

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 23-0842.01 Brita Darling x2241

HOUSE BILL 23-1218

HOUSE SPONSORSHIP

Brown and Titone,

SENATE SPONSORSHIP

Jaquez Lewis,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRING THAT A HEALTH-CARE FACILITY INFORM**
102 **PATIENTS AS PART OF THE INFORMED CONSENT PROCESS OF**
103 **SERVICES THAT THE HEALTH-CARE FACILITY REFUSES TO**
104 **PROVIDE TO PATIENTS WHEN THE REFUSAL IS FOR NONMEDICAL**
105 **REASONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires the department of public health and environment (department) to identify health-care services that are or may be subject to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

a denial of care in this state and to develop a simple service availability form to be filled out by a covered entity for the purpose of conveying to patients and to the public information about health-care services that, for nonmedical reasons, are not generally available at the covered entity or that are subject to significant restriction at the covered entity.

The bill defines:

- "Covered entity" as a hospital, community clinic, maternity hospital, freestanding emergency department, or rehabilitation hospital;
- "Denial of care", in part, as refusal to provide health-care services for nonmedical reasons; and
- "Nonmedical reasons", in part, as nonclinical criteria, rules, or policies that restrict health-care professionals and covered entities from providing health-care services that the professionals or facilities are authorized or licensed to provide.

The bill includes requirements for the content and format of the service availability form and requires the department to publish and maintain on its public-facing website a list of covered entities and the service availability form for the covered entity.

The bill authorizes the department to update the service availability form at least biennially. The executive director of the department shall adopt rules to implement the requirements in the bill and investigate complaints and assess fines against covered entities that fail to comply with the requirements in the bill.

The department shall implement a public awareness program that includes how denial of care may negatively impact health-care access and quality of care, how denial of care may be avoided, and the impacts of denial of care on vulnerable people and communities.

A covered entity shall provide patients with the current service availability form as part of the informed consent process prior to initiating a health-care service and shall maintain a record of the patient's receipt of the form. The covered entity shall encourage health-care professionals with privileges at the covered entity to share the covered entity's service availability form with a patient when a health-care service is scheduled at the covered entity.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 58 to title
3 25 as follows:

4 **ARTICLE 58**

1 **Patients' Right to Know**

2 **25-58-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 58 IS
3 THE "PATIENTS' RIGHT TO KNOW ACT".

4 **25-58-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY
5 HEREBY FINDS AND DECLARES THAT:

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

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

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

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

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

1 THEY REFUSE TO PROVIDE;

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

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

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

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

16 (II) CAUSE TRAUMA TO PATIENTS;

17 (III) IMPACT QUALITY OF LIFE; AND

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

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

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

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

27 (1) "COVERED ENTITY" MEANS ANY GENERAL HOSPITAL, HOSPITAL

1 UNIT AS DEFINED IN SECTION 25-3-101, COMMUNITY CLINIC AS DEFINED IN
2 SECTION 25-3-101, FREESTANDING EMERGENCY DEPARTMENT AS DEFINED
3 IN SECTION 25-1.5-114, MATERNITY HOSPITAL, OR REHABILITATION
4 HOSPITAL. "COVERED ENTITY" DOES NOT INCLUDE A HEALTH-CARE
5 PROFESSIONAL.

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

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

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

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

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

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

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

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

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

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

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

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

16 **25-58-104. Department duties - service availability form -**
17 **public access to information - complaint process - public education**
18 **and awareness program - rules.** (1) NOT LATER THAN DECEMBER 1,
19 2023, THE DEPARTMENT, IN CONSULTATION WITH STAKEHOLDERS,
20 INCLUDING A STATEWIDE HOSPITAL ASSOCIATION, PATIENT ADVOCACY
21 GROUPS, AND GROUPS REPRESENTING POPULATIONS THAT ARE
22 FREQUENTLY SUBJECT TO DENIAL OF CARE, SHALL:

23 (a) IDENTIFY HEALTH-CARE SERVICES THAT ARE OR MAY BE
24 SUBJECT TO DENIAL OF CARE IN THE STATE; AND

25 (b) (I) DEVELOP A CLEAR AND SIMPLE SERVICE AVAILABILITY
26 FORM FOR THE PURPOSE OF CONVEYING TO PATIENTS AND TO THE PUBLIC
27 WHICH OF THE IDENTIFIED HEALTH-CARE SERVICES ARE AND ARE NOT

1 GENERALLY AVAILABLE OR ARE SUBJECT TO SIGNIFICANT RESTRICTION AT
2 A COVERED ENTITY.

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

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

11 (2) BEGINNING ON OR BEFORE FEBRUARY 1, 2024, THE
12 DEPARTMENT SHALL PUBLISH AND MAINTAIN ON ITS WEBSITE A CURRENT
13 LIST OF COVERED ENTITIES AND SHALL PROVIDE FOR PUBLIC ACCESS THE
14 SERVICE AVAILABILITY FORM SUBMITTED BY EACH COVERED ENTITY. THE
15 DEPARTMENT MAY USE VARIOUS METHODS TO DISPLAY THE INFORMATION
16 IN ORDER TO ENABLE PATIENTS TO COMPARE SERVICES AVAILABLE AT
17 COVERED ENTITIES.

18 (3) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL ADOPT
19 RULES TO IMPLEMENT THIS ARTICLE 58. THE EXECUTIVE DIRECTOR'S RULES
20 MUST INCLUDE A PROCESS FOR RECEIVING AND INVESTIGATING
21 COMPLAINTS REGARDING COVERED ENTITIES THAT FAIL TO COMPLY WITH
22 THIS ARTICLE 58 AND FOR ASSESSING FINES, AS SPECIFIED IN SECTION
23 25-58-105 (4), AGAINST COVERED ENTITIES.

24 (4) THE DEPARTMENT SHALL DEVELOP AND ADMINISTER A PUBLIC
25 EDUCATION AND AWARENESS PROGRAM THAT INCLUDES HOW THE DENIAL
26 OF CARE:

27 (a) MAY NEGATIVELY IMPACT HEALTH-CARE ACCESS AND QUALITY

1 OF CARE;

2 (b) MAY BE AVOIDED; AND

3 (c) AFFECTS VULNERABLE PEOPLE AND COMMUNITIES.

4 **25-58-105. Requirements for covered entities - penalty for**

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

12 (2) NOT LATER THAN FEBRUARY 1, 2024, EACH COVERED ENTITY
13 SHALL ADOPT A POLICY FOR PROVIDING PATIENTS WITH ITS CURRENT
14 SERVICE AVAILABILITY FORM AS PART OF THE INFORMED CONSENT
15 PROCESS PRIOR TO THE INITIATION OF HEALTH-CARE SERVICES AND FOR
16 RECORDING THE PATIENT'S RECEIPT OF THE FORM. THE COVERED ENTITY'S
17 POLICY MUST ALSO ENCOURAGE HEALTH-CARE PROFESSIONALS WHO HAVE
18 PRIVILEGES WITH THE COVERED ENTITY TO PROVIDE THE COVERED
19 ENTITY'S SERVICE AVAILABILITY FORM TO THE PATIENT OR THE PATIENT'S
20 REPRESENTATIVE PRIOR TO ANY SCHEDULED HEALTH-CARE SERVICE AT
21 THE COVERED ENTITY.

22 (3) ON AND AFTER FEBRUARY 1, 2024, EACH COVERED ENTITY
23 SHALL:

24 (a) (I) PROVIDE THE CURRENT SERVICE AVAILABILITY FORM TO THE
25 PATIENT OR THE PATIENT'S REPRESENTATIVE AS PART OF THE INFORMED
26 CONSENT PROCESS BEFORE ANY HEALTH-CARE SERVICE IS INITIATED. IF
27 INFORMED CONSENT IS IMPRACTICABLE BECAUSE OF AN EMERGENCY OR

1 OTHER CIRCUMSTANCES, THE COVERED ENTITY MAY DELAY THE PROVISION
2 OF THE SERVICE AVAILABILITY FORM, AS APPROPRIATE, UNTIL THE
3 INFORMED CONSENT PROCESS IS CONDUCTED; AND

4 (II) MAINTAIN A RECORD OF THE PATIENT'S OR THE PATIENT'S
5 REPRESENTATIVE'S RECEIPT OF THE SERVICE AVAILABILITY FORM AS PART
6 OF THE INFORMED CONSENT PROCESS; AND

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

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

13 **25-58-106. Construction.** (1) THIS ARTICLE 58 DOES NOT:

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

16 (b) LIMIT ANY CAUSE OF ACTION UNDER STATE OR FEDERAL LAW,
17 OR LIMIT ANY REMEDY IN LAW OR EQUITY, AGAINST A COVERED ENTITY,
18 HEALTH-CARE FACILITY, OR HEALTH-CARE PROFESSIONAL.

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

23 **25-58-107. Severability.** IF ANY PROVISION OF THIS ARTICLE 58 OR
24 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
25 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
26 THIS ARTICLE 58 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID
27 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS

1 ARTICLE 58 ARE SEVERABLE.

2 **SECTION 2. Effective date.** This act takes effect July 1, 2023.

3 **SECTION 3. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, or safety.