

CHAPTER 155

HEALTH AND ENVIRONMENT

HOUSE BILL 23-1218

BY REPRESENTATIVE(S) Brown and Titone, Amabile, Bacon, Bird, deGruy Kennedy, Dickson, Duran, Epps, Froelich, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Kipp, Liedler, Lindsay, Lindstedt, Mabrey, McCormick, Michaelson Jenet, Sirotta, Snyder, Story, Valdez, Velasco, Vigil, Weissman, Willford, Woodrow, Young, Daugherty, English, Parenti, Ricks, McCluskie; also SENATOR(S) Jaquez Lewis, Cutter, Exum, Ginal, Hinrichsen, Kolker, Marchman, Moreno, Mullica, Priola, Winter F., Zenzinger.

AN ACT

CONCERNING REQUIRING THAT A HEALTH-CARE FACILITY INFORM PATIENTS AS PART OF THE INFORMED CONSENT PROCESS OF SERVICES THAT THE HEALTH-CARE FACILITY REFUSES TO PROVIDE TO PATIENTS WHEN THE REFUSAL IS FOR NONMEDICAL REASONS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 58 to title 25 as follows:

ARTICLE 58
Patients' Right to Know

25-58-101. Short title. THE SHORT TITLE OF THIS ARTICLE 58 IS THE "PATIENTS' RIGHT TO KNOW ACT".

25-58-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE RIGHT OF EVERY PATIENT TO RECEIVE BASIC INFORMATION NECESSARY TO GIVE FULL AND INFORMED CONSENT IS A FUNDAMENTAL TENET OF GOOD PUBLIC HEALTH POLICY AND HAS LONG BEEN THE ESTABLISHED LAW OF THIS STATE;

(b) EVERY PERSON HAVING ULTIMATE RESPONSIBILITY FOR DECISIONS RESPECTING THE PERSON'S OWN HEALTH CARE ALSO POSSESSES A CONCOMITANT RIGHT OF ACCESS TO COMPLETE INFORMATION RESPECTING THE PERSON'S CONDITION AND AVAILABLE CARE;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(c) FOR NONMEDICAL REASONS, SOME HEALTH-CARE FACILITIES DO NOT PROVIDE A FULL RANGE OF HEALTH-CARE SERVICES AND MAY PROHIBIT, SIGNIFICANTLY RESTRICT, OR OTHERWISE REFUSE TO PROVIDE SERVICES SUCH AS STERILIZATION, INFERTILITY TREATMENTS, ABORTION, END-OF-LIFE HEALTH-CARE SERVICES, OR CONTRACEPTIVE SERVICES, INCLUDING EMERGENCY CONTRACEPTION;

(d) HEALTH-CARE FACILITIES MAY ALSO DENY OR SELECTIVELY RESTRICT CARE RELATING TO STIGMATIZED POPULATIONS, INCLUDING LESBIAN, GAY, BISEXUAL, AND TRANSGENDER INDIVIDUALS, FOR NONMEDICAL REASONS EVEN IF EQUIVALENT PROCEDURES ARE PROVIDED FOR OTHER PATIENTS;

(e) PERSONS SEEKING HEALTH CARE FREQUENTLY LACK INFORMATION ABOUT WHICH FACILITIES REFUSE TO PROVIDE VARIOUS HEALTH-CARE SERVICES FOR NONMEDICAL REASONS AND WHICH SERVICES THEY REFUSE TO PROVIDE;

(f) PATIENTS ARE NOT WELL POSITIONED TO UNDERSTAND WHAT TREATMENT OPTIONS ARE AVAILABLE TO THEM WHEN HEALTH-CARE FACILITIES DO NOT DISCLOSE WHICH TREATMENT OPTIONS THEY REFUSE TO PROVIDE FOR NONMEDICAL REASONS;

(g) CONSEQUENTLY, WHEN HEALTH-CARE FACILITIES DO NOT DISCLOSE THAT THEY RESTRICT OR REFUSE TO PROVIDE VARIOUS HEALTH-CARE SERVICES FOR NONMEDICAL REASONS, THEY CAN DEPRIVE PATIENTS OF A KNOWLEDGEABLE CHOICE AS TO ALTERNATIVE TREATMENTS, WHICH IS INCONSISTENT WITH THE UNDERLYING PRINCIPLE OF INFORMED CONSENT;

(h) REFUSAL TO PROVIDE HEALTH-CARE SERVICES FOR NONMEDICAL REASONS MAY:

(I) HAVE LONG-TERM NEGATIVE CONSEQUENCES, RESULTING IN INJURY, DISABILITY, AND DEATH;

(II) CAUSE TRAUMA TO PATIENTS;

(III) IMPACT QUALITY OF LIFE; AND

(IV) RESULT IN GREATER HEALTH-CARE EXPENSES FOR PATIENTS AND PAYERS; AND

(i) SOME DENIALS OF CARE VIOLATE STATE AND FEDERAL LAW.

(2) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO HELP ENSURE THAT PATIENTS ARE GIVEN FULL AND COMPLETE INFORMATION ABOUT THE HEALTH-CARE SERVICES AVAILABLE TO THEM SO THAT THEY CAN MAKE WELL-INFORMED HEALTH-CARE DECISIONS.

25-58-103. Definitions. AS USED IN THIS ARTICLE 58, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COVERED ENTITY" MEANS ANY GENERAL HOSPITAL, HOSPITAL UNIT AS DEFINED IN SECTION 25-3-101, COMMUNITY CLINIC AS DEFINED IN SECTION 25-3-101,

FREESTANDING EMERGENCY DEPARTMENT AS DEFINED IN SECTION 25-1.5-114, MATERNITY HOSPITAL, OR REHABILITATION HOSPITAL. "COVERED ENTITY" DOES NOT INCLUDE A HEALTH-CARE PROFESSIONAL OR A HOSPITAL, COMMUNITY CLINIC, OR OTHER FACILITY OWNED OR OPERATED BY THE STATE.

(2) (a) "DENIAL OF CARE" MEANS ANY REFUSAL BY A COVERED ENTITY TO PROVIDE A HEALTH-CARE SERVICE, OR TO PROVIDE A REFERRAL FOR A HEALTH-CARE SERVICE, FOR NONMEDICAL REASONS.

(b) "DENIAL OF CARE" INCLUDES THE FOLLOWING PRACTICES, WHETHER BASED ON FORMAL OR INFORMAL POLICIES OR PRACTICES, THAT ARE NOT BASED ON GENERALLY ACCEPTED STANDARDS OF CARE:

(I) SELECTIVE REFUSAL TO PROVIDE A HEALTH-CARE SERVICE TO SOME, BUT NOT ALL, PATIENTS BASED ON A CHARACTERISTIC DESCRIBED IN SECTION 24-34-601 (2)(a), OBJECTIONS TO A HEALTH-CARE SERVICE, OR FOR OTHER NONMEDICAL REASONS; AND

(II) A SIGNIFICANT RESTRICTION ON THE AVAILABILITY OF HEALTH-CARE SERVICES.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(4) "END-OF-LIFE HEALTH-CARE SERVICES" MEANS ANY MEDICAL, SURGICAL, PREVENTIVE, COUNSELING, OR REFERRAL SERVICES PROVIDED TO AN INDIVIDUAL WHO IS NEAR THE END OF LIFE OR WHO HAS A TERMINAL ILLNESS. "END-OF-LIFE HEALTH-CARE SERVICES" INCLUDES ANY SERVICES PROVIDED PURSUANT TO ARTICLE 48 OF THIS TITLE 25, PALLIATIVE CARE, SERVICES IDENTIFIED IN ADVANCE DIRECTIVES, WITHDRAWAL OF NUTRITION SERVICES, AND HOSPICE CARE.

(5) "HEALTH-CARE PROFESSIONAL" MEANS A PERSON WHO IS LICENSED, CERTIFIED, REGISTERED, OR OTHERWISE AUTHORIZED OR PERMITTED BY LAW TO ADMINISTER HEALTH CARE OR DISPENSE MEDICATION IN THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION.

(6) "HEALTH-CARE SERVICE" MEANS THE PROVISION OF TREATMENT, CARE, ADVICE OR GUIDANCE, OR SERVICES OR SUPPLIES, INCLUDING:

(a) PREVENTIVE, DIAGNOSTIC, THERAPEUTIC, REHABILITATIVE, MAINTENANCE, OR PALLIATIVE CARE;

(b) COUNSELING, ASSESSMENT, PROCEDURES, OR OTHER SERVICES; OR

(c) SELLING, DISPENSING, OR ADMINISTERING A PRESCRIPTION OR NONPRESCRIPTION DRUG, A DEVICE, OR EQUIPMENT.

(7) "LGBTQ HEALTH-CARE SERVICES" MEANS ANY MEDICAL, SURGICAL, PREVENTIVE, COUNSELING, OR REFERRAL SERVICES THAT ARE SPECIFICALLY TARGETED TO OR THAT DISPROPORTIONATELY AFFECT LGBTQ INDIVIDUALS,

INCLUDING GENDER-AFFIRMING CARE, HIV-RELATED CARE, AND FAMILY-BUILDING SERVICES.

(8) "NONMEDICAL REASONS" MEANS NONCLINICAL CRITERIA, RULES, OR POLICIES, WHETHER WRITTEN OR UNWRITTEN, THAT RESTRICT HEALTH-CARE PROFESSIONALS AT A COVERED ENTITY FROM PROVIDING TYPES OF CARE THAT A HEALTH-CARE PROFESSIONAL IS AUTHORIZED UNDER LAW TO PROVIDE AND THAT THE COVERED ENTITY IS LICENSED TO PROVIDE.

(9) "REPRODUCTIVE HEALTH-CARE SERVICES" MEANS ANY MEDICAL, SURGICAL, PREVENTIVE, COUNSELING, OR REFERRAL SERVICES RELATING TO THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES RELATING TO CONTRACEPTION, STERILIZATION, PREGNANCY, AND THE TERMINATION OF A PREGNANCY.

(10) "SERVICE AVAILABILITY FORM" MEANS THE FORM CREATED BY THE DEPARTMENT PURSUANT TO SECTION 25-58-104 AND COMPLETED BY COVERED ENTITIES.

25-58-104. Department duties - service availability form - public access to information - rules. (1) NOT LATER THAN AUGUST 1, 2024, THE DEPARTMENT, IN CONSULTATION WITH STAKEHOLDERS, INCLUDING A STATEWIDE HOSPITAL ASSOCIATION, PATIENT ADVOCACY GROUPS, PHYSICIANS, AND GROUPS REPRESENTING POPULATIONS THAT ARE FREQUENTLY SUBJECT TO DENIAL OF CARE, SHALL:

(a) IDENTIFY REPRODUCTIVE HEALTH-CARE SERVICES, LGBTQ HEALTH-CARE SERVICES, AND END-OF-LIFE HEALTH-CARE SERVICES THAT ARE OR MAY BE SUBJECT TO DENIAL OF CARE IN THE STATE; AND

(b) (I) DEVELOP A CLEAR AND SIMPLE SERVICE AVAILABILITY FORM FOR THE PURPOSE OF CONVEYING TO PATIENTS AND TO THE PUBLIC WHICH OF THE IDENTIFIED HEALTH-CARE SERVICES ARE AND ARE NOT GENERALLY AVAILABLE OR ARE SUBJECT TO SIGNIFICANT RESTRICTION AT A COVERED ENTITY.

(II) THE SERVICE AVAILABILITY FORM MUST INCLUDE CONTACT INFORMATION FOR THE COVERED ENTITY IN CASE A PATIENT HAS SPECIFIC QUESTIONS ABOUT SERVICES AVAILABLE AT THE COVERED ENTITY.

(III) THE DEPARTMENT SHALL REVIEW AND, IF APPROPRIATE, UPDATE THE FORM AT LEAST BIENNIALY IN CONSULTATION WITH STAKEHOLDERS. THE DEPARTMENT MAY DEVELOP DIFFERENT VERSIONS OF THE SERVICE AVAILABILITY FORM APPROPRIATE FOR DIFFERENT CATEGORIES OF COVERED ENTITIES.

(2) BEGINNING ON OR BEFORE OCTOBER 1, 2024, THE DEPARTMENT SHALL MAINTAIN ON ITS PUBLIC-FACING WEBSITE A CURRENT LIST OF COVERED ENTITIES AND SHALL PROVIDE FOR PUBLIC ACCESS THE SERVICE AVAILABILITY FORM SUBMITTED BY EACH COVERED ENTITY.

(3) THE STATE BOARD OF HEALTH SHALL ADOPT RULES TO IMPLEMENT THIS ARTICLE 58.

25-58-105. Requirements for covered entities - penalty for noncompliance.

(1) NOT LATER THAN SIXTY DAYS AFTER THE DEPARTMENT ISSUES OR UPDATES THE SERVICE AVAILABILITY FORM, EACH COVERED ENTITY SHALL SUBMIT A COMPLETED SERVICE AVAILABILITY FORM TO THE DEPARTMENT. A COVERED ENTITY SHALL ALSO SUBMIT AN UPDATED SERVICE AVAILABILITY FORM WITHIN THIRTY DAYS AFTER MAKING A CHANGE TO THE AVAILABILITY OF A HEALTH-CARE SERVICE IDENTIFIED ON THE SERVICE AVAILABILITY FORM.

(2) NOT LATER THAN OCTOBER 1, 2024, EACH COVERED ENTITY SHALL ADOPT A POLICY FOR PROVIDING PATIENTS WITH ITS CURRENT SERVICE AVAILABILITY FORM DURING SCHEDULING FOR LGBTQ HEALTH-CARE SERVICES, REPRODUCTIVE HEALTH-CARE SERVICES, OR END-OF-LIFE HEALTH-CARE SERVICES, AND AT THE TIME PRIVACY REQUIREMENTS SPECIFIED IN THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, ARE PROVIDED TO PATIENTS PRIOR TO THE INITIATION OF HEALTH-CARE SERVICES, OR UPON REQUEST, AND FOR RECORDING THE PATIENT'S RECEIPT OF THE FORM. THE COVERED ENTITY'S POLICY MUST ALSO ENCOURAGE HEALTH-CARE PROFESSIONALS WHO HAVE PRIVILEGES WITH THE COVERED ENTITY TO PROVIDE THE COVERED ENTITY'S SERVICE AVAILABILITY FORM TO THE PATIENT OR THE PATIENT'S REPRESENTATIVE PRIOR TO ANY SCHEDULED HEALTH-CARE SERVICE AT THE COVERED ENTITY.

(3) ON AND AFTER OCTOBER 1, 2024, EACH COVERED ENTITY SHALL:

(a) (I) PROVIDE THE CURRENT SERVICE AVAILABILITY FORM TO THE PATIENT OR THE PATIENT'S REPRESENTATIVE DURING SCHEDULING FOR LGBTQ HEALTH-CARE SERVICES, REPRODUCTIVE HEALTH-CARE SERVICES, OR END-OF-LIFE HEALTH-CARE SERVICES, AND AT THE TIME PRIVACY REQUIREMENTS SPECIFIED IN THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED, ARE PROVIDED TO PATIENTS BEFORE ANY HEALTH-CARE SERVICE IS INITIATED. IF PROVIDING THE CURRENT SERVICE AVAILABILITY FORM IS IMPRACTICABLE BECAUSE OF AN EMERGENCY OR OTHER CIRCUMSTANCES, THE COVERED ENTITY MAY DELAY THE PROVISION OF THE SERVICE AVAILABILITY FORM, AS APPROPRIATE; AND

(II) MAINTAIN A RECORD OF THE PATIENT'S OR THE PATIENT'S REPRESENTATIVE'S RECEIPT OF THE SERVICE AVAILABILITY FORM; AND

(b) PROVIDE THE CURRENT SERVICE AVAILABILITY FORM TO ANY PERSON UPON REQUEST.

(4) A COVERED ENTITY THAT FAILS TO COMPLY WITH THIS SECTION IS SUBJECT TO A FINE NOT EXCEEDING ONE THOUSAND DOLLARS FOR EACH DAY THAT THE COVERED ENTITY IS NOT IN COMPLIANCE WITH THIS SECTION.

25-58-106. Construction. (1) THIS ARTICLE 58 DOES NOT:

(a) PERMIT OR AUTHORIZE DENIAL OF CARE OR DISCRIMINATION IN THE PROVISION OF HEALTH-CARE SERVICES; OR

(b) LIMIT ANY CAUSE OF ACTION UNDER STATE OR FEDERAL LAW, OR LIMIT ANY

REMEDY IN LAW OR EQUITY, AGAINST A COVERED ENTITY, HEALTH-CARE FACILITY, OR HEALTH-CARE PROFESSIONAL.

(2) COMPLIANCE WITH THIS ARTICLE 58 DOES NOT REDUCE OR LIMIT ANY POTENTIAL LIABILITY FOR COVERED ENTITIES, HEALTH-CARE FACILITIES, AND HEALTH-CARE PROFESSIONALS ASSOCIATED WITH DENIAL OF CARE OR ANY VIOLATIONS OF STATE OR FEDERAL LAW.

25-58-107. Severability. IF ANY PROVISION OF THIS ARTICLE 58 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE 58 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS ARTICLE 58 ARE SEVERABLE.

SECTION 2. Appropriation. For the 2023-24 state fiscal year, \$64,627 is appropriated to the department of public health and environment for use by the health facilities and emergency medical services division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.7 FTE. To implement this act, the division may use this appropriation for administration and operations related to operations management.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 10, 2023