

**HB18-1212: An Economic Analysis**

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House Bill “Freestanding Emergency Departments Licensure,” or HB18-1212, establishes a new license for health facilities providing independently-run emergency care or emergency care away from the main campus of hospitals. The bill also would require these licensed facilities to follow certain regulations that would protect their patrons from unreasonable fees and guarantee that they receive care. Colorado’s health care market is in need of reform due to its current market failure, but HB18-1212 inadequately addresses the root of this market failure and is therefore not an economically sound solution.

HB18-1212 creates a license for the Department of Public Health and Environment to issue to freestanding emergency departments on or after July 1, 2021. These freestanding emergency departments are health facilities that offer “emergency care, that may [also] offer primary and urgent care services.” These health facilities may be independent or affiliated with a hospital, where the hospital’s main campus is more than 250 yards away.

The bill also mandates that on or after July 1, 2021, all health facilities that wish to act as freestanding emergency departments must either be licensed or offer “services in a geographically underserved community.” The licensed freestanding emergency departments must comply with a new set of regulations. These regulations include charging patients reasonable facility fees, submitting an annual report detailing facility fees compared to overhead costs, and not charging fees to patients who are transferred to other facilities for the purpose of stabilization. The regulations also require the licensed facilities to offer prompt medical screening to anyone without consideration of whether they can pay.

Markets that require government intervention – which could include the issuing of licensure – are those that are experiencing market failure. Market failures occur when one entity in a market has significant power in comparison to other players. When a few suppliers of a good

– such as health care - have significant market power, consumers are harmed, and the market is rendered inefficient. Colorado’s residents currently experience market failure in health care in two ways: oligopoly of hospital systems and asymmetric payment information.

As of 2012, hospitals owned 27% of all urgent care facilities, which Tom Charland, CEO of Merchant Medicine, stated was only the early stage of this trend.<sup>1</sup> The market power of hospital systems limits the ability for other independently-owned facilities to compete, enabling hospital systems to be strong price-makers. This oligopoly of health care throughout the state forces consumers to have fewer choices and to become price-takers for their medical expenses.

This tendency is particularly problematic for emergency facilities, as HB18-1212 addresses, because those citizens needing immediate care cannot afford the time it would take to transfer to a different facility and must take whatever rate they are given. Hospitals are more advantaged to establish freestanding clinics than any other provider because of the industry’s moderate barriers to entry and high capital investments, according to an IBISWorld Industry Report.<sup>2</sup> This trend causes a lack of optionality of facilities for patients. Therefore, unregulated facilities have the power to charge exorbitant “facility fees” that patients are obligated to pay, creating space for facilities to exploit their patients.

A lack of access to urgent care facilities also enables hospital systems to have market power. The vast majority of urgent care facilities in the state are located in the largest metro areas near the strongest hospital systems. Specifically, the five urgent care brands with the most locations in Colorado all have their locations exclusively in the metro areas of Colorado,

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<sup>1</sup> Gold, J. (2012, November 08). Hospitals Gamble On Urgent Care Clinics to Keep Patients Healthy. Retrieved March 31, 2018, from <https://khn.org/news/urgent-care-clinics/>

<sup>2</sup> Curran, J. (2017). Emergency & Other Outpatient Care Centers in the US (Rep. No. 62149). IBISWorld. Retrieved April 6, 2018.

including Denver, Colorado Springs, Boulder, and Fort Collins.<sup>3</sup> This reliance on hospital systems to provide urgent care restricts the opportunities of care available to some populations.

In 2017, there were two counties in Colorado with no rural clinic or hospital, and there were eleven more without a hospital.<sup>4</sup> The same source details that the primary reason for the absence of rural clinics, hospital-owned clinics included, in Colorado is directly correlated with an absence of providers. The source also cites that rural counties have fewer physicians per capita, and hiring new physicians for these counties takes - on average - between 1 and 3 years.

HB18-1212 attempts to address this market failure of asymmetric information between urgent care providers and their paying patients. The licensure proposed in HB18-1212 would successfully ensure a minimum level of capability, and the restriction on facility fees could restrict oligopoly pricing from hospital systems.

However, these are only small remedies to symptoms of the real problem of market failure. The passage of HB18-1212 will not adequately remediate the market power of hospital systems nor will it fully address the information asymmetry between medical providers and patients.

The bill fails to address the core reason there are such rampant market failures: the power of hospital systems. Creating a new license for freestanding emergency facilities will likely have very little impact on hospital systems, which have the capacity to adapt and to continue to control the market. While the public may be more protected from unreasonable fees, other repercussions of the hospital systems' market power will persist.

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<sup>3</sup> Colorado Urgent Care and Walk-in Clinics. (n.d.). Retrieved March 31, 2018, from <https://www.urgentcarelocations.com/co/colorado-urgent-care>

<sup>4</sup> Colorado Rural Health Center. (n.d.). Snapshot of Rural Health in Colorado: 2017 Edition [Press release]. Retrieved April 3, 2018, from <http://coruralhealth.wpengine.netdna-cdn.com/wp-content/uploads/2013/10/Final-Snapshot-2.28-1.pdf>

In fact, the creation of an additional license could be problematic because it could continue to limit the number of clinics that Colorado residents have to choose from. Colorado is already below average in number of walk-in clinics per capita. *Medical Economics* cites that in the United States, an average of four urgent care centers will serve a population of 114,000, originally estimated by the Urgent Care Association of America.<sup>5</sup> Currently, 140 urgent care facilities<sup>6</sup> serve Colorado's 2017 population of 5.607 million<sup>7</sup> with each facility serving a population 40,050 as opposed to the recommended 28,500. This potential market failure will only be furthered by imposing a more challenging process to licensing a facility. The number of clinics accessible to residents will at best stay the same or, more likely, decrease.

As economists Kleiner and Kudrle found in their study of occupational licensing, in dentistry, more stringent licensing did not correlate with higher performance.<sup>8</sup> Improving one license to be as effective as opposed to adding other licenses could be an efficient solution to reduce administrative burden and achieve positive results. Currently, when health facilities apply for licensure, the Colorado Department of Public Health and Environment and the Colorado Department of Public Safety review their application and conduct a Facilities Guideline Institute plan review to ensure safe practices.<sup>9</sup> Amending these current licensing processes would be a

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<sup>5</sup> Greenfield, D. (2015, June 04). Starting an Urgent Care Center. Retrieved March 31, 2018, from <http://medicaleconomics.modernmedicine.com/medical-economics/news/starting-urgent-care-center?page=full>

<sup>6</sup> Colorado Urgent Care and Walk-in Clinics. (n.d.). Retrieved March 31, 2018, from <https://www.urgentcarelocations.com/co/colorado-urgent-care>

<sup>7</sup> QuickFacts: Colorado. (2017, July 1). Retrieved March 31, 2018, from <https://www.census.gov/quickfacts/fact/table/CO/PST045217>

<sup>8</sup> Kleiner, M. M., & Kudrle, R. T. (2000). Does Regulation Affect Economic Outcomes? The Case of Dentistry. *The Journal of Law and Economics*, 547-582. Retrieved March 30, 2018.

<sup>9</sup> United States, Colorado Department of Public Health and Environment. (n.d.). Licensure / Certification Process Flowchart. Retrieved March 30, 2018, from [goo.gl/jAcCHM](http://goo.gl/jAcCHM)

significantly more efficient strategy to resolve present market failure than adding another license entirely.

Colorado's healthcare market is currently dominated by the market power of hospital systems. This market power and asymmetric information provided to patients are symptom of market failure. While HB18-1212 attempts to address these symptoms of market failure, the bill falls short in its execution. A stronger bill would minimize the power of hospital systems, perhaps by removing barriers to entry into the market for independent care facilities. At this time, creating additional licensure with House Bill 1212 will not adequately resolve market failures and, therefore, is not economically justified.