

CHAPTER 305
FORMERLY
HOUSE BILL NO. 248

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:

Section 1. Amend § 122, Title 16 of the Delaware Code as follows:

§ 122. Powers and duties of the Department of Health and Social Services [Effective upon final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to:

p. Establish standards for quality assurance in the operation of freestanding birthing centers, freestanding surgical centers, and freestanding emergency departments; and to grant licenses for the operation of such facilities to persons, associations or organizations meeting those standards and paying the appropriate license fee established by the Department. Upon receipt of an application for license and the application fee of \$150 for freestanding birthing centers, \$250 for freestanding surgical centers, and \$250 for freestanding emergency departments, the Department shall issue a license if the facility meets the requirements established under this chapter. A license unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of \$75 for freestanding birthing centers, \$150 for freestanding surgical centers, and \$150 for freestanding emergency departments. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of \$75 for freestanding birthing centers, \$150 for freestanding surgical centers, and \$150 for freestanding emergency departments has been submitted. Only licensed facilities may use the terms birthing, surgical or emergency in their name or advertising as approved by the Department. For each facility which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license. When appropriate, the Department should use the established standards for Medicare reimbursement in setting standards; provided, however, that nothing contained in this subparagraph shall be construed to authorize the Department to expand or limit the scope of practice afforded to professionals under other chapters of this title or other provisions of Delaware law or lawful regulations of the Department. For the purpose of this chapter, the following definitions shall apply to those facilities:

1. "Freestanding birthing center" means a public or private facility, other than a hospital, which is established for the purpose of delivering babies and providing immediate postpartum care.
2. "Freestanding emergency department" means a facility, physically separate from a hospital, which is established, maintained and operated for the purpose of providing immediate and

emergent care to individuals suffering from a life-threatening medical condition, and which is subject to the following requirements:

A. Services are provided 24 hours per day, 7 days per week on an outpatient basis for medical conditions that include those manifested by symptoms of sufficient severity that, in the absence of immediate medical attention, could result in any of the following:

- I. Placing the patient's health in jeopardy.
- II. Serious impairment to bodily functions.
- III. Serious dysfunction of any bodily organ or part.
- IV. Development or continuance of severe pain.

B. The freestanding emergency department shall maintain the services, staff, equipment and drugs necessary to provide an initial evaluation and stabilization of a patient of any age who presents with symptoms as noted herein.

I. There shall be a full time physician serving as director of the freestanding emergency department who is board-certified in emergency medicine.

II. Each physician practicing in the freestanding emergency department shall be licensed to practice medicine in the State and: attain certification within 3 years of completion of a residency program; or emergency medicine within the past 5 years, be American Board of Medical Specialties or American Osteopathic Association certified in a medical specialty, and hold current certifications in advanced cardiac life support, advanced pediatric life support, and advanced trauma life support.

III. Resident physicians and nonphysician providers may work in the freestanding emergency department as long as there are procedures in place for prompt consultation and communication with a physician on-site who meets the criteria in paragraph (3)p.2.B.II. of this section.

IV. All registered nurses practicing in the freestanding emergency department shall be licensed as a registered nurse in the State and hold, or attain within 6 months of hire, certifications, or equivalents as approved by the Department, in advanced cardiac life support and pediatric advanced life support.

V. There must be at least 1 physician, who meets the requirements of paragraph (3)p.2.B.II. of this section, and 1 registered nurse, with current certifications, or equivalents as approved by the Department, in advanced cardiac life support and pediatric advanced life support, present in the freestanding emergency department at all times.

VI. Each freestanding emergency department shall provide on-the-premises clinical laboratory services and diagnostic radiology services during all hours of operation, including scan and ultrasound processing and provision of results, to meet a patient's emergency laboratory needs.

C. Patient transfer agreements, including a plan for transportation, must be in effect with 1 or more general acute care hospitals that provide basic or comprehensive emergency medical services wherein patients requiring more definitive care will be expeditiously transferred to receive prompt hospital care.

D. Each freestanding emergency department shall participate in the Delaware Health Information Network as data senders and end users by January 27, 2017.

E. To receive emergency medical services patients, the freestanding emergency department must comply with the requirements and procedures for medical command facility designation set forth by the Division of Public Health's Office of Emergency Medical Services.

F. Each freestanding emergency department must maintain malpractice insurance coverage.

G. A freestanding emergency department is exempt from licensure requirements if all of the following are satisfied:

I. The freestanding emergency department is owned and operated by a hospital licensed under Chapter 10 of this title.

II. The freestanding emergency department is a service of such hospital deemed by an accreditation organization as approved by the Centers for Medicare and Medicaid Services.

Approved July 11, 2018