

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 23-0842.01 Brita Darling x2241

HOUSE BILL 23-1218

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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, AND, IN CONNECTION THEREWITH, MAKING AN**
106 **APPROPRIATION.**

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

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.

HOUSE
3rd Reading Unamended
April 18, 2023

HOUSE
Amended 2nd Reading
April 17, 2023

(department) to identify health-care services that are or may be subject to 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 HEALTH-CARE SERVICES, OR CONTRACEPTIVE SERVICES,
19 INCLUDING EMERGENCY 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 OR A HOSPITAL, COMMUNITY CLINIC, OR OTHER FACILITY
6 OWNED OR OPERATED BY THE STATE.

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

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

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

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

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

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

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

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

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

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

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

15 (7) "LGBTQ HEALTH-CARE SERVICES" MEANS ANY MEDICAL,
16 SURGICAL, PREVENTIVE, COUNSELING, OR REFERRAL SERVICES THAT ARE
17 SPECIFICALLY TARGETED TO OR THAT DISPROPORTIONATELY AFFECT
18 LGBTQ INDIVIDUALS, INCLUDING GENDER-AFFIRMING CARE,
19 HIV-RELATED CARE, AND FAMILY-BUILDING SERVICES.

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

26 (9) "REPRODUCTIVE HEALTH-CARE SERVICES" MEANS ANY
27 MEDICAL, SURGICAL, PREVENTIVE, COUNSELING, OR REFERRAL SERVICES

1 RELATING TO THE HUMAN REPRODUCTIVE SYSTEM, INCLUDING SERVICES
2 RELATING TO CONTRACEPTION, STERILIZATION, PREGNANCY, AND THE
3 TERMINATION OF A PREGNANCY.

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

7 **25-58-104. Department duties - service availability form -**
8 **public access to information - complaint process - public education**
9 **and awareness program - rules.** (1) NOT LATER THAN AUGUST 1 2023,
10 THE DEPARTMENT, IN CONSULTATION WITH STAKEHOLDERS, INCLUDING A
11 STATEWIDE HOSPITAL ASSOCIATION, PATIENT ADVOCACY GROUPS,
12 PHYSICIANS, AND GROUPS REPRESENTING POPULATIONS THAT ARE
13 FREQUENTLY SUBJECT TO DENIAL OF CARE, SHALL:

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

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

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

25 (III) THE DEPARTMENT SHALL REVIEW AND, IF APPROPRIATE,
26 UPDATE THE FORM AT LEAST BIENNIALY IN CONSULTATION WITH
27 STAKEHOLDERS. THE DEPARTMENT MAY DEVELOP DIFFERENT VERSIONS OF

1 THE SERVICE AVAILABILITY FORM APPROPRIATE FOR DIFFERENT
2 CATEGORIES OF COVERED ENTITIES.

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

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

9 **25-58-105. Requirements for covered entities - penalty for**
10 **noncompliance.** (1) NOT LATER THAN SIXTY DAYS AFTER THE
11 DEPARTMENT ISSUES OR UPDATES THE SERVICE AVAILABILITY FORM, EACH
12 COVERED ENTITY SHALL SUBMIT A COMPLETED SERVICE AVAILABILITY
13 FORM TO THE DEPARTMENT. A COVERED ENTITY SHALL ALSO SUBMIT AN
14 UPDATED SERVICE AVAILABILITY FORM WITHIN THIRTY DAYS AFTER
15 MAKING A CHANGE TO THE AVAILABILITY OF A HEALTH-CARE SERVICE
16 IDENTIFIED ON THE SERVICE AVAILABILITY FORM.

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

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

1 SHALL:

2 (a) (I) PROVIDE THE CURRENT SERVICE AVAILABILITY FORM TO THE
3 PATIENT OR THE PATIENT'S REPRESENTATIVE AS PART OF THE INFORMED
4 CONSENT PROCESS BEFORE ANY HEALTH-CARE SERVICE IS INITIATED. IF
5 INFORMED CONSENT IS IMPRACTICABLE BECAUSE OF AN EMERGENCY OR
6 OTHER CIRCUMSTANCES, THE COVERED ENTITY MAY DELAY THE PROVISION
7 OF THE SERVICE AVAILABILITY FORM, AS APPROPRIATE, UNTIL THE
8 INFORMED CONSENT PROCESS IS CONDUCTED; AND

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

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

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

18 **25-58-106. Construction.** (1) THIS ARTICLE 58 DOES NOT:

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

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

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

1 **25-58-107. Severability.** IF ANY PROVISION OF THIS ARTICLE 58 OR
2 ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
3 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
4 THIS ARTICLE 58 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID
5 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
6 ARTICLE 58 ARE SEVERABLE.

7 **SECTION 2. Appropriation.** For the 2023-24 state fiscal year,
8 \$64,627 is appropriated to the department of public health and
9 environment for use by the health facilities and emergency medical
10 services division. This appropriation is from the general fund and is based
11 on an assumption that the division will require an additional 0.7 FTE. To
12 implement this act, the division may use this appropriation for
13 administration and operations related to operations management.

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