

## BUSINESS

### Freestanding emergency department growth creates backlash

■ The number of facilities is on the rise due to pressures from increased health care demand, but questions over fees are dogging their operators.

By SUE TER MAAT ([HTTP://WWW.AMEDNEWS.COM/APPS/PBCS.DLL/PERSONALIA?ID=STERMAAT](http://www.amednews.com/apps/pbcs.dll/personalia?id=STERMAAT)) amednews staff — Posted April 29, 2013

When Houston emergency physician Eric McLaughlin, MD, comes home after work from Elite Care Emergency Center, a freestanding emergency department operator, he's not completely exhausted from his shift. He said it's much different from his other shift at a hospital emergency department where he sees what seems like a limitless flow of patients.

"I consider freestanding emergency departments like the private practice to emergency care," he said.

Dr. McLaughlin, part-owner of Texas-based Elite, is among those embracing one of the growing segments of health care — freestanding emergency departments. The stand-alone emergency departments have similar equipment as hospital emergency departments but are usually miles from main hospitals. They can look from the outside like urgent care centers, but freestanding EDs can take more severe cases. If the centers take Medicare or Medicaid, they are subject to the federal Emergency Medical Treatment and Active Labor Act and must accept all patients regardless of their ability to pay.

The centers' numbers have doubled during the past decade, up to 284 in 45 states. One thing fueling this sector is a greater demand for emergency care (up 30% in nonrural emergency departments from 1990 to 2009), coupled with a decline in hospital emergency departments (in nonrural areas, down 27% from 1990 to 2009), according to a May 18, 2011, report by *The Journal of the American Medical Association*.

Centers are opened by hospitals and physicians, sometimes separately, sometimes in alliance. Generally, local hospital EDs have agreements with the centers to take cases too severe for the freestanding centers, or to admit patients. On April 10, the North Texas division of HCA, the largest for-profit hospital chain in the country, signed that kind of agreement with First Choice Emergency Room, a Dallas-based for-profit freestanding chain of emergency departments.

With that growth, however, has come a backlash over freestanding EDs charging, or attempting to charge, a facility fee, as a hospital ED would. Facility fees are charges that hospitals collect from insurers for operating EDs and cover the cost of running the departments. Some insurers have sued freestanding emergency departments over their use of the facility fee, which can run about \$1,500 per patient.

Urgent care centers also have viewed freestanding emergency departments as a competitive threat. Few states have passed legislation requiring freestanding emergency centers that don't accept Medicare and Medicaid to conform to EMTALA standards on accepting all patients.

### Aetna gets aggressive on costs

Proponents say these departments provide services that patients want in their communities, while critics say they will increase health care costs at a time when lowering them is paramount. Recently, Aetna sued two freestanding EDs that partnered with a hospital over facility fees.

Aetna is suing physicians who own and operate two freestanding EDs, Trinity Healthcare Network and ER Doc 24/7, both north of Houston. They partnered with Doctors Diagnostic Hospital in Cleveland, Texas. Aetna's lawyers want the defendants to pay about \$5.7 million in back facility fees that they claim the clinics are not entitled to.

Aetna's attorneys argue that the clinics entered into management contracts with DDH to circumvent the law by allowing the clinics to use the hospital's tax identification number to collect payments. Ed Neugebauer, an Aetna attorney, said the agreement doesn't cover facility fees and that freestanding EDs must have their own state licenses to collect such fees.

Larry Thompson, the clinics' attorney, said these ED owners view the facilities as extensions of Doctors Diagnostic Hospital and should be able to charge similar facility fees because they function as emergency departments with sophisticated equipment, including magnetic resonance imaging machines and ultrasound machines used to perform echocardiograms.

Calling Aetna the "big gorilla on the block these days," Thompson said the insurance carrier is trying to bully his clients and other freestanding emergency departments into not receiving their fair share for services provided.

He added that these freestanding EDs provide services for patients who can't or don't want to travel miles to their nearest emergency department, where wait times are far longer.

Neugebauer said it's the second lawsuit that the insurer has filed against freestanding EDs. The first case was settled, and terms are confidential, Aetna officials said.

In the other case, Aetna first noticed facility fees charged for freestanding EDs that didn't have their own state license or were run by hospitals, Neugebauer said. For a time, Aetna paid the fees but then stopped and sued the EDs for back facility fees.

Elite, which is not being sued by Aetna and has its own state license, charges facility fees to maintain its emergency services, Dr. McLaughlin said. Without the fees, Elite's five centers in the Houston area couldn't afford its board-certified physicians, 24-hour staff and emergency equipment that are on par with hospital emergency departments.

#### **DID YOU KNOW:**

**The average freestanding ED treats 35-40 patients per day, compared with 100-150 in hospital EDs.**

#### **Smaller patient loads, shorter wait times**

The average freestanding EDs treat between 35 and 40 patients per day compared with 100 to 150 in hospitals, according to an Urgent Care Assn. of America report in February 2012. Average wait times at traditional hospital EDs are about three hours compared with 60 to 90 minutes at freestanding EDs.

Freestanding EDs are more lucrative than urgent care centers. Average net revenue per patient for urgent care centers range from \$105 to \$135, while average revenue is \$350 to \$500 for freestanding EDs, according to the urgent care association's report. Co-pays for urgent care go from \$35 to \$50 compared with \$75 to \$100, the report said.

A major concern has been that freestanding EDs take care of minor health problems like urgent care clinics but charge emergency departments fees, said Alan Ayers, vice president of market development at Concentra Urgent Care and author of the UCAA report on freestanding EDs. Concentra is owned by the health insurer Humana.

Ayers said some patients are angered by bills from freestanding EDs that were much higher than expected. Insurance companies aren't keen on paying facility fees to freestanding EDs that are acting like urgent care centers, he added.

Dr. McLaughlin said Elite experienced this issue in the first few months of operation when it opened in 2009. But public backlash prompted the owners to be clearer about cost and the roles of freestanding EDs compared with urgent care centers.

Ayers said he has seen some movement by freestanding EDs to educate the public and refer patients to urgent care centers when appropriate. "A lot will depend on educating the public on the cost of freestanding EDs, or else the public's goodwill will be exhausted when they get the bills," Ayers said. Freestanding EDs "will be a good business

model when they can better align their type of emergency care with the right patients.”

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#### **EXTERNAL LINKS**

“Factors Associated With Closures of Emergency Departments in the United States,” *The Journal of the American Medical Association*, May 18, 2011 (link: <http://jama.jamanetwork.com/article.aspx?doi=10.1001/jama.2011.620> )

“Emerging Business Models: Freestanding Emergency Rooms,” Urgent Care Assn. of America, February 2012 (link: [http://www.ucaoa.org/docs/Article\\_Freestanding.pdf](http://www.ucaoa.org/docs/Article_Freestanding.pdf) )

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