

Free Standing Emergency Department Signage Workgroup

November 28, 2023

Time 9:30 a.m.

Perimeter Center, Training Room 2

9960 Mayland Drive

Henrico, VA 23233

ATTENDEES – Entire Meeting (alphabetical by last name): *Rebekah E. Allen*, Senior Policy Analyst, Office of Licensure and Certification, Virginia Department of Health; *Joel W. Andrus*, Government Relations Director, Kemper Consulting, Inc; *Kimberly F. Beazley*, Director, Office of Licensure and Certification, Virginia Department of Health; *Curtis S. Byrd*, Director of Advocacy and Community Relations, Chesapeake Regional Medical Center; *Julie Dime*, Vice President of Government Affairs, Virginia Hospital & Healthcare Association; *Christopher Fleury*, Health Policy Analyst, Medical Society of Virginia; *Allyson Flinn*, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health; *Harold Han*, Privacy Officer, Patient First; *Val Hornsby*, Policy Analyst, Office of Licensure and Certification, Virginia Department of Health; *R. Christopher Lindsay*, Chief Operating Officer, Virginia Department of Health; *Elizabeth Mikula*, Vice President of Quality, HCA Capital Division; *R. Brent Rawlings*, Senior Vice President and General Counsel, Virginia Hospital & Healthcare Association; *Ruthanne Risser*, Deputy Director, Office of Licensure and Certification, Virginia Department of Health.

ATTENDEES – Partial Meeting (alphabetical by last name): *Angela I. Bezik*, Government Affairs Director, Principle Advantage Government Relations Group, LLC; *Aimee Perron Seibert*, Commonwealth Strategy Group.

INVITEES – Did Not Attend (alphabetical by last name): *Dr. Benjamin Blackwood*, Virginia College of Emergency Physicians; *Camela “Cam” Crittenden*, Acting Director, Office of Emergency Medical Services, Virginia Department of Health; *Emily Hardy*, Deputy Director of the Center for Health Communities, Virginia Poverty Law Center; *Steve McCoy*, General Counsel, Patient First; *Angela Puryear*, Virginia College of Emergency Physicians; *James W. “Jay” Speer*, Executive Director, Virginia Poverty Law Center; *Tracy White*, Vice President of Government Relations, HCA Capital Division.

1. Call to Order and Introductions

R. Christopher Lindsay called the meeting to order at 9:05 a.m., welcomed those in attendance, and led the introductions of the workgroup attendees.

2. Review of Agenda

Rebekah E. Allen reviewed the agenda.

3. Relevant Findings from the JCHC Study, *Reducing Unnecessary Emergency Department Utilization*

Ms. Allen presented the relevant findings from the Joint Commissioner on Health Care (JCHC) Study on reducing unnecessary emergency department utilization in Virginia.

4. Workgroup Mandate

Mr. Lindsay reviewed the workgroup mandate from JCHC. Mr. Lindsay explained the origin of the mandate, stating that commission members would like to address this issue for patients, but that there were concerns about what specific signage, patient disclosures, or other forms of patient education should be required, and the potential cost to hospitals.

Mr. Lindsay stated that JCHC requested a workgroup of impacted stakeholders be held to recommend a specific policy option that can mitigate patient confusion while minimizing the burden on hospitals.

5. Public Comment Period

No workgroup invitees or members of the public signed up to give public comment, and no public comments were received.

6. Free Standing Emergency Department Signage Laws

Ms. Allen reviewed free standing emergency department (FSED) signage laws in Texas, Connecticut, Colorado, and Florida with the workgroup, and presented photographs of the front of several FSEDs from separate hospital systems in the state. Ms. Allen also reviewed the Emergency Medical Treatment and Labor Act (EMTALA) with the workgroup.

Aimee Perron Seibert raised concerns regarding EMTALA and how presenting cost information may violate this Act. Ms. Allen explained that while there are no known citations of EMTALA violations in these states due to their signage laws, that does not mean there won't be any in the future. Elizabeth Mikula offered to reach out to HCA facilities in Texas to inquire about potential EMTALA citations regarding their FSED signage laws.

Ms. Allen reviewed disclosure requirements, specifically those required by Texas and Colorado. Ms. Allen also briefly mentioned that at present Virginia does not mandate disclosures that are specific to hospital emergency departments, regardless of whether they were on-campus or freestanding.

Mr. Lindsay discussed the Inova health literacy campaign that addressed the difference between urgent care and emergency care.

7. Discussion

Mr. Lindsay opened the discussion of FSED signage to the workgroup members. Curtis S. Byrd requested the workgroup members view FSED signage and disclosure as a tool for consumer protection. Mr. Byrd stated that he believed FSEDs are business models meant to increase market share, as they are generally located in areas of the state that do not necessarily need a FSED. R. Brent Rawlings responded to this claim citing that FSEDs require a Certificate of Public Need (COPN) in Virginia.

Ms. Mikula inquired about the origins of the JCHC study mandate. Ms. Allen informed Ms. Mikula that the study mandate was a result of a bill from the 2022 Regular General Assembly Session that was continued by the Senate Committee on Education and Health.

Mr. Rawlings inquired whether the Virginia Department of Health Office of Licensure and Certification (VDH OLC) had received complaints regarding misleading signage in urgent care centers, to which Ms. Allen informed Mr. Rawlings that those complaints would not be sent to VDH OLC and would instead be referred to the Virginia Department of Health Professions (DHP) as provider complaints because urgent care centers are not licensed medical care facilities. Ms. Allen further clarified that VDH OLC has received constituent inquiries regarding cost and quality of care received at EDs, both on-campus and freestanding, in Virginia.

Julie Dime discussed the problem the workgroup was tasked with addressing, stating that she did not want to duplicate already existing actions already addressing FSED signage and health literacy education. Ms. Dime indicated that she liked the idea to address health literacy education as a potential recommendation. Ms. Dime also addressed the differences between urgent care and FSEDs, stating that consumers may choose a FSED rather than an urgent care facility due to FSEDs holding 24/7 hours, while urgent care facilities may not.

Mr. Byrd stated that consumers are often utilizing FSEDs to treat non-emergent conditions, citing the JCHC report. Mr. Byrd also expressed that regulators do not need to have received complaints in order to address an issue. Mr. Rawlings clarified that the JCHC report contains a disclaimer for that data, which states that the claims data used in the report does not identify whether a patient was treated in a FSED, or a hospital-based emergency department (hospital-based ED). Mr. Rawlings further stated that report indicates that JCHC staff were able to identify 5 hospitals with FSEDs in the all-payer claims database, and that those FSEDs served less than 3% of the hospital's total ED visits with similar patient intensity levels as the hospital-based ED. Mr. Byrd responded to Mr. Rawlings stating the research largely indicates consumer confusion between FSEDs and urgent care facilities.

Mr. Byrd discussed the differences between FSEDs and hospital-based EDs, stating that FSEDs have more limitations than the hospital-based EDs due to resource availability. Mr. Byrd further clarified this point, stating that patients who require a higher-level of care, such as surgery or a heart catheter, would need to be transported to another facility from the FSED due to the FSED's inability to perform that procedure. Ms. Mikula informed Mr. Byrd that if a patient at a hospital were to require a cardiac catheter, that patient would also need to be transported from the hospital to another facility, as hospitals are generally unable to perform that procedure.

Ms. Mikula discussed health literacy initiatives regarding the differences between FSEDs and urgent care facilities, stating that those initiatives already exist.

Harold Han discussed urgent care facilities, and anecdotally offered that while his Patient First does not see emergency patients, the same cannot be said for other Patient First facilities.

Ms. Dime inquired with the group regarding the use of the word “emergency”, and whether urgent care facilities used that term in their signage. Ms. Mikula discussed the association of hospital systems and their urgent care facilities, referencing Bon Secours as an example and stated that HCA does not affiliate itself with its urgent care center’s signage like Bon Secours does.

Ms. Perron Siebert discussed the health literacy issues identified by the group, stating that she was not sure how to address them. Ms. Perron Siebert further stated that she did not think this was a signage question, and is rather an education question, mentioning that FSEDs have the name of the affiliate hospital on its signage. Ms. Perron Siebert stated that she believes requiring the department of health to publish information regarding the difference between FSEDs and urgent care facilities would be helpful.

Mr. Byrd inquired with Mr. Han about whether urgent care facilities charge a facility fee for services. Mr. Han stated that Patient First does not charge a facility fee for services. Ms. Mikula stated that FSEDs do charge that facility fee for services. Mr. Byrd and Ms. Mikula discussed the EMTALA requirements on FSEDs to perform a medical screening for patients who enter that FSED and at what point during that process a facility fee is charged to the patient. Ms. Mikula stated she was not sure how the intake process would work for providing a disclosure of cost after the initial medical screening without violating EMTALA and offered to reach out to the HCA facilities in Texas to further clarify. Mr. Byrd concluded the discussion stating that the workgroup should look to other states to determine how these requirements protect consumers, and that the consumers should be protected from undue burdens.

Ms. Perron Siebert discussed the important of health literacy education, and inquired with VDH about the potential partnership opportunities that may exist in order to address health literacy concerns regarding FSEDs.

Ms. Dime suggested that the workgroup recommend VDH and DHP to publish information comparing urgent care facilities and FSEDs on their websites. Ms. Dime stated that legislators who are interested in this issue could send a link to the respective websites in communications with their constituents.

Ms. Perron Siebert inquired with VDH about the possibility of convening a workgroup focused on addressing health literacy issues. Ms. Allen responded to Ms. Perron Siebert, stating that spring of 2024 is the earliest VDH OLC would be able to host this workgroup.

Mr. Rawlings inquired with VDH OLC about whether a list of the urgent care facilities in Virginia was available to which Ms. Allen stated there is not, and that a list of CLIA facilities would be the closest estimation. Ms. Beazley clarified that the

classification is not necessarily the same for all urgent care facilities due to some classifying themselves as a physician's office instead.

Mr. Lindsay concluded the signage discussion, clarifying the recommendations from the workgroup would be to hold a community health literacy workgroup, and that additional stakeholders should be included in this future workgroup.

Mr. Lindsay inquired with the group whether a disclosure exists for EMS transfer from a FSED to a separate hospital system. Ms. Dime stated that EMS does disclose information regarding transfer from one hospital system to another. Mr. Rawlings referenced the JCHC report data, stating that 77,000 ambulance transfers between facilities occurred between 2015 to 2020, representing 1% of all ambulance transports total.

8. Wrap Up and Next Steps

8.1. Written Report

Ms. Allen explained the report process to the workgroup, as well as the expected timeline of completion; VDH staff expect to have the report completed by the end of calendar year 2023.

8.2. Public Comment

Ms. Allen requested that workgroup members provide any written public comments by the close of business on Wednesday, December 6.

9. Meeting Adjournment

Mr. Lindsay adjourned the meeting at 11:09 a.m.