



SPONSOR: Sen. Poore & Rep. Griffith
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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 171

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO URGENT CARE FACILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 16, of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and adding a new Subchapter 10B as follows:

§ 1001B Purpose.

To establish standards with respect to safety and sanitary conditions of urgent care facilities as defined in § 1002B of this subchapter and to investigate and inspect any such urgent care facility for unsafe or unsanitary conditions upon receipt of a complaint by a patient or current urgent care facility employee in accordance with this subchapter or upon the occurrence of any adverse event in connection with any such facility.

§ 1002B Definitions.

As used in this Chapter, the following terms mean:

(1) "Adverse event" means:

a. The death or serious injury of any patient at an urgent care facility;

b. A reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at an urgent care facility; or

c. The initiation of any criminal investigation arising out of, or relating to, any diagnosis, treatment or other medical care at an urgent care facility.

(2) "Approved Accrediting Body" means those accrediting organizations approved by the Department pursuant to criteria that may be further outlined by regulation.

(3) "Complaint" means a complaint filed by a patient or current facility employee in writing, in such format as the Department shall require.

(4) "Patient" means a person who has received diagnosis, treatment, or other medical care at an urgent care facility or such person's spouse, as well as any parent, legal guardian, or legal custodian of such person who is under 18 years of age or any legal guardian or legal custodian of such person who is an adult.

(5) “Urgent Care Facility” means a facility that provides urgent care services, such as, without limitation, facilities known as “walk-in” clinics or centers or “urgent care centers.”

(6) “Urgent Care Services” means a model of episodic care for the diagnosis, treatment, management, or monitoring of acute and chronic disease or injury that is: (i) for the treatment of illness or injury that is immediate in nature but does not require emergency services and (ii) otherwise holds itself out to the public as a facility that provides immediate medical care for non-emergency conditions outside of the customary primary care office setting.

§ 1003B Regulations.

(1) The Department shall promulgate regulations in accordance with the Administrative Procedures Act, 29 Del. C. § 10101, et seq., to further outline the parameters of its inspection and enforcement authority and to further establish the operational protocols contemplated in paragraphs (a) through (h) of this Section, consistent with the limitations as set forth in this subchapter. Specifically, at a minimum, the Department shall develop, establish, and enforce regulations:

a. Governing the operation of urgent care facilities to protect and promote the public health and welfare;

b. Setting forth criteria the Department will utilize in assessing whether a facility may be offering urgent care services without a license to operate as an urgent care facility, including whether the facility holds itself out to the public as a provider of immediate medical care for non-emergent conditions that provides care outside of the customary primary care office setting or relationship on a walk-in basis and outside of routine primary care business hours;

c. Governing the criteria for which organizations shall be designated as an approved accrediting body;

d. Governing when reports, documentation, and proof required by this subchapter shall be provided to the Department;

e. Setting forth criteria under which the Department shall investigate and inspect any urgent care facility upon receipt of a complaint by a patient or current facility employee or upon occurrence of any adverse event in connection with any such urgent care facility;

f. Governing whether and under what circumstances and conditions a facility fee may be charged or added to the costs of services provided to a patient by an urgent care facility;

g. Governing patient care coordination, including working with the Delaware Health Information Network (“DHIN”) and other necessary stakeholders, to establish procedures for appropriate notifications to primary care providers of urgent care utilization by the primary care provider’s assigned or attributed patients; and

h. Revoking any existing Department regulations or sub-regulatory guidance or documents that conflict with the requirements of this subchapter, including the requirements set forth in 16 Del. Reg. § 4404 that prohibit

or otherwise restrict the use of the name or title “urgent care” by any facility that is not licensed by the Department as a free standing emergency center.

§ 1004B Licensing By Accreditation Requirement.

(1) To provide urgent care services and operate in this State, an urgent care facility must obtain a license, whether provisional or regular, from the Department.

(2) The Department shall issue a provisional license, which shall be valid for no more than 9 months from the date issued, to any existing or new urgent care facility when such facility provides the Department with the following:

a. An application made on a form prepared by or approved by the Department and published by regulation; and

b. Proof satisfactory to the Department that the existing or new urgent care facility is seeking accreditation from an approved accrediting body.

Provided both subsections (a) and (b) of this subsection (2) are satisfied, the Department shall issue a provisional license to such facility within 10 business days of the urgent care facility submitting its application. A provisional license may only be renewed one time.

(3) The Department shall issue a regular license, which shall be valid for no more than twenty-four months from the date issued, to any existing urgent care facility or any urgent care facility holding a provisional license when such facility provides the Department with the following:

a. An application made on a form prepared by or approved by the Department and published by regulation; and

b. Proof satisfactory to the Department that the existing urgent care facility or urgent care facility holding a provisional license has been accredited by an approved accrediting body.

Provided both subsections (a) and (b) of this subsection (2) are satisfied, the Department shall issue a regular license to such facility within 10 business days of the urgent care facility submitting its application.

(4) All urgent care facilities must submit proof of accreditation to the Department at regular intervals as the Department may proscribe. After each survey of any facility hereunder by an approved accrediting body, the facility must submit the approved accrediting body’s survey report to the Department within 30 days.

(5) If the facility fails to maintain current accreditation or if the accreditation is revoked or is otherwise no longer valid, the license of that urgent care facility shall immediately cease to operate. The Department shall also revoke the license granted to the urgent care facility

(6) An approved accrediting body shall report to the Department, at a minimum, all of the following regarding urgent care facilities the organization has accredited under this subchapter:

a. Findings of surveys; and

b. Findings of complaint and incident investigations;

Each approved accrediting body shall makes these reports to the Department at regular intervals as the Department may proscribe. Documents provided under this section are not public records under the Freedom of Information Act, Chapter 100 of Title 29.

(7) If an urgent care facility holds a current certification for participation in either Medicare or Medicaid through an affiliated hospital, such certification shall be deemed to be the equivalent of being accredited by an approved accrediting body provided the urgent care facility provides proof satisfactory to the Department that the urgent care facility holds, through an affiliated hospital, a current certification for participation in either Medicare or Medicaid. Such proof shall be provided to the Department at regular intervals as the Department may proscribe.

(8) The Department shall charge a fee of up to two thousand dollars (\$2,000) per facility that shall accompany the application for licensure of an urgent care facility. The fee shall be used to offset the costs of administering the licensing requirements set forth in this subchapter.

§ 1005B Other Department Authority.

(a) The Department can make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines during the course of any investigation or inspection that any facility hereunder poses a substantial risk to the health or safety of any person, the Department may order that such facility be closed until such time as it no longer poses a substantial risk.

(b) The Department shall share information regarding facilities with the Department of State, Division of Professional Regulation.

§ 1006B Coordination of Care.

(a) No later than January 1, 2020, each urgent care facility must enroll in the DHIN as active users of the Community Health Record and enter into an agreement with DHIN to provide DHIN with a summary of each visit or episode of care in an electronic format established by DHIN.

(b) If the patient has a primary care provider, the urgent care facility must notify the patient's primary care provider of the urgent care visit. Such notifications may be made through DHIN's Electronic Notification Service.

§ 1007B Enforcement.

111 (1) Any person constructing, managing, or operating any urgent care facility without complying with the
112 procedures set forth in this Chapter shall be fined by the Department no more than \$5,000 for the first offense and no more
113 than \$10,000 for each subsequent offense. Each day of a continuing violation shall be considered a separate offense.

114 Section 2. This Act shall become effective at the earlier of 180 days following enactment or 90 days after final
115 regulations specified under Section § 1003B are published in accordance with the Administrative Procedures Act.

SYNOPSIS

This Act establishes a new subchapter of Title 16 regulating urgent care facilities. It requires such facilities, existing and new, to obtain a license from DHSS, which requires the urgent care facility to either be accredited by an approved accrediting body or be seeking such accreditation. If the urgent care facility is seeking accreditation, it can operate on a provisional license for nine months. If accreditation is not obtained, the urgent care facility can apply once for a renewal of a provisional license. Operating without a license or accreditation will subject urgent care facilities to fines. The Act grants DHSS the power to promulgate various regulations to enforce the Act. DHSS can also make and enforce orders to protect the public health and share information with the Division of Professional Regulation. The Act requires each urgent care facility in the State to enroll in the Delaware Health Information Network ("DHIN") and to notify a patient's primary care provider through DHIN to facilitate the coordination of care.

Author: Senator Poore