

Testimony in Support of SB25-129
Colorado Senate Judiciary Committee
February 12, 2025

To the Honorable Members of the Colorado Senate Judiciary Committee,

I am Leanna Gavin, a licensed attorney in the State of Colorado, submitting this written testimony on behalf of the Colorado Women's Bar Association (CWBA). The CWBA represents over 2,000 members, including attorneys, judges, and legal professionals, dedicated to promoting equality and justice for women and marginalized communities.

We strongly support Senate Bill 25-129, which strengthens protections for individuals and entities engaged in legally protected health-care activities, including reproductive health care and gender-affirming care. As attacks on reproductive freedom and bodily autonomy intensify, it is imperative that Colorado enacts robust safeguards to ensure providers and patients are shielded from external legal threats.

Strengthening Protections for Reproductive and Gender-Affirming Health Care

SB25-129 is an important legislative response to the evolving landscape of health care access and the growing threat of legal action from other states seeking to undermine legally protected health-care activities in Colorado. Healthcare providers who provide abortion care and gender-affirming care, including *mental health* services, are facing legal attacks from anti-choice states such as Texas, Idaho, Kansas, and Missouri. Healthcare providers who serve Coloradans must be protected from these attacks to ensure no one in Colorado is denied access to healthcare due to the regressive policies of other states.

SB25-129 builds upon existing shield laws by preventing Colorado entities from being compelled to cooperate with out-of-state legal actions that target providers, patients, and insurers involved in legally protected health-care activities. The bill prohibits compliance with subpoenas, investigations, or civil actions aimed at penalizing individuals and organizations providing or facilitating essential care. This protection is vital for safeguarding the rights of patients and health-care providers in Colorado, especially given the recent legal attacks against healthcare providers by anti-choice states.

Importantly, SB25-129 ensures that health-care providers can continue delivering services without fear of retribution from states with restrictive laws. It extends legal protections by explicitly blocking Colorado-based individuals and businesses from responding to hostile out-of-state subpoenas or investigations related to reproductive or gender-affirming health care. This safeguard is crucial in preventing harassment and unwarranted legal exposure for providers and patients.

Ensuring Access to Confidential and Secure Health Care Services

Confidentiality is paramount when seeking legally protected health care. SB25-129 strengthens privacy protections by allowing health-care practices, rather than individual practitioners, to be named on prescription labels for medications such as mifepristone and misoprostol. This measure protects providers from targeted harassment and ensures patient safety.

The bill also requires any subpoena request related to health-care activities to include an affirmation under penalty of perjury that it is not being used to impose liability on those providing or receiving care. This provision prevents the misuse of legal processes to intimidate providers and patients. This is especially vital for clinics, healthcare practitioners, and other entities who are at risk of being targeted by states with restrictive or hostile laws regarding reproductive and gender-affirming care.

In a time when many states have implemented or are considering laws that seek to limit access to reproductive or gender-affirming health services, SB25-129 establishes Colorado as a sanctuary for these crucial health-care activities. The bill empowers our providers to continue their work without fear of being dragged into legal battles that would undermine their ability to serve patients.

Upholding State Sovereignty and Legal Integrity

SB25-129 reaffirms Colorado's commitment to protecting health-care rights within our jurisdiction. It prevents state and local entities, including law enforcement and public health agencies, from assisting out-of-state investigations seeking to criminalize reproductive or gender-affirming care. Additionally, it grants the Attorney General the authority to enforce these protections and seek injunctive relief to block hostile legal actions before they occur. By limiting cooperation with out-of-state investigations or legal actions targeting providers of protected health-care services, Colorado ensures that our residents and businesses are not forced to comply with laws from other states and jurisdictions that do not reflect the values and legal protections that Colorado holds dear.

This bill also empowers individuals targeted by out-of-state legal actions to seek redress in Colorado courts. By establishing a private right of action, SB25-129 allows affected individuals to pursue damages and legal remedies against those who attempt to penalize them for engaging in protected health-care activities. This aspect of the bill strengthens the ability of Coloradans to protect their rights and defend themselves against unlawful interference from outside jurisdictions.

Legal Necessity and State Policy

As a licensed attorney and representative of the Colorado Women's Bar Association, I believe SB25-129 is not only a legal necessity but also a moral imperative. It ensures that Colorado continues to be a place where individuals can access the full spectrum of health care without fear of outside legal repercussions. This bill is especially important for women, transgender individuals, and other marginalized communities who may face systemic barriers to accessing reproductive and gender-affirming care under our country's new administration.

The protections provided by SB25-129 are aligned with the values of the State of Colorado. Colorado voters have historically supported the rights of women and LGBTQIA+ individuals, and their right to access necessary healthcare, time and time again. In this moment, when federal attacks on the rights of women and transgender people are imminent, it is crucial for the Colorado legislature to carry out the intent of the voters in passing this bill so that Coloradans and their healthcare providers do not have to fear repercussions and barriers to accessing necessary healthcare in this State.

By passing SB25-129, Colorado will continue to set an example for other states, demonstrating a commitment to protecting the rights and well-being of all individuals seeking necessary and legally

protected health care services. This bill ensures that Colorado remains a safe haven for individuals exercising their fundamental rights to make decisions about their health care.

Conclusion

On behalf of the CWBA, I urge the Senate Judiciary Committee to pass SB25-129. This legislation is a crucial safeguard for Colorado's residents, health-care providers, and businesses, ensuring they are protected from out-of-state legal threats and that access to reproductive and gender-affirming health care remains secure. SB25-129 reflects the values of fairness, privacy, and state sovereignty, ensuring that Colorado remains a leader in protecting the health-care rights of all its residents.

Thank you for your time and consideration.

Sincerely,

Leanna Gavin, Esq.

On Behalf of the Colorado Women's Bar Association

Testimony in Support of SB25-130
Colorado Senate Judiciary Committee

February 12, 2025

To the Honorable Members of the Colorado Senate Judiciary Committee,

My name is Leanna Gavin, and I am a licensed attorney in the State of Colorado. I am submitting this written testimony on behalf of the Colorado Women’s Bar Association (CWBA), a professional organization that advocates for the legal rights and interests of women and marginalized communities in Colorado. We strongly support **Senate Bill 25-130**, which requires emergency departments to provide necessary medical services and ensures that all patients receive equitable care in emergency situations. We believe this bill is legally necessary and aligned with the values and intent of Colorado voters, and we urge the Committee to pass it.

Upholding the Right to Emergency Medical Care

SB25-130 is a critical measure to ensure that all individuals, regardless of their personal characteristics or circumstances, receive emergency medical care when they need it most. The bill’s core provision requires emergency departments, including labor and delivery departments, to provide care to any patient who presents for treatment. This aligns with the long-standing principle that access to emergency medical care is a fundamental right and is consistent with the **Emergency Medical Treatment and Labor Act (EMTALA)**, a federal law that mandates hospitals to provide emergency care to all patients without discrimination. In light of recent events under the new administration, federal protections for emergency medical care are vulnerable to legal attacks.

Colorado voters have consistently supported the notion that healthcare is a right, not a privilege. By passing SB25-130, Colorado continues to affirm its commitment to ensuring that people who are in urgent need of medical attention can receive treatment without unnecessary barriers. This is especially important for vulnerable populations, including women, people of color, LGBTQIA+ individuals, and those facing socioeconomic disadvantages, who are at greater risk of encountering discrimination or denial of care in health-care settings.

Preventing Discrimination and Ensuring Equal Access

SB25-130 explicitly prohibits emergency departments from denying or discriminating against patients based on characteristics such as gender, race, disability, or immigration status. This provision ensures that individuals who are most vulnerable, including women in labor, survivors of domestic violence, and marginalized communities, are not subjected to unequal treatment in emergency situations. For example, women who present in labor or in urgent need of reproductive health care must be treated with dignity and respect, regardless of their personal characteristics.

This provision aligns with the values of fairness, justice, and equality that Colorado voters have supported over the years, particularly in matters related to reproductive health and gender equity. It ensures that a patient’s access to critical medical care is never determined by factors unrelated to their health needs. By making discrimination in emergency care explicitly illegal, SB25-130 protects all individuals from harmful and potentially life-threatening biases.

Promoting Accountability and Transparency in Emergency Care

SB25-130 requires emergency departments to maintain a central log detailing whether a patient was treated, refused care, or transferred, among other key actions. This provision promotes accountability and transparency in the emergency care process. It ensures that any refusal of treatment or actions taken by an emergency department are properly documented, making it easier for patients to seek redress if their rights are violated.

By providing clear documentation and requiring reporting of patient outcomes, the bill enables more effective oversight and safeguards against negligent or improper practices. It strengthens patient protections, which is a key concern for the CWBA and many other advocacy groups. Ensuring that there is a paper trail can help prevent the improper denial of care and protect vulnerable patients who may have been wrongfully turned away or discriminated against.

Protecting Health-Care Providers and Promoting Ethical Care

While SB25-130 imposes important obligations on emergency departments to provide care, it also takes into account the rights of health-care providers. The bill allows for conscientious objections to care based on a provider's sincerely held religious beliefs. However, this does not absolve emergency departments from their obligation to provide care to all patients, and the bill explicitly prohibits retaliatory actions against providers who provide or refuse care based on these beliefs.

This nuanced approach respects both the rights of patients to receive timely and appropriate care and the rights of providers to maintain their ethical standards. By promoting ethical care, this bill ensures that health-care providers are held accountable to the standard of care expected in emergency medical situations, without imposing undue hardship or discrimination on those who rely on emergency services.

Providing Remedies for Patients and Promoting Legal Oversight

SB25-130 grants patients a private right of action if they suffer harm from violations of the bill's provisions. This provides essential legal recourse for individuals who are denied emergency care or subjected to discriminatory treatment in an emergency setting. The bill also authorizes the attorney general to seek civil penalties, adding an additional layer of protection and deterrence against violations of patients' rights.

The availability of both private legal remedies and state enforcement ensures that patients can seek justice if their rights are violated, while also incentivizing emergency departments to comply with the law. This mechanism reflects Colorado's commitment to upholding the rule of law and ensuring that vulnerable individuals are protected from negligence, abuse, and discrimination.

Alignment with Colorado Voter Intent

Colorado voters have a long history of supporting policies that ensure equitable access to health care and protect individuals from discrimination. This includes support for reproductive rights, gender equality, and access to necessary medical services. SB25-130 is in alignment with this progressive vision, reinforcing the state's commitment to safeguarding health care as a fundamental right for all individuals, regardless of their gender, race, or economic status.

By enacting SB25-130, Colorado is taking a necessary step to ensure that emergency medical services are consistently provided without discrimination, and that patients are not turned away or treated unfairly due to personal characteristics unrelated to their health needs. This bill reflects the will of the people of Colorado, who have overwhelmingly supported policies to protect vulnerable populations and ensure that healthcare remains accessible, equitable, and compassionate.

Conclusion

In conclusion, we strongly urge the Senate Judiciary Committee to support the passage of **SB25-130**. This bill is a crucial step in ensuring that all patients who present to an emergency department in Colorado receive timely, appropriate, and non-discriminatory medical care. It reflects Colorado's commitment to protecting vulnerable individuals, upholding the right to emergency health care, and promoting transparency and accountability in medical practice.

Thank you for your time and consideration of this important piece of legislation.

Sincerely,

Leanna Gavin, Esq.

On Behalf of the Colorado Women's Bar Association

Arpita Appannagari
Associate Director of Policy and Partnerships
National Institute for Reproductive Health
Senate Judiciary Committee
02/12/2025

Senator Lee and members of the Distinguished Senate Judiciary Committee, my name is Arpita Appannagari and I'm the Associate Director of Policy and Partnerships at the National Institute for Reproductive Health. Thank you for accepting my testimony in support of SB 25-129 A Bill for an Act Concerning Protections Related to a Legally Protected Health-Care Activity and SB25-130 A Bill for an Act Concerning Emergency Medical Services. Both bills are necessary to protect reproductive health care in Colorado and we urge you to pass them out of committee.

For more than 40 years, the National Institute for Reproductive Health has worked in communities across the country, including Colorado, to advance reproductive freedom for all. We do so by working closely with state and local organizations on proactive policies that will expand and uphold reproductive rights in their states and communities. In the nearly three years since the *Dobbs v. Jackson Women's Health Organization* decision eliminated the longstanding constitutional right to abortion enshrined in *Roe v. Wade*, federal protections of abortion care have eroded immensely, making our work and the work of our partners all the more essential.

Colorado has been at the forefront of protecting reproductive rights and justice. In the wake of the *Dobbs* decision, with the support of state advocates like our partners at COLOR, the Colorado Organization for Latina Opportunity and Reproductive Rights, Colorado expanded protections for and access to abortion and gender-affirming care. In November 2024, voters in Colorado protected the right to abortion in their Constitution. Coloradans demand care without barriers.

Despite this, actions from other states threaten the safety of Colorado abortion providers. Anti-abortion lawmakers and prosecutors have targeted abortion providers in other states. In December 2024, Texas sued a doctor in New York for prescribing abortion pills online¹ and just a few days ago, a Louisiana grand jury issued an indictment and arrest warrant for that same doctor for prescribing abortion pills online².

SB25-129 will strengthen and expand the protections for providers already in place thanks to SB23-188, Protections for Accessing Reproductive Health Care which passed into law in 2023. SB25-129 will protect providers' privacy on prescriptions labels, ensure that subpoena's do not

¹ <https://www.npr.org/2024/12/13/g-s1-38240/texas-abortion-pill-lawsuit-new-york-doctor-challenge-interstate-telemedicine>

² <https://apnews.com/article/abortion-indictment-louisiana-new-york-doctor-63ff4d9da8a9b592a7ca4ec7ba538cd3>

target legally protected health care, expand who is covered by prohibitions on compliance with hostile out-of-state actions, and strengthen enforcement and compliance with these protections. These actions are necessary to protect Colorado abortion providers. Hostile states have been emboldened by the anti-abortion actions of the Trump Administration and attacks on abortion rights around the country have become more vicious, targeted, and dangerous in the past few months. SB25-129 will help ensure that providers can do their jobs without fear of repercussion or punishment and help protect access to abortion care in Colorado.

In addition to moving SB25-129 forward, we urge you to pass SB25-130 out of committee. This bill will protect access to emergency care, including abortion care. As the federal government and the Trump administration seek to erode federal protections for reproductive health—including emergency care—Colorado must enact its own protections. For nearly 40 years the Emergency Medical Treatment and Labor Act (EMTALA) has ensured that people can get emergency medical care, including emergency treatment for pregnancy complications that could require an abortion or active miscarriage management. These requirements are crucial to protecting pregnant patients' lives and health. However, one of Trump's first actions in office included rescinding an executive order from the Biden Administration that affirmed that EMTALA required emergency medical care for pregnancy complications, including for miscarriages and ectopic pregnancy. Trump took this action even though pregnancy complications are the 5th most common reason for women aged 15 to 64 to visit the emergency department³.

Uncertainty, confusion, and fear around the provision of abortion care has contributed to the maternal health crisis and impacted the health care workforce. As of 2022, more than 1/3 of rural and 1/2 of urban hospitals across the country do not offer obstetric services because their labor and delivery departments have closed⁴. Fewer medical students are choosing to practice gynecology and obstetrics⁵ given the ongoing confusion and turmoil the *Dobbs* decision has left in its wake. In many places, this confluence of outside factors has left emergency physicians as the first line of response for pregnancy-related emergencies and urgent medical needs and created delays in patient care that have resulted in preventable pregnancy-related deaths. People like Amber Thurman in Georgia and 18-year-old Neveah Crain in Texas, for example, both died after being forced to wait for twenty hours or more to be treated.

SB25-130 would ensure that Colorado does not have to rely on federal enforcement of EMTALA. SB25-130 addresses patient safety by ensuring the provision of emergency medical care. In addition to requiring Colorado hospitals to provide emergency care to patients regardless of their ability to pay, SB25-130 requires hospitals to provide emergency care, including

³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC10777191/>

⁴ <https://www.sciencenews.org/article/birth-labor-delivery-closure-hospital>

⁵ <https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-training-and-workforce-after-dobbs>

abortion and miscarriage management to preserve a patient's future fertility and health, as well as to save their lives.

Colorado has long stood for the proposition that everyone should be able to make decisions about their lives, their bodies, and their futures with dignity and self-determination. SB25-129 and SB25-130 will continue in that tradition. Providers who have stepped up to offer critical abortion care even as it becomes harder and, in many cases, impossible to access in other states, deserve to be protected from prosecution or persecution by hostile states. And no patient should be denied life and health saving treatment when they are at their most vulnerable. Colorado should remain a beacon of freedom and committed to protecting the rights and health of those within the state. We urge you to pass these critical protections out of committee.



INTERFAITH ALLIANCE OF COLORADO

PROTECTING FAITH AND FREEDOM

February 12, 2025

RE: Support for SB25-129 and SB25-130

Chairperson Gonzales and members of the Senate Judiciary Committee,

Thank you for the opportunity to provide testimony in support of SB25-129 Legally Protected Health-Care Activity Protections and SB25-130 Providing Emergency Medical Services.

The Interfaith Alliance of Colorado promotes justice, religious liberty, and interfaith understanding through building relationships in order to educate, advocate, and catalyze social change. We are an interfaith public policy and advocacy organization with over 400 congregations in our statewide network, representing over two dozen faith traditions.

The faith community is not monolithic when it comes to reproductive healthcare, and perspectives on abortion vary greatly across faith doctrines, traditions, and communities of religious practice. At the Interfaith Alliance of Colorado, we know that religious freedom and reproductive justice are deeply intertwined and that another individual's faith should not dictate what healthcare a patient receives or what care a provider can administer. We honor the sacred and deeply personal nature of reproductive decision making and the dignity of pregnant people, and we advocate for policies that do the same.

SB25-129 protects the rights of providers and patients engaging in protected healthcare activity. Providers and patients should be able to provide and receive care in Colorado free from intrusion and retaliation. As other states adapt their efforts to extend legal threats to protected healthcare activity, so too must we adapt our laws to protect patients and providers and continue saying no to states that seek to infringe on rights protected by Colorado.

SB25-130 protects the ability of pregnant patients to receive emergency care. In anti-abortion states, patients are being denied emergency care. The consequences of those denials are deadly, and those who survive are facing risks to their health and fertility and the trauma of being denied the care they need. SB25-130 is an opportunity to provide protection for patients and providers from those shocking injustices.

Your Yes votes on SB25-129 and SB25-130 are critical to helping Colorado remain a leader in care and ensuring that Coloradans receive the compassionate, dignified care they need.

Thank you,

Shara Smith, Chief Executive Officer
Interfaith Alliance of Colorado



INTERFAITH ALLIANCE OF COLORADO

PROTECTING FAITH AND FREEDOM

February 12, 2025

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Thank you,

Shara Smith, Chief Executive Officer
Interfaith Alliance of Colorado



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February 12, 2025

Senate Judiciary Committee
Colorado General Assembly
200 E. Colfax Avenue
Denver, CO 80203

RE: SUPPORT SB 25-129, Legally Protected Health-Care Activity Protections

Dear Committee Members:

The National Women’s Law Center (“The Law Center” or “NWLC”), based in Washington, D.C., is a non-profit legal and advocacy organization dedicated to the protection and advancement of gender justice. The Law Center is submitting comments in support of Senate Bill 25-129, concerning protections related to a legally protected health-care activity.¹ We urge the Committee to advance this important bill.

At the Law Center, we use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us – especially those who face multiple forms of discrimination. We know that access to critical health care, including abortion and gender affirming care, are vital to gender equity. Legal and privacy protections for those who provide, access, or help facilitate critical health care, including abortion and gender affirming care, are becoming increasingly necessary as people providing or seeking these forms of critical health care are becoming more widely criminalized and surveilled around the country. Passing SB 25-129 would strengthen Colorado’s existing protections, and it would be a show of Colorado’s continued leadership in protecting Coloradans and those who travel to Colorado for care. As such, NWLC strongly supports SB 25-129’s passage.²

¹ Co. S.B. 25-129, Reg. Sess. 2025.

² This letter in support of SB 25-129 will focus on abortion care. However, at NWLC we recognize that attacks on gender affirming care and abortion care are deeply tied, and protections for both forms of care, like the ones in SB 25-129, are critical. Ma’ayan Anafi, *New Targets, Old Tactics: How Attacks on Gender-Affirming Care Are Repurposing the Anti-Abortion Playbook*, NWLC (January 2025), <https://nwlc.org/wp-content/uploads/2025/01/New-Targets-Old-Tactics-Issue-Brief-Updated.pdf>. (“Anti-trans movement actors have deliberately modeled their attacks after the anti-abortion playbook.”)

I. SB 25-129 is an important step in bolstering privacy protections and strengthening legal obligations to protect abortion seekers and providers in Colorado.

The intersecting legal and public health crises with respect to pregnancy and reproductive health care continue to intensify following the Supreme Court’s erroneous decision in *Dobbs v. Jackson Women’s Health Organization*.³ With abortion bans that criminalize care in place, state actors are emboldened to heighten their targeting of abortion seekers, providers, and those who help them. As a result, there is an increased need for stronger privacy and legal protections to ensure that anti-abortion state actors and vigilantes, including those outside of Colorado, cannot target, harass, investigate, or prosecute people who are involved in seeking or providing abortion care. SB 25-129 provides an opportunity for Coloradan lawmakers to increase protections for people involved in accessing or providing this critical care and create an obligation for Colorado-based individuals and entities to not comply with hostile out-of-state actions.

Reproductive surveillance, the targeting of abortion providers, and the criminalization of pregnancy outcomes are not new. In fact, pregnant people and abortion providers have long been subject to harassment, intimidation, surveillance, investigations, and prosecution for seeking or providing abortion care. Further, reproductive surveillance and pregnancy criminalization have a disproportionate impact on low-income communities.⁴ The *Dobbs* decision has emboldened state actors to heighten their surveillance and investigations of people who seek or provide abortion care. Unsurprisingly, states that are hostile to abortion are the common source of pregnancy-related prosecutions.⁵

We live in a time where the potential for surveillance and criminalization of pregnant people and abortion providers has increased and, in some hostile states, even encouraged. A report by Pregnancy Justice shows that in the year after *Roe v. Wade* was overturned, at least 210 people were charged with pregnancy-related crimes, the highest total of pregnancy-related prosecutions recorded in a single year.⁶ According to the Guttmacher Institute, in 2024, thirteen states introduced “31 provisions aimed at intensifying the criminalization of pregnancy outcomes.”⁷ Although none were enacted, it does signal a trend towards heightened state-sanctioned surveillance and criminalization

³ 597 U.S. 215 (2022).

⁴ Wendy A. Bach & Madalyn K. Wasilczuk, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs*, PREGNANCY JUSTICE (September 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf>

⁵ *Id.*

⁶ Wendy A. Bach & Madalyn K. Wasilczuk, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs*, PREGNANCY JUSTICE (September 2024), <https://www.pregnancyjusticeus.org/wp-content/uploads/2024/09/Pregnancy-as-a-Crime.pdf>.

⁷ Kimya Forouzan, et al., *State Policy Trends 2024: Anti-Abortion Policymakers Redouble Attacks on Bodily Autonomy*, GUTTMACHER INSTITUTE (December 2024), <https://www.guttmacher.org/2024/12/state-policy-trends-2024-anti-abortion-policymakers-redouble-attacks-bodily-autonomy>.

of pregnancy outcomes.⁸ Some abortion bans, like SB8 in Texas, encourage vigilantism by allowing civilians to file a civil complaint against someone who provides abortion care or helps a pregnant person access abortion care.⁹ In recent years, we are seeing more incidents of anti-abortion state officials utilizing state-sanctioned intimidation and targeting of doctors for providing abortion care through prosecution and professional punishment, with the most recent instance occurring just last month.¹⁰

Vulnerabilities in Colorado law remain to the extent that hostile state actors and vigilantes can pursue investigations or proceedings concerning health care provided or obtained in Colorado. If passed, SB 25-129 would be an important step in beginning to remedy some of those vulnerabilities and a demonstration of Colorado's commitment and leadership in protecting reproductive freedom.

In conclusion, Senate Bill 25-129 is an important step in bolstering protections for abortion seekers, providers, and those who help them. No one should have to worry about being targeted by a hostile anti-abortion state actor or vigilante while trying to access or provide essential health care. The National Women's Law Center urges the Senate Judiciary Committee to advance Senate Bill 25-129.

Sincerely,

Sawyeh Esmail
Senior Counsel, Reproductive Rights and Health
National Women's Law Center

⁸ *Id.*

⁹ Texas' SB 8 encourages so-called "abortion bounty hunters" by granting a minimum of \$10,000 to those who succeed in such lawsuits.

¹⁰ See, e.g., ACT statement about Louisiana case against NY doctor (January 31, 2025), <https://www.theactgroup.org/post/act-statement-about-louisiana-case-against-ny-doctor>; and Sarah McCammon, *Indiana reprimands doctor who spoke publicly about providing 10-year-old's abortion*, NPR (May 26, 2023), <https://www.npr.org/2023/05/26/1177435278/indiana-reprimands-doctor-who-spoke-publicly-about-providing-10-year-olds-aborti>.



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February 12, 2025

Senate Judiciary Committee
Colorado General Assembly
200 E. Colfax Avenue
Denver, CO 80203

RE: SUPPORT FOR SB25-130

Dear Committee Members:

The National Women's Law Center (NWLC), based in Washington D.C., is a nonpartisan, non-profit legal and advocacy organization whose mission is centered on the protection and advancement of women's legal rights and opportunities. NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially those who face multiple forms of discrimination. NWLC strongly supports efforts to strengthen access to emergency health care in Colorado, as directed in SB25-130¹, and submits these comments for consideration as the Committee deliberates this critical legislation.

The ability for every individual, regardless of their condition, class, or status, to access emergency health care is an essential component of a prosperous society. For nearly 40 years, the Emergency Medical Treatment and Active Labor Act (EMTALA)² has guaranteed everyone, nationwide, receives the appropriate stabilizing treatment when experiencing a medical emergency. And the law is clear: EMTALA requires abortion if that is the treatment necessary to prevent further deterioration of a patient's health.

While federal law provides the protection that pregnant Coloradans need in the event of emergency complications, we know abortion and the safeguards under EMTALA are constantly being attacked. It is for that reason this bill is such critical legislation that would ensure the federal provisions under EMTALA are also enshrined in state law. SB25-130 would also build upon EMTALA's requirements to further protect every emergency room patient in hospitals across the state. NWLC urges advancement of this bill and applauds the legislature for taking action.

¹ S.B. 25-130, 75th Gen. Assemb., Reg. Sess. (Co. 2025).

² 42 U.S.C.A. § 1395dd.

I. Abortion care, even when necessary to treat an emergency condition, continues to face opposition, making SB25-130 critically essential in this moment.

Under EMTALA, hospitals are required to provide stabilizing care to those with emergency medical conditions. Professional medical organizations have been unequivocal in their recognition that EMTALA requires abortion when that treatment is necessary to prevent further deterioration of a patient's health.³ After the constitutional right to abortion was struck down by the 2022 Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, the Department of Health and Human Services issued guidance reminding states of their obligations under EMTALA.⁴

But post-*Dobbs*, anti-abortion extremists have been emboldened to attack abortion access, including emergency abortion access, leading to a climate of fear and in some instances, dire circumstances for pregnant people seeking abortion care. Patients like NWLC's clients Mylissa Farmer, who was denied life-and-health-saving emergency abortion care by hospitals in Kansas and Missouri.⁵ Or like Anna Nusslock, who was sent away from a Catholic hospital in California—in violation of state law—with a bucket and towels after learning the non-viable pregnancy she was carrying posed a significant risk to her life⁶ These patients have been callously ping-ponged from one facility to another—with little regard for their lives, their future health and fertility, or their livelihoods.

Since the *Dobbs* decision, legal challenges launched by states hostile to abortion access have scrutinized EMTALA's constitutionality.⁷ While the Supreme Court has declined to take a stance that protects emergency abortion access, Project 2025—the well-publicized mandate for the Trump administration—details policies that would undermine, and effectively eliminate, protections for emergency abortion care under EMTALA.⁸ In the face of these attacks, it is imperative that states take preventative steps to ensure pregnant people continue to receive the full spectrum of emergency care required by law.

II. Without the protection of EMTALA, more pregnant people, especially those from marginalized communities, will lose access to critical emergency care, further exacerbating the country's maternal health crisis.

EMTALA's protections are particularly important for pregnant patients from communities already facing systemic oppression and divestment, as those patients have limited access to the preventative care necessary to avert life-threatening pregnancy complications. The maternal mortality rate in the United States far outpaces that of any other industrialized nation, with Black

³ Brief for Am. Hosp. Ass'n et al. as Amici Curiae Supporting Respondent, *Moyle v. United States*, 603 U.S. 324 (2024) (Nos. 23-726, 23-727).

⁴ *Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss*, Ctrs. for Medicare & Medicaid Servs. (July 11, 2022), <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurvey/certificationgeninfo/policy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0>.

⁵ *NWLC Files EMTALA and Sex Discrimination Complaints on Behalf of Mylissa Farmer*, Nat'l Women's Law Ctr. (Nov. 8, 2022), <https://nwlc.org/resource/nwlc-files-emtala-and-sex-discrimination-complaints-on-behalf-of-mylissa-farmer/>.

⁶ *NWLC Announces Legal Representation of Anna Nusslock in Emergency Abortion Care Refusal Case*, Nat'l Women's Law Ctr. (Sept. 30, 2024), <https://nwlc.org/press-release/nwlc-announces-legal-representation-of-anna-nusslock-in-emergency-abortion-care-refusal-case/>.

⁷ *Moyle v. United States*, 603 U.S. 324 (2024); *Texas v. Becerra*, 89 F.4th 529 (5th Cir.), *cert. denied*, 145 S. Ct. 139 (2024).

⁸ Kenna Titus, *Project 2025: A Blueprint for Attacking EMTALA Protections and Denying Emergency Abortion Care*, Nat'l Women's Law Ctr. (Oct. 10, 2024), <https://nwlc.org/project-2025-a-blueprint-for-attacking-emtala-protections-and-denying-emergency-abortion-care/>.

and Indigenous patients bearing the brunt of the crisis. This also comes at a time when health care coverage through Medicare and the Affordable Care Act is constantly being threatened, and federal funding earmarked for public health is in limbo. Without the protection of EMTALA ensuring patients receive the medical care necessary to preserve their health and their life, more pregnant patients will undoubtedly suffer and die.⁹

III. As a state leader in reproductive rights, health, and justice, it is critical that Colorado continue to protect patients and providers from emerging threats across the country.

SB25-130 ensures emergency care access in Colorado, regardless of whether the current administration takes steps to further sow confusion and doubt as to EMTALA's requirements. It provides reassurance to providers who just want to do their job and take care of their patients. In many states, physicians face the threat of prosecution, confusion, and delays as they are forced to wait for lawyers to tell them whether they can provide the emergency care their pregnant patients urgently need. Health care providers should not be forced to violate their medical training, judgment, and the standard of care just to further the anti-abortion agenda.

Not only is access to emergency abortion care critically important, but it is also popular. A poll conducted by NWLC found that nearly 80 percent of voters believe hospitals should provide abortion care in cases of medical emergencies, even if abortion is banned in the state.¹⁰

Colorado has long stood at the forefront of advancing health equity and gender justice. As the first state to decriminalize abortion, several years before the decision in *Roe v. Wade*, Colorado has solidified its status as a safe haven for those seeking and providing equitable health care. Colorado recently passed a groundbreaking ballot measure to expand abortion access, and it is the only state to have enacted critical hospital transparency laws that ensure the public is adequately informed about where they can receive care. It is clear the state is dedicated to prioritizing patient health and holding health care institutions accountable. SB25-130 is another opportunity to renew that commitment and ensure the health of every Coloradan is respected and protected.

Sincerely,



Sudria Twyman
Legal Fellow, Reproductive Rights and Health
National Women's Law Center

⁹ Brief for Nat'l Women's Law Ctr. et al. as Amici Curiae Supporting Respondent, *Moyle v. United States*, 603 U.S. 324 (2024) (Nos. 23-726, 23-727).

¹⁰ *Voters Support Emergency Abortion Care and Oppose Religious Refusals and "Conscience Clauses"*. Nat'l Women's Law Ctr. (Apr. 5, 2024), <https://nwlc.org/wp-content/uploads/2024/04/Final-Memo-Voters-Support-Emergency-Abortion-Care-and-Oppose-Religious-Refusals-and-Conscience-Clauses.pdf>.

Dear Madam Chair and Members of the Committee,

My name is Allison Irias. I am a first generation student, the daughter of immigrants, and a young person who relies on Medicaid to stay healthy.

A week before I was scheduled for knee surgery, my family and I unexpectedly lost our Medicaid coverage. I felt intense dread and fear run through my body. I thought about how I would cover the cost of the surgery, losing access to care, and what I would do in an emergency. We spent hours on hold waiting to speak with someone about what happened. We went to the human services office and waited hours but left without any resolution. Days later, we received a phone call with an update. After much confusion and advocating for ourselves, my family's coverage was reactivated.

I still live with the constant fear of being dropped from Medicaid at any time. I can't imagine being denied emergency care. Like many of my family members, I would have to put off medical care simply because I cannot afford healthcare costs on my own, especially if I experienced an emergency.

While I truly appreciate Medicaid, I often have to jump through hoops to find adequate healthcare. It is difficult to find a provider that accepts Medicaid and has appointments available. I have been forced to delay some of my healthcare needs because I cannot find anywhere to go or an appointment that is not months away. I am a young woman and I have never seen an OB/GYN. I know it's important to take care of my reproductive health but I have yet to find someone available that accepts Medicaid near me.

I am thankful for the care and services I have received through Medicaid, but there is still much we can do to make health care more accessible to our communities. I know that other people are not able to receive the care that they need. **Removing barriers to healthcare is good for young people like me, my family, my community, and Colorado.**

Please vote yes on SB25-129 and SB25-130.

Thank you for your consideration.

Allison Irais



Written Testimony – SB 130
Senate Judiciary Committee
Feb. 12, 2025

Dear Chairwoman Gonzales and Members of the Senate Judiciary Committee:

On behalf of our 100 member hospitals providing care to patients across Colorado, we would like to share the following feedback in response to **Senate Bill 25-130**, “Concerning Providing Emergency Medical Services.”

At the outset, we would like to thank Senator Gonzales for being receptive to our concerns and agreeing to work with us following this committee hearing. Our sincere hope is to work together with the sponsors and proponents of the bill to address these concerns, avoid redundant or conflicting regulatory requirements, and ensure the proponents’ goals are achieved effectively.

Unfortunately, as introduced, SB 130 has some significant technical flaws that will create conflicts with current federal law, severely increasing complexity and cost for Colorado hospitals and our patients. As a result, CHA currently has an **Amend** position on this bill.

Background

Hospitals and health care professionals work tirelessly to provide emergency care in every hospital 24/7/365. The federal Emergency Medical Treatment and Active Labor Act (EMTALA) is the bedrock of hospitals’ commitment to treat patients experiencing emergency medical conditions of any type. This nearly 40-year-old law (as well as associated federal regulations, sub-regulatory guidance, and case law) applies to all Colorado hospitals and freestanding emergency departments, and the law is enforced in Colorado by CDPHE through their statutory authority to license and certify health care facilities.

In concert with our members, CHA believes that health care choices should be made by a patient in partnership their health care provider(s), whether during emergencies or routine care, and we are supportive of policies that enable that crucial patient-provider decision-making process. In recent years, CHA has also engaged heavily with the maternal health advocacy community to improve Colorado’s maternal mortality rates and improve birthing mothers’ experiences, whether delivering at a hospital or elsewhere in the community.

We appreciate the near-incomprehensible uncertainties surrounding clarity and enforcement of federal law – EMTALA and otherwise – and value the sponsors’ commitment to ensure the rights of Colorado patients to seek and receive clinically appropriate care are not undermined. **To the extent the proponents and sponsors are seeking to codify existing EMTALA requirements into state statute, we have no concerns.** However, we request the issues on the following page be addressed as early as possible as the bill progresses.

We appreciate your consideration regarding these technical concerns and remain ready to work with you and your colleagues to address them.

1. There are significant incongruencies between SB 130 and EMTALA regarding several key definitions, including “emergency medical condition” (EMC) and services that must be provided in the event of an EMC (which SB 130 calls “emergency medical services”).

As just one example, EMTALA’s definition of an EMC centers on the need for “*immediate*” care that, if not provided, would put the health of the patient in “*serious jeopardy*” or lead to “serious impairment [or...] disfunction.” In contrast, SB 130’s definition is far more broad and highly subjective: “a medical condition with symptoms of an illness or injury that *may progress in severity* or result in complications with a high probability for morbidity or mortality if treatment does not begin *quickly*” (p. 9, l. 1-5, emphasis added).

Equally concerning conflicting approaches between EMTALA and SB 130 include qualifications for transfer and discharge; applicability of state vs. federal law based on location or care delivery setting; and patient registration processes.

- **Recommendation:** align *all* definitions, care delivery settings in which rules apply, transfer/discharge requirements, and billing inquiry standards with current EMTALA law. Failure to do so will lead to both massive confusion and a burdensome and costly “highest of” threshold across all of these compliance dimensions.

2. SB 130 imposes new requirements regarding specialty care that are simply not feasible.

EMTALA requires screening and stabilization for any patient that presents with an EMC as long as the hospital has the *capability and capacity* to provide the care the patient needs – in essence, this is a “supply side” model. In contrast SB 130 would require every hospital “to ensure a health-care provider is available at all times who is willing and able to provide emergency medical services” (p. 4, l. 11-13), which includes “the medical treatment and *care necessary to...ensure*, within reasonable medical probability, that *no material deterioration* of the patient’s condition is likely to result” from transfer or discharge (p. 9, l. 24 – p. 10, l. 7) – in essence, this is a “demand side” model.

A plain-language reading of these requirements would indicate an affirmative requirement for *every* hospital to have *every* conceivable level of expertise and equipment available to respond to *every* variety of EMC. Even if this were feasible in the face of workforce shortages and limited specialty providers, the costs of these requirements would be insurmountable.

Additionally, with respect to pregnant patients, the bill requires an obstetrician to conduct a medical screening examination of all pregnant patients (p. 9, l. 20-23). Over 50 percent of rural Colorado is considered a “maternity care desert” by the Colorado Rural Health Center – only 18 of 32 Critical Access Hospitals even have an obstetrics department – and these hospitals often rely on non-obstetricians (e.g., midwives, nurse practitioners, family physicians, etc.) to provide care to pregnant patients.

- **Recommendation:** adopt EMTALA’s approach to “capability and capacity,” wherein care that must be provided is reflective of available equipment, supplies, and personnel with sufficient expertise to respond to a given EMC.

