Senate

General Assembly **File No. 468**

February Session, 2018 Substitute Senate Bill No. 303

Senate, April 12, 2018

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist. and SEN. SOMERS of the 18th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING OUTPATIENT CLINICS, URGENT CARE CENTERS AND FREESTANDING EMERGENCY DEPARTMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (l) of section 19a-508c of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2018*):

(l) Notwithstanding the provisions of this section, **[**on and after January 1, 2017,**]** no hospital, health system or hospital-based facility shall collect a facility fee for (1) outpatient health care services that use a current procedural terminology evaluation and management (CPT E/M) code and are provided at a hospital-based facility located off-site from a hospital campus, other than a hospital emergency department **[**, located off-site from a hospital campus**]** that is operated as a provider-based entity, as defined in 42 CFR 413.65, and authorized under Medicare rules to bill for emergency procedures, or (2) outpatient health care services, other than those provided in an emergency

department located off-site from a hospital campus, received by a patient who is uninsured of more than the Medicare rate. Notwithstanding the provisions of this subsection, in circumstances when an insurance contract that is in effect on July 1, 2016, provides reimbursement for facility fees prohibited under the provisions of this section, a hospital or health system may continue to collect reimbursement from the health insurer for such facility fees until the date of expiration of such contract. A violation of this subsection shall be considered an unfair trade practice pursuant to chapter 735a.

Sec. 2. Section 19a-493d of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2018*):

(a) For purposes of this section:

(1) "Outpatient clinic" means an organization operated by a municipality or a corporation, other than a hospital, that provides (A) ambulatory medical care, including preventive and health promotion services, (B) dental care, or (C) mental health services in conjunction with medical or dental care for the purpose of diagnosing or treating a health condition that does not require the patient's overnight care; **[**and**]**

(2) "Urgent care center" means a free-standing facility, distinguished from an emergency department setting, that is licensed as an outpatient clinic under section 19a-491 and that (A) provides treatment of medical conditions that do not require critical or emergent intervention for a life-threatening or potentially permanent disabling condition, (B) offers treatment of such conditions without requiring an appointment, and (C) provides services during times of the day, weekends or holidays when primary care provider offices are not customarily open to patients; and

(3) "Freestanding emergency department" means a free-standing facility that (A) is structurally separate and distinct from a hospital, (B) provides emergency care, and (C) is a department of a hospital

licensed under chapter 368v.

(b) On or after April 1, 2018, no person acting individually or jointly with any other person shall establish, conduct, operate or maintain an urgent care center without obtaining a license as an outpatient clinic under section 19a-491 from the Department of Public Health.

(c) The Office of Health Strategy shall adopt regulations, in accordance with the provisions of chapter 54, to require an outpatient clinic, urgent care center and freestanding emergency department to display signage that clearly indicates whether it is (1) an outpatient clinic, urgent care center or freestanding emergency department, and (2) owned by a hospital or hospital system.

[(c)**]** (d) The Commissioner of Public Health may implement policies and procedures as necessary to carry out the provisions of this section while in the process of adopting the policies and procedures as regulations, provided notice of intent to adopt the regulations is published in accordance with the provisions of chapter 54.

[(d)**]** (e) The Commissioner of Social Services may establish rates of payment to providers practicing in urgent care centers. The Commissioner of Social Services may implement policies and procedures as necessary to carry out the provisions of this section while in the process of adopting the policies and procedures as regulations, provided notice of intent to adopt the regulations is published in accordance with the provisions of section 17b-10 not later than twenty days after the date of implementation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2018*	19a-508c(l)
Sec. 2	*October 1, 2018*	19a-493d

Statement of Legislative Commissioners:
In Section 1, "CFR 413.65" was changed to "42 CFR 413.65" for accuracy.

PH *Joint Favorable Subst.*

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 $	FY 20 $
UConn Health Ctr.	Various - Revenue Loss	Less than 4.2 million	Less than 5.6 million
UConn Health Ctr.	Various - Potential Cost	See Below	See Below

Note: Various=Various

Municipal Impact: None

Explanation

The bill results in a revenue loss to UConn Health Center of less than $4.2 million in FY 19 and less than $5.6 million in FY 20 due to clarifying when a facility fee is prohibited, and a potential cost to UConn Health in FY 19 and FY 20 associated with signage requirements. The bill is not anticipated to result in a fiscal impact to the state or municipal health plans as it is consistent with current reimbursement practices of the plans.

Section 1 results in a revenue loss to UConn Health because it clarifies that hospital-based off-site urgent care centers and freestanding emergency departments may not collect facility fees associated with evaluation/management services, except for emergency departments meeting specific criteria. Therefore, UConn Health will be prohibited from charging a facility fee for evaluation/management services provided at its off-site urgent care clinics.

In FY 17, UConn Health collected facility fees from off-site services

totaling $15 million. It is estimated using prior year data that approximately 37.5 percent of this revenue was attributable to non-dermatology off-site facilities, which results in annual revenue of approximately $5.6 million. As a portion of this annual revenue may be due to facility fees collected in association with non-evaluation/management services, and with non-urgent care facilities, the actual revenue loss will be less than $5.6 million. The FY 19 estimated revenue loss of less than $4.2 million reflects approximately three-quarters of annual revenue loss as the bill's effective date is October 1, 2018.

Section 2 results in a potential cost to UConn Health associated with signage requirements for outpatient clinics and urgent care centers. The extent of the cost depends on the signage requirements that will be adopted by the Office of Health Strategy through regulation and to what degree UConn Health's current signage must be adjusted. For example, the regulations may specify large outdoor signs, which may involve a substantial cost, or a paper notice by a patient entrance or check-in window, which would entail little cost.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation in facility fees, as well as UConn Health's patient volume for services for which the facility fee is prohibited under the bill.

OLR Bill Analysis

sSB 303

AN ACT CONCERNING OUTPATIENT CLINICS, URGENT CARE CENTERS AND FREESTANDING EMERGENCY DEPARTMENTS.

SUMMARY

This bill requires the Office of Health Strategy to adopt regulations to require outpatient clinics, urgent care centers, and freestanding emergency departments to display signs that clearly indicate whether they are (1) such type of facility and (2) owned by a hospital or hospital system.

It defines "freestanding emergency department" as a free-standing emergency care facility that is a department of a hospital, but structurally separate and distinct from the hospital. The bill applies existing definitions of "outpatient clinic" and "urgent care center" (see BACKGROUND).

The bill also specifies that a hospital's off-site emergency department may charge facility fees for certain outpatient services only if it is a provider-based entity authorized under Medicare to bill for emergency procedures (see BACKGROUND).

EFFECTIVE DATE: October 1, 2018

FACILITY FEES AT OFF-SITE EMERGENCY DEPARTMENTS

Under current law, hospitals, health systems, and hospital-based facilities generally may not collect facility fees for outpatient services that use a current procedural terminology evaluation and management code and are provided at a hospital-based facility located away from the hospital's campus. This restriction does not apply to off-site emergency departments. The bill specifies that the exception only applies to such departments that are provider-based entities

authorized under Medicare to bill for emergency procedures.

BACKGROUND

Outpatient Clinics and Urgent Care Centers

By law, an "outpatient clinic" is an organization operated by a municipality or corporation, other than a hospital, that provides (1) ambulatory medical care, including preventive and health promotion services; (2) dental care; or (3) mental health services in conjunction with medical or dental care for the purpose of diagnosing or treating a health condition that does not require overnight care.

An "urgent care center" is a free-standing facility, separate from an emergency department, that is licensed as an outpatient clinic and (1) treats medical conditions that do not require critical or emergent intervention for life-threatening or potentially permanently disabling conditions; (2) treats these conditions without requiring an appointment; and (3) provides services during times when primary care provider offices are not customarily open.

Facility Fees

By law, a "facility fee" is any fee a hospital or health system charges or bills for outpatient hospital services provided in a hospital-based facility that is (1) intended to compensate the hospital or health system for its operational expenses and (2) separate from the provider's professional fee (CGS § 19a-508c(a)).

Medicare Provider-Based Entities

Under the federal Centers for Medicare and Medicaid Services "provider-based status" rules, Medicare will reimburse for facility fees for services at hospital-based facilities (such as a group practice owned by the hospital) meeting certain requirements, but not at physicians' offices not affiliated with a hospital.

A facility or practice has provider-based status, and thus can bill for facility fees, if it has a relationship with the main provider (i.e., the hospital) concerning a range of issues, such as licensure, clinical and

financial integration with the hospital, public awareness, and billing practices. The regulations specify payment recovery procedures if a hospital inappropriately treats a facility as provider-based (42 C.F.R. § 413.65).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute
Yea 26 Nay 0 (03/26/2018)