Maintenance of quality in FED services through Article 28 monitoring and surveillance;
- Certification for CMS participation (Medicare and Medicaid) through DOH review process.

Cons:

- None

State Models:

- Most States have implemented regulations that impose standards similar to hospital based EDs.
- Experiences by other states who have tried going without regulating FEDs have been viewed as unsuccessful by these states and regulations have been imposed.

2. Adherence to Title 10 Section 405.19 for Emergency Services. Update and revise, as indicated, with requirements specific to FEDs.

Key provisions of Title 10 Section 405.19

A) Prompt physician evaluation of patients presenting emergencies;

B) Initial treatment and stabilization or management; and transfer, where indicated, of patients to an appropriate receiving hospital. The hospital shall have a written agreement with local emergency medical services (EMS) to accommodate the need for timely inter-hospital transfer on a 24 hours a day, 7 days a week, 365 days a year basis.

C) Written policies and procedures developed by the medical staff and approved by the governing body that shall specify:

1) The responsibility of the emergency services to evaluate, initially manage and treat, or admit or recommend admission, or transfer patients to another facility that can provide definitive treatment. Such policies and procedures shall include a written agreement with one or more local emergency medical services (EMS) to accommodate the need for timely inter-facility transport on a 24 hours a day, 7 days a week, 365 days a year basis;

2) The organizational structure of the emergency service, including the specification of authority and accountability for services; and

3) Explicit prohibition on transfer of patients based on their ability or inability to pay for services.

D) The emergency service shall be directed by a licensed and currently registered physician who is board-certified or board-admissible for a period not to exceed five years after the physician first attained board admissibility in emergency medicine, surgery, internal medicine, pediatrics or family practice, and who is currently certified in advanced trauma life support (ATLS) or has training and experience equivalent to ATLS. Such physician shall also have successfully completed a course in advanced cardiac life support (ACLS) or have had training and experience equivalent to ACLS. A licensed and currently registered physician who is board-certified or board-admissible in psychiatry for a period not to exceed five years after the physician first attained board-admissibility, in psychiatry may serve as psychiatrist director of a separately operated psychiatric emergency service. Directors of separately operated psychiatric emergency services need not be qualified to perform ACLS and ATLS.

E) An emergency service shall have laboratory and X-ray capability, including both fixed and mobile equipment, available 24 hours a day, seven days a week, to provide test results to the service within a time considered reasonable by accepted emergency medical standards.

Pros:

- Ensures adequate staffing and expertise to provide quality emergency care
- Protects consumers ensuring they will receive care similar to that provided by a hospital based ED
- Clarifies the distinctions between FEDs and Urgent Care Centers
- Ensures availability of 24/7 emergency transportation to transfer patients in need of specialized emergency care or inpatient care.
- Utilizes established standards the health care community understands
- The American College of Emergency Physicians has not yet developed standards for FEDs

Cons:

- May impose requirements that unnecessarily reduce flexibility such as 24/7 operation
- May increase operational costs unnecessarily for staffing since FEDs usually treat lower acuity patients than hospital based EDs

State Models:

- The States reviewed all have requirements about staffing and hospital linkages. Kansas, Idaho and Illinois have specific facility design requirements
- Illinois regulations are separate from hospital based ED regulations. They include population density standards where FEDs may be constructed
- Texas regulations require physician owned FEDs to meet hospital based ED standards including treating all patients without regard to ability to pay and having a physician on site at all times.

3. Accreditation Requirements

Pros:

- A survey conducted in 2008 found that 198 of 222 FEDs were accredited by the Joint Commission. Some FEDs are accredited as part of the hospital and others are accredited as independent entities.
- Established mechanism for ensuring staffing and operations are conducive to high quality services as well as adequacy of the facility.
- Less burdensome than CON for providers.
- Provides more information for the consumer.
- Provides a mechanism to help the State track resources.
- Consistent with Provider sentiment to reduce the reach and utilization of CON.

Cons:

- Does not ensure resources are developed where they are needed or mitigate the impact on other providers in close proximity.
- Access for persons who are on Medicaid or are uninsured or under-insured is no longer part of the decision making process of where to increase FED resources.
- Inconsistent with the practices of most other states.

State Models:

- Most FEDs nationwide have been accredited by the Joint Commission.
- Of the States reviewed, only Kansas referenced accreditation as a requirement.

4. Allow for Less than 24/7 Hours of Operations

Pros:

- Reduces expenses
- Allows the provider the flexibility to design the program to meet the needs of the community
- Consistent with CMS policy
- Already exists in states such as Connecticut.

Cons:

- Inconsistent with the FED model used in most other states
- May add to consumer confusion about the distinction between an FED and an urgent care center
- Potential inconsistency with Title 10 Section 405.19, unless structured as a Provider-Based Off Campus ED
- Federal reimbursement is lower for FEDs operating less than 24/7
- Signage and marketing must be clear about hours of operation
- Legislation was introduced but not enacted to support a part-time FED in Lake Placid

State Models:

- Delaware, Virginia, Texas, Illinois, Idaho and Kansas require 24/7 operation.
- Connecticut and Rhode Island do not require 24/7 operation.

5. Allow for FED Models without Beds

Pros:

- Allows for providers to design services to meet community needs without the added expense of inpatient beds especially when the FED is located in close enough proximity to hospitals for rapid transfers

- Consistent with CMS policy

Cons:

- Raises the possibility of delays in transferring patients who require inpatient care
- Raises reimbursement issues for a model of care that is expensive due to the staffing requirements

State Models:

- Most of the states reviewed do not address the requirement of having beds at FEDs.
- Rhode Island does not permit overnight stays at FEDs.

6. Allow FEDs that are not Hospital Affiliated (CMS refers to as “Hospitals Specializing in Emergency Services”)

Pros:

- Not specifically prohibited in Title 10 Section 45.19 regulation
- Allows for greater flexibility in ownership consistent with several other states
- Greater competition may bring downward pressure on reimbursement rates
- May result in more responsive service models
- Consistent with CMS regulations

Cons:

- May result in proliferation of FEDs that produce competition that is harmful to existing providers.
- Likelihood of FED development concentrated in regions where most residents have private insurance and resources are adequate
- Requires non hospital affiliated facilities have emergency transportation available during hours of operation and direct access to nearby hospitals
- Historically there has been no demand to construct FEDs by anyone other than hospitals.
- CMS has not encouraged this model.

State Models:

- The majority of FEDs in Texas are owned by private physicians. Delaware does not require hospital ownership.
- Illinois, Florida and Alabama require hospital ownership.

II. Samples of Other States' Requirements

Alabama

- In anticipation of the development of FEDs, state regulations were approved 7/17/2013. There are currently three FEDs under development.
- CON is required.
- Includes architectural review.
- Medical Director must be board certified in emergency medicine.
- Nurses must be certified in "emergency health care work" which usually involves a minimum of one year experience in emergency medicine.
- Must be thoroughly integrated into a hospital licensed in the state of Alabama.
- Helipads are required for all FEDs.
- Considering adding rules regulating how close together FEDs can be.

Delaware

- Operate 24/7
- Capable of handling all medical emergencies that have life threatening potential
- Transfer agreements in writing with one or more hospitals
- If owned by a hospital must be separately licensed
- Hospital ownership not required

Florida

- Currently 4 FEDs in operation statewide. There had been a moratorium on new FEDs that was not extended.
- CON is not required as the FED is considered part of the hospital
- Must operate 24/7
- Board Certified Physicians and Nurses are required

Idaho

- Must operate 24/7
- Must be located within 35 miles of the hospital that owns or controls it
- Must be staffed at all times with a board-certified physician or board eligible emergency department physician
- Capable of receiving ground ambulance patients
- Dietary, laboratory, radiology, and pharmacy services required
- Written transfer agreements in place with one or more hospitals
- Provide, or contract with an EMS service to provide ambulance transport to hospital-based EDs.

- Require written notification to EMS agencies with any change in available services or capabilities
- Meet standards for facility design, including EMS physical requirements

Illinois

- Located in a municipality with a population of 75,000 or fewer inhabitants within 20 miles of the hospital that owns or controls the freestanding emergency center and within 20 miles of the Resource Hospital affiliated with the freestanding emergency center as part of the EMS system;
- Wholly owned or controlled by an Associate or Resource Hospital, but is not a part of the hospital's physical plant;
- Meets standards for facility design, operation and maintenance standards and equipment standards
- Meets standards for the number and qualifications of emergency medical personnel and other staff, which must include at least one board certified emergency physician present at the FED 24 hours per day.
- Limits participation in the EMS System strictly to receiving a limited number of BLS runs by emergency medical vehicles according to protocols developed by the Resource Hospital within the FEC's designated EMS System and approved by the Project Medical Director and the Department;
- Provides comprehensive emergency treatment services, as defined in Hospital Licensing Requirements (77 Ill. Adm. Code 250), 24 hours per day, on an outpatient basis;
- Provides an ambulance and maintains on site ambulance services staffed with paramedics 24 hours per day;
- Maintains a communications system that is fully integrated with its Resource Hospital within the FEC's designated EMS System;
- Reports to the Department any patient transfers from the FEC to a hospital within 48 hours after the transfer plus any other data determined to be relevant by the Department;

Kansas

- Must operate 24/7
- Must be accredited
- Must provide same services as on site ED
- Same signage requirements as on site EDs which clearly indicate the service capability of the facility.
- Transportation to the main hospital must be done by the hospital (FED) or through a local EMS.
- An Emergency Medical Physician from the staff must be in charge for each location.
- Must provide medical screening and stabilization
- ED RN must supervise care

- 96-97 AIA Guidelines for physical plant requirements
- Listing of on-call physicians

Rhode Island

- Overnight stay not permitted
- Procedures must be in place for hospital transfers
- May operate less than 24/7
- The Medical Director must be a physician licensed in the State.
- At least one physician must be on duty during operating hours who is board certified or board eligible in Emergency Medicine.
- Adhere to the State's uniform reporting requirements.
- Clinical lab
- Diagnostic radiology
- EKG

Texas

- Unlike the rest of the country, the majority of FEDs in Texas are physician owned and not hospital affiliated.
- Laboratory testing necessary for emergency situations
- Radiology services such as X-ray, CT scans and ultrasound
- Staffing by physicians and nurses trained in emergency medicine
- Provide for patient transfers between the freestanding ERs and other medical facilities
- Operate 24 hours a day, 7 days a week and always have a physician on site.
- Only licensed emergency centers may use emergency terminology to advertise
- Must treat all patients regardless of ability to pay.

Virginia

- Minimal special rules for FEDS
- Hospitals are permitted to have off site facilities which are subject to the same rules as on site facilities, including an available physician and an assigned RN at all times.
- Ambulance services are required.
- 24/7 operation.