

This report was prepared by the Agency for Health Care Administration (AHCA, Agency) in response to the following requirement in Section 23, Chapter 2004-350, *Laws of Florida* (CS/SB 2448):

By December 31, 2004, the agency shall submit a report to the President of the Senate and the Speaker of the House of Representatives recommending whether it is in the public interest to allow a hospital to license or operate an emergency department located off the premises of the hospital. If the agency finds it to be in the public interest, the report shall also recommend licensure criteria for such medical facilities, including criteria related to quality of care and, if deemed necessary, the elimination of the possibility of confusion related to the service capabilities of such facility in comparison to the service capabilities of an emergency department located on the premises of the hospital. Until July 1, 2005, additional emergency departments located off the premises of licensed hospitals may not be authorized by the agency.

The report attempts to answer two questions:

Are freestanding emergency departments in the public interest?

If so, how should they be regulated?

Background

Freestanding Emergency Departments in Florida

In April 2002, the Agency for Health Care Administration (AHCA) approved the addition of an offsite, freestanding emergency department to the license of Munroe Regional Medical Center (MRMC) in Ocala. The freestanding emergency department is located approximately 12 miles to the southwest of the MRMC inpatient facility. The inpatient facility also includes a traditional, onsite emergency department.

The history of the development of the state's first freestanding emergency department, from the MRMC perspective, is included as Appendix 1 to this report.

In approving the addition of the freestanding emergency department to the MRMC license, AHCA rested its decision on two primary factors:

- Emergency room patients are outpatients; and
- Chapter 395, *Florida Statutes*, the licensing statute for hospitals, allows hospitals to have multiple inpatient premises on one license, and to list specific offsite outpatient facilities on the hospital license.

Chapter 395 does not define 'inpatient' or 'outpatient'. AHCA does not regulate the establishment of outpatient services or the mix of outpatient services a hospital can

provide. The Legislature removed the review of hospital proposals for new outpatient services from Florida's Certificate of Need (CON) program in 1987.

Emergency room patients are considered 'outpatients' and are billed as such. The Centers for Medicare and Medicaid Services (CMS), which establishes federal payment policies for the reimbursement of hospital services, pays for emergency department patients as 'outpatients'.

Section 395.003(2)(d) specifies that "the agency shall, at the request of a licensee, issue a single license to a licensee for facilities located on separate premises. Such a license shall specifically state the location of the facilities, and the licensed beds available on each separate premises...."

Rule 59A-3.203(f), related to hospital licensure, allows for the 'addition of beds or off-site facilities to a hospital's license..' Approximately 70 of Florida's 270 licensed hospitals list offsite outpatient facilities on their licenses.

In October 2003, AHCA approved the state's second freestanding emergency department for Ft. Walton Beach Medical Center. The offsite emergency department is located in Destin, approximately 12 miles to the east of the main inpatient facility.

AHCA published a proposed administrative rule in September 2003. The proposed rule was challenged and later withdrawn by the Agency. A copy of the proposed rule is attached to this report as Appendix 2.

No other Florida hospitals have applied to have a freestanding emergency department added to their license.

Freestanding Emergency Departments in Other States

AHCA staff searched academic and trade literature, and the Internet, for information about freestanding emergency departments in other states. The following information summarizes the results of the literature search.

- Though uncommon, freestanding emergency departments have existed in the U.S. health care system since the 1960s.
- There is very little in academic health care literature that specifically addresses freestanding emergency departments.
- In addition to Florida's two facilities, freestanding emergency departments can be documented in Texas, California, Virginia, South Carolina and Delaware.
- Freestanding emergency departments are under development in North Carolina, Kansas, Arizona and Washington.

Information that documents these freestanding emergency departments is compiled in Appendix 3 of this report.

The Centers for Medicare and Medicaid Services (CMS) recognizes both onsite and freestanding emergency departments. With respect to Medicare participating hospitals' treatment of individuals with emergency medical conditions, on September 9, 2003 CMS published 42 CFR Parts 413, 482, and 489 Medicare program; Clarifying Policies Related to the Responsibilities of Medicare – Participating Hospitals in Treating Individuals with Emergency Medical Conditions; Final Rule. This rule defines “dedicated emergency department” at 489.24(b) as: “any department or facility of the hospital regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

- (1) It is licensed by the state in which it is located under applicable state law as an emergency department;
- (2) It is held out to the public (by name, posted signs, advertising or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment...”

Trends in Hospital Outpatient Services

Acute care hospitals have diversified their services in recent decades, particularly in the 1990s. The expansion of managed care in the 1990s led hospitals to eliminate unnecessary inpatient stays in favor of greater use of outpatient services. The overnight inpatient stay has become shorter and hospitals have increased their involvement with outpatient surgery, outpatient diagnostic imaging, outpatient clinical laboratories, freestanding urgent care centers, outpatient rehab centers and outpatient clinic services.

The development of freestanding emergency departments is part of this trend toward more hospital-based outpatient services. The National Center for Health Care Statistics reported the following statistics on the use of hospital outpatient services in its summary of data from the 2002 National Hospital Ambulatory Medical Care Survey:

- “In 2002, 83.3 million visits were made to hospital outpatient departments, about 29.4 visits per 100 persons.”
- “The visit rate in 2002 was 31 percent higher than the rate observed in 1992 (22.5 visits per 100 persons). Visit rate increases occurred among all age groups, for each sex, for white persons, and for black or African American persons. The overall rate, however, has leveled off since 1999.”

Similarly, the National Center for Health Care Statistics reported the following statistics on the use of hospital emergency department services in its summary of data from the 2002 National Hospital Ambulatory Medical Care Survey:

- “From 1992 through 2002, the number of ED visits increased from 89.8 million to 110.2 million visits annually (up 23 percent). This represents an average increase of almost 2 million visits per year. The number of hospital EDs in the United States decreased by about 15 percent during the same period.
- “The overall ED utilization rate per population increased by 9 percent from 35.7 visits per 100 persons in 1992 to 38.9 visits per 100 persons in 2002.”

In Florida, the trend toward increased hospital emergency department utilization is documented in the following tables.

Number of Hospitals Reporting	Year	Total Emergency Visits
210	1993	4,838,356
207	1994	5,048,124
201	1995	5,338,456
198	1996	5,157,730
193	1997	5,400,293
187	1998	5,747,308
189	1999	5,238,017
184	2000	6,210,265
181	2001	6,424,009
178	2002	6,668,680
182	2003	6,903,762

Source: AHCA data from the Florida Hospital Uniform Reporting System

Florida emergency department visits have been increasing even as the number of hospitals offering emergency services has decreased. The following table shows how the trend of increased visits to Florida emergency departments has exceeded what could be expected due to the state's steadily increasing population

Year	Florida Population	Florida ED Visits	ED Visits Per 100 Persons
1993	13,608,627	4,838,356	35.6
1994	13,878,905	5,048,124	36.4
1995	14,149,317	5,338,456	37.7
1996	14,411,563	5,157,730	35.8
1997	14,712,922	5,400,293	36.7
1998	15,000,475	5,747,308	38.3
1999	15,322,040	5,238,017	34.2

Year	Florida Population	Florida ED Visits	ED Visits Per 100 Persons
2000	16,051,395	6,210,265	38.7
2001	16,373,330	6,424,009	39.2
2002	16,713,149	6,688,680	40.0
2003	17,019,068	6,903,762	40.6

Source: AHCA data from the Florida Hospital Uniform Reporting System

Emergency Care and Hospital Development

In recent years, improved access to emergency care has been one of the leading reasons for proposals for new hospitals, as well as for open-heart surgery programs, in Florida's certificate of need (CON) program. Most of this activity has occurred in previously rural communities that are now growing quickly, or in rapidly developing suburbs of major metropolitan areas.

Growing communities with increasing traffic congestion seek quicker access to emergency services as well as basic inpatient hospital services. In the area of interventional cardiology, hospitals have competed to be able to offer emergency angioplasties, but they have been forced to apply for highly restricted open heart surgery services because of requirements to offer backup surgery before performing angioplasties. Emergency services have therefore been an important driver of hospital development in the state.

Market Incentives for Freestanding Emergency Departments

Hospitals that develop freestanding emergency departments want to expand their market share in a rapidly growing part of their service area. They typically want to establish a visible presence in a new, growing area that might later support further development.

The concern with using a freestanding emergency department to expand market share is the potential negative effect on safety net hospitals. Overdevelopment of freestanding emergency departments could threaten hospitals that serve many uninsured and underinsured patients. Health planners would try to ensure that the benefits of improved access to emergency services outweigh any negative effect on an existing hospital, particularly a safety net provider.

Other factors will likely limit the number of hospitals that attempt to develop freestanding emergency departments. These factors include liability and patient safety concerns, competition for qualified professional staff or adequacy of specialty physician backup. Hospitals that have such concerns in their existing onsite emergency departments may be unable to consider developing a freestanding facility.

Quality of Care in Freestanding Emergency Departments

Neither of Florida's two freestanding emergency departments has had any complaints filed about the care provided in the facility, nor has either hospital filed an adverse incident report related to the freestanding facility. These are the best available indicators of quality of care in the freestanding emergency facilities.

AHCA is interested in ensuring that there is no confusion in the minds of patients, families or practitioners between a freestanding emergency department of a hospital and any other freestanding facility such as an urgent care center. This is an important reason for regulating the freestanding emergency department identical to the main hospital facility. This includes detailed signage requirements that specifically define the services offered and the affiliation with the main hospital facility.

Summary of Background Issues

- Florida has two licensed, freestanding emergency departments.
- Although freestanding emergency departments have existed since the 1960s in some states, they remain unusual. There are several freestanding emergency departments being developed in other states.
- Over the last decade, hospitals have expanded outpatient and emergency services.
- The desire for better access to emergency services has led a number of Florida communities to apply for CONs for satellite hospitals and open heart surgery programs.
- Overdevelopment of freestanding emergency departments could negatively affect safety net hospitals, but it is reasonable to assume that freestanding emergency departments will remain very limited due to liability, patient safety and staffing issues.
- Regulating the two existing freestanding emergency departments in the same way as onsite emergency rooms, AHCA has had no indication of quality of care concerns.

Are Freestanding Emergency Departments in the Public Interest?

To answer the question of whether freestanding emergency departments are in the public interest, first consider the following three specific questions:

1. Do freestanding emergency departments improve access to emergency care at less cost than a new acute care hospital?
2. Is there a justifiable concern for the effect of a freestanding emergency department on an existing hospital, particularly a safety net hospital?
3. Are there quality of care concerns at freestanding emergency departments?

Improved Access

In certain locations, it appears that improved access to quality emergency services can be achieved by developing a freestanding emergency department. This would allow a hospital to delay the construction of inpatient facilities until there is a large enough population and an adequate supply of local professionals to admit patients and deliver basic acute care inpatient services.

Under certain circumstances, freestanding emergency departments allow a hospital to provide the most sought after hospital service to a growing population without forcing it to develop inpatient services that may not be used efficiently.

Florida has a number of the nation's most rapidly growing counties, so it is reasonable to expect continued interest in new hospital development. In order to be successful, new hospitals need a core group of specialized physicians who are likely to admit patients for inpatient care. Physicians require a relatively large population in order to operate a sustainable practice. This is one of the biggest challenges that face growing communities when they begin to feel that their population has expanded, and now requires quicker access to emergency services. The population, though rapidly growing, will still not sustain a diverse medical community needed to staff a viable hospital.

In certain communities, a freestanding emergency department can be a bridge to a full service community hospital until future population growth enables the development of a complete hospital.

Effect on Safety Net Hospitals

Uncontrolled expansion of freestanding emergency departments could change the market shares of the hospitals in a regional market. When one of those hospitals is a safety net provider, such a change could threaten its financial viability. However, since each regional market is unique, it would be very difficult to predict the effect on existing hospitals.

Florida has a small number of regional safety net hospitals. Approximately 20 teaching hospitals and major community hospitals provide a large majority of the state's services to uninsured and underinsured patients. In smaller communities, it may be difficult to identify the safety net hospital, making it more difficult to assess the potential impact of a freestanding emergency department on existing hospitals and their patients.

The only process that could evaluate the complex issues associated with impact on safety net hospitals and other community hospitals would be CON review.

Quality of Care

There is currently no indication of any quality of care concerns at either of the state's two freestanding emergency departments. The two existing freestanding emergency departments have served as pilot projects to allow the Agency to gain information about any quality problems that might be associated with freestanding facilities. Since April 2002, there have been no reports of any problem in either facility.

How Should Freestanding Emergency Departments Be Regulated?

The Agency for Health Care Administration licenses the state's two existing freestanding emergency departments as though they are a part of the main hospital.

When certifying hospitals and other health care providers to participate in Medicare and Medicaid, it is necessary to be consistent in the application of licensure standards. For this reason, AHCA applies the following standards to both onsite and freestanding emergency departments. Hospitals understand that these requirements, applied as consistently as possible, are a part of the regulatory system that makes them eligible for reimbursement by Medicare and Medicaid.

- The offsite emergency department must be inspected and meet the requirements of Rule 59A-3.255, Florida Administrative Code.
- If the hospital is accredited, the offsite location must also be accredited.
- The same services provided at the main emergency department must be provided at the freestanding emergency department, 24 hours per day, seven days per week.
- Since a freestanding emergency department is a department of the hospital, it must be able to provide emergency services and care for any emergency medical condition that is within the service capability of the hospital. Patients may be transported from one area of the hospital (offsite) to another (main) as long as emergency services and care are provided within the service capability of the hospital. Transportation from one area of the hospital (offsite) to another (main) must be provided by the hospital or through a contract with the local community EMS system. All services provided by on-call physicians must be available to patients at the offsite facility as well as the main hospital.

- A hospital's freestanding emergency department is subject to the same signage requirements (Chapter 59A-3.255, F.A.C.) as the main emergency department. Signs posted in the freestanding emergency department must be identical to signs posted in the onsite emergency department, as they must identify the service capability of the hospital.
- A list of services provided at the main campus and at the freestanding location must be provided.
- Medical screening and stabilization are required for all patients seeking emergency services at both the main emergency department and the freestanding location.
- An emergency medicine physician member of the organized medical staff must be in charge of each emergency department location.
- Supervision of care by a registered nurse qualified by relevant training and experience in emergency care for all emergency department nursing staff must be provided at each location.
- A control register identifying all persons seeking emergency care must be maintained at each location.
- Both onsite and freestanding emergency departments must have procedures in place and a listing of on-call physicians.
- Onsite and freestanding emergency departments are subject to the federal Emergency Medical Treatment and Labor Act (EMTALA) regulations as well as Florida's emergency access statute.
- The AHCA Office of Plans and Construction must review and approve construction plans for freestanding emergency departments.
- Freestanding emergency departments must meet all of the physical plant requirements, including electrical and mechanical, of an onsite emergency department as described in Section 419.4.11 of the Florida Building Code. These facilities must also meet the requirements of section 7.D.9, Definitive Emergency Care, as described in the *Guidelines for the Design and Construction of Hospitals and Health Care Facilities, 2001*, edition incorporated by referenced in Section 419.2.1.2 of the Florida Building Code.
- Freestanding emergency departments must meet the occupancy and construction requirements of the Life Safety Code and Florida Building Code relevant to the actual use of the facility.

Conclusions and Recommendations

It is in the public interest to allow hospitals in certain unique communities to develop freestanding emergency departments and to have them listed separately on their license. Such communities are likely to be high growth areas within a reasonable travel time to the main hospital to enable patient transport for surgery and inpatient services. This allows growing communities to gain quicker access to emergency care but avoids the premature development of a hospital in a community that cannot yet support it.

As long as the hospital understands that the freestanding emergency department will be regulated identically to the onsite emergency department, there is no reason to have a concern about quality of care. The fact that we have had two freestanding emergency departments operating without a single complaint or adverse incident shows that quality services can be achieved in the offsite setting.

It is reasonable to assume that interest in freestanding emergency departments will remain limited. Factors such as liability concerns and staffing problems will prevent many hospitals from pursuing this option. In order to evaluate the complex market issues associated with freestanding emergency departments, the Legislature should add freestanding emergency departments as a project subject to CON review by the Agency.

Recommendations

- Allow the development of freestanding emergency departments; adding them to projects subject to certificate of need review pursuant to Section 408.036(1), Florida Statutes.
- Direct the Agency to promulgate rules designating that the regulatory criteria for onsite emergency departments also apply to offsite freestanding emergency departments.

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