LEGAL UPDATES

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Proposed Colorado Legislation Could Impact Operation of Emergency Rooms

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The Colorado General Assembly has introduced Senate Bill 25-130, the purpose of which is to strengthen existing Colorado law regarding reproductive healthcare rights. Specifically, SB 25-130 proposes significant changes to the provision of emergency medical services in the state. If enacted, the bill would impose new obligations on emergency departments, strengthen patient protections, and expand enforcement mechanisms for violations. However, this bill does not alter the legal landscape for reproductive care in Colorado. The state had already codified the right to abortion in 2022 through the Reproductive Health Equity Act (HB 22-1279), and voters further enshrined this right in the state constitution by approving Amendment 79 in 2024, which also repealed a prior ban on the use of public funds for abortion services. In effect, SB 25-130 does not substantively change Colorado's existing reproductive health protections but rather clarifies and reinforces them, serving more as a show of commitment to these rights.

As introduced, the bill would—similar to the federal Emergency Medical Treatment and Active Labor Act (EMTALA)—require that emergency departments, including labor and delivery units, provide emergency medical services to any patient who seeks care, regardless of a patient's sex, ability to pay, insurance status, or other protected characteristics. Emergency departments would be required to document in a centralized log whether each patient refused treatment, was denied treatment, was admitted and treated, stabilized and transferred, or discharged. The bill prohibits discrimination in providing emergency medical services based on specified characteristics, including pregnancy and pregnancy outcomes, and also requires emergency departments to maintain protocols ensuring that a healthcare provider is available at all times to deliver emergency medical services. Additionally, the

bill would prohibit emergency departments from inquiring about a patient's ability to pay until after emergency services have been rendered. It also establishes specific conditions under which patients with emergency medical conditions may be transferred or discharged, including requirements for stabilization, informed consent, and documentation, as well as ensuring that appropriate personnel, medical records, and diagnostic results accompany the patient. The bill further defines "emergency medical services" to include medical screening examinations and necessary stabilization treatments, including abortion services when required to stabilize a patient with an emergency medical condition.

However, the bill also creates an exception to a provider's obligation to provide emergency treatment—providers are not obligated to offer services that conflict with their sincerely-held religious beliefs, and the bill prohibits adverse actions against providers for either providing or refusing to provide services on this basis.

To ensure compliance, the bill authorizes the attorney general to bring civil actions, including seeking injunctive relief or imposing fines of up to $50,000, against emergency departments or healthcare providers who negligently violate its provisions. Patients who suffer personal injury due to noncompliance are also granted a private right of action, which may be pursued within three years of the alleged violation. However, emergency departments are exempt from liability if they meet the bill's requirements, including providing appropriate medical screening examinations and stabilizing treatments.

Comparing SB 25-130 and EMTALA: Key differences in emergency medical services protections and obligations

SB 25-130 introduces several provisions that expand the scope of obligations for Colorado Medicare-participating hospitals beyond the requirements established by EMTALA. Below is a summary highlighting the key differences between the two laws.

Definition of emergency medical condition

SB 25-130 expands the definition of an "emergency medical condition" to include pregnancy-related conditions such as ectopic pregnancy, miscarriage, complications from pregnancy loss, and risks to future fertility. Additionally, SB 25-130 defines emergency medical services to include abortion services when required to stabilize a patient with an emergency medical condition.

In contrast, while EMTALA does not explicitly address abortion, the Supreme Court's decision to dismiss *Moyle v. United States* effectively upheld a lower court ruling that blocked Idaho's near-total abortion ban due to its conflict with EMTALA. As a result, Idaho—and by extension other states with similar abortion bans—cannot enforce such restrictions when they contradict EMTALA's mandate to provide necessary stabilizing care. Therefore, while EMTALA addresses emergency abortions to a lesser extent than SB 25-130, it still ensures that such care is included when medically necessary.

Religious exemptions
Unlike EMTALA, SB 25-130 includes a provision that allows healthcare providers to refuse to deliver emergency medical services if doing so conflicts with their sincerely held religious beliefs. However, it also mandates that emergency departments ensure another qualified healthcare provider is always available to deliver the necessary care, ensuring continuity of emergency services. In the absence of such an alternative provider, the physician's duty to stabilize the patient under EMTALA would override any state-level protection, ensuring that critical care is not withheld in life-threatening situations.

Documentation requirements
SB 25-130 introduces more stringent documentation requirements for emergency departments. It requires maintaining a central log that records whether a patient was treated, refused treatment, denied treatment, stabilized and transferred, or discharged. While EMTALA also requires hospitals to maintain a log of individuals who come to the emergency department, SB 25-130's requirements are more detailed and comprehensive.

Financial inquiries
SB 25-130 explicitly prohibits emergency departments from inquiring about a patient's ability to pay until after emergency medical services have been provided. EMTALA prohibits delaying treatment to inquire about payment but does not explicitly ban financial inquiries after stabilization or treatment.

Patient contact requirements
SB 25-130 requires emergency departments to contact or attempt to contact a patient's preferred contact person or next of kin before transferring or discharging the patient. This requirement is absent in EMTALA, which does not impose any obligations related to notifying a patient's family or preferred contact.

Discharge conditions
SB 25-130 establishes specific conditions that must be met before discharging a patient. These include providing a discharge summary and notifying the patient's preferred contact person. By contrast, EMTALA's obligations end once a patient is stabilized, even if they are subsequently discharged or transferred.

What this means to you

SB 25-130 is currently under consideration in the Colorado Senate Judiciary Committee. Stakeholders should monitor the bill's progress and any amendments that may be adopted. Healthcare organizations may wish to engage with legislators or industry groups to provide feedback on the bill's potential operational and financial impacts.

If enacted, SB 25-130 will require significant operational adjustments for emergency departments in Colorado. Healthcare entities in Colorado should begin assessing the potential impacts of the bill and developing strategies to ensure compliance if it is enacted.

Contact us

If you have questions regarding SB 25-130 or assistance with compliance planning, Husch Blackwell's Healthcare attorneys offer comprehensive counsel and solution-driven services that address healthcare industry pressures. For more information, please contact Ragini Acharya, Nick Healey, or Kristina Abdalla.