First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 25-0066.01 Shelby Ross x4510 **SENATE BILL 25-130**

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A BILL FOR AN ACT

CONCERNING PROVIDING EMERGENCY MEDICAL SERVICES.

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 an emergency department, including a labor and delivery department, to provide emergency medical services to a patient who presents to the emergency department.

For each person who presents to an emergency department for treatment, the bill requires the emergency department to input into a central log whether the person refused treatment or was denied treatment, or whether the person was admitted and treated, stabilized and transferred, or discharged.

The bill prohibits an emergency department from denying or discriminating in providing emergency medical services to a patient because of certain characteristics.

The bill requires an emergency department to implement a protocol to ensure a health-care provider is available at all times who is willing and able to provide emergency medical services; except that a health-care provider is not required to provide emergency medical services if the emergency medical services conflict with the health-care provider's sincerely held religious beliefs. The bill prohibits an emergency department from taking any adverse action against a health-care provider who provides or refuses to provide emergency medical services.

The bill prohibits an emergency department from inquiring about a patient's ability to pay for emergency medical services until after the services have been rendered.

The bill prohibits an emergency department from transferring or discharging a patient with an emergency medical condition unless certain conditions are met.

An emergency department does not violate the bill requirements if certain conditions are met.

The bill authorizes the attorney general to bring a civil action to seek injunctive relief or a civil penalty not to exceed $50,000 against an emergency department or examining health-care provider who negligently violates the requirements of the bill. The bill creates a private right of action for a person who suffers personal injury by an emergency department.

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

SECTION 1. In Colorado Revised Statutes, **add** 25-3-132 as follows:

25-3-132. Emergency medical condition - emergency medical services - transfer - discharge - nonliability - enforcement - definitions. (1) **Requirements.** A FACILITY SHALL PROVIDE EMERGENCY MEDICAL SERVICES TO A PERSON WHO PRESENTS TO THE EMERGENCY DEPARTMENT WHEN THE PERSON REQUESTS OR A REQUEST IS MADE ON THE PERSON'S BEHALF FOR EMERGENCY MEDICAL SERVICES. IN THE ABSENCE OF A REQUEST, A FACILITY SHALL PROVIDE EMERGENCY MEDICAL SERVICES TO A PERSON IF A PRUDENT LAYPERSON WOULD BELIEVE, BASED ON THE

PERSON'S APPEARANCE OR BEHAVIOR, THAT THE PERSON IS IN NEED OF EMERGENCY MEDICAL SERVICES.

(2) **Central log required.** FOR EACH PERSON WHO PRESENTS TO A FACILITY AND REQUESTS EMERGENCY MEDICAL SERVICES OR A REQUEST IS MADE ON THE PERSON'S BEHALF FOR EMERGENCY MEDICAL SERVICES, THE FACILITY SHALL INPUT INTO A CENTRAL LOG WHETHER THE PERSON REFUSED TREATMENT, WAS DENIED TREATMENT, WHETHER NO TREATMENT WAS REQUIRED, OR WHETHER THE PERSON WAS TRANSFERRED, ADMITTED AND TREATED, STABILIZED AND TRANSFERRED, OR DISCHARGED.

(3) **Nondiscrimination.** A FACILITY IS A PLACE OF PUBLIC ACCOMMODATION SUBJECT TO PART 6 OF ARTICLE 34 OF TITLE 24 AND SHALL NOT DENY EMERGENCY MEDICAL SERVICES OR DISCRIMINATE IN PROVIDING EMERGENCY MEDICAL SERVICES TO A PATIENT FOR A DISCRIMINATORY OR UNLAWFUL REASON AS DESCRIBED IN PART 6 OF ARTICLE 34 OF TITLE 24.

(4) **Provider protections.** (a) A FACILITY SHALL NOT PENALIZE OR TAKE ANY ADVERSE ACTION AGAINST A HEALTH-CARE PROVIDER FOR REFUSING TO TRANSFER A PATIENT WITH AN EMERGENCY MEDICAL CONDITION THAT HAS NOT BEEN STABILIZED.

(b) THIS SUBSECTION (4) DOES NOT ALTER OR LIMIT THE RIGHTS AND PROTECTIONS AFFORDED TO A PERSON PURSUANT TO SECTION 24-34-402 (1).

(5) **Financial inquiry.** A FACILITY SHALL NOT DELAY PROVIDING EMERGENCY MEDICAL SERVICES TO A PERSON IN ORDER TO INQUIRE ABOUT THE PERSON'S ABILITY TO PAY FOR EMERGENCY MEDICAL SERVICES.

(6) **Appropriate transfer.** IF A PATIENT HAS RECEIVED AN APPROPRIATE MEDICAL SCREENING EXAMINATION AS DESCRIBED IN

SUBSECTION (10)(c)(I)(A) OF THIS SECTION AND THE EXAMINING HEALTH-CARE PROVIDER DETERMINES THAT AN EMERGENCY MEDICAL CONDITION EXISTS AND THE CONDITION HAS NOT BEEN STABILIZED, THE FACILITY SHALL NOT TRANSFER THE PATIENT UNLESS ALL OF THE FOLLOWING CONDITIONS ARE MET:

(a) THE PATIENT IS PROVIDED MEDICAL TREATMENT WITHIN THE FACILITY'S CAPACITY THAT MINIMIZES THE RISKS TO THE PATIENT'S HEALTH;

(b) THE RECEIVING FACILITY HAS THE SPACE AND QUALIFIED PERSONNEL AVAILABLE FOR TREATING THE PATIENT AND HAS AGREED TO ACCEPT TRANSFER OF THE PATIENT AND TO PROVIDE APPROPRIATE MEDICAL TREATMENT;

(c) THE TRANSFER IS EFFECTED THROUGH QUALIFIED PERSONNEL AND TRANSPORTATION EQUIPMENT, INCLUDING THE USE OF NECESSARY AND MEDICALLY APPROPRIATE LIFE SUPPORT MEASURES DURING THE TRANSFER;

(d) THE TRANSFERRING FACILITY SENDS ALL MEDICAL RECORDS, OR COPIES OF THE MEDICAL RECORDS, RELATED TO THE PATIENT'S EMERGENCY MEDICAL CONDITION THAT THE PATIENT PRESENTED TO THE FACILITY FOR, THAT ARE AVAILABLE AT THE TIME OF THE TRANSFER, INCLUDING MEDICAL RECORDS, OR COPIES OF THE MEDICAL RECORDS, RELATED TO OBSERVATIONS OF SIGNS AND SYMPTOMS; PRELIMINARY DIAGNOSIS; TREATMENT PROVIDED TO THE PATIENT; TEST RESULTS; THE INFORMED WRITTEN REQUEST OR CERTIFICATION PROVIDED PURSUANT TO SUBSECTION (6)(f) OF THIS SECTION, OR A COPY OF THE REQUEST OR CERTIFICATION; AND, IF RELEVANT, THE NAME AND ADDRESS OF ANY ON-CALL PHYSICIAN WHO REFUSED OR FAILED TO APPEAR AT THE FACILITY

WITHIN A REASONABLE AMOUNT OF TIME TO PROVIDE THE PATIENT WITH NECESSARY STABILIZING TREATMENT;

(e) THE TRANSFER CONFORMS WITH APPLICABLE FACILITY STANDARDS ESTABLISHED BY THE STATE BOARD OF HEALTH, CREATED IN SECTION 25-1-103, IN ACCORDANCE WITH THE DEPARTMENT'S AUTHORITY ESTABLISHED PURSUANT TO SECTION 25-1.5-103. THE FACILITY STANDARDS MUST REFLECT THE FEDERAL RULES AND REGULATIONS DESCRIBED IN 42 CFR 489.24 AND ADOPTED PURSUANT TO THE FEDERAL "EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT", 42 U.S.C. SEC. 1395DD; AND

(f) (I) AFTER BEING INFORMED OF THE FACILITY'S OBLIGATIONS PURSUANT TO THIS SECTION AND THE RISK OF TRANSFER, THE PATIENT OR THE PATIENT'S REPRESENTATIVE REQUESTS THE TRANSFER IN WRITING;

(II) A PHYSICIAN HAS SIGNED A CERTIFICATION THAT INCLUDES A SUMMARY OF THE RISKS AND BENEFITS OF TRANSFERRING THE PATIENT AND A STATEMENT THAT, BASED UPON THE INFORMATION AVAILABLE AT THE TIME OF THE TRANSFER, THE MEDICAL BENEFITS REASONABLY EXPECTED FROM THE PROVISION OF APPROPRIATE MEDICAL TREATMENT AT ANOTHER FACILITY OUTWEIGH THE INCREASED RISKS TO THE PATIENT FROM BEING TRANSFERRED; OR

(III) IF A PHYSICIAN IS NOT PHYSICALLY PRESENT IN THE FACILITY AT THE TIME A PATIENT IS TRANSFERRED, THE EXAMINING HEALTH-CARE PROVIDER HAS SIGNED A CERTIFICATION THAT INCLUDES THE INFORMATION DESCRIBED IN SUBSECTION (6)(f)(II) OF THIS SECTION AND THE PHYSICIAN, AFTER CONSULTING WITH THE EXAMINING HEALTH-CARE PROVIDER, AGREES WITH THE CERTIFICATION AND SUBSEQUENTLY COUNTERSIGNS THE CERTIFICATION.

(7) **Appropriate discharge.** (a) IF A PATIENT HAS RECEIVED AN APPROPRIATE MEDICAL SCREENING EXAMINATION AS DESCRIBED IN SUBSECTION (10)(c)(I)(A) OF THIS SECTION AND THE EXAMINING HEALTH-CARE PROVIDER DETERMINES THAT AN EMERGENCY MEDICAL CONDITION EXISTS, THE FACILITY SHALL NOT DISCHARGE THE PATIENT UNLESS ALL OF THE FOLLOWING CONDITIONS ARE MET:

(I) THE PATIENT'S EMERGENCY MEDICAL CONDITION HAS BEEN STABILIZED; AND

(II) THE DISCHARGE CONFORMS WITH APPLICABLE FACILITY STANDARDS ESTABLISHED BY THE STATE BOARD OF HEALTH, CREATED IN SECTION 25-1-103, IN ACCORDANCE WITH THE DEPARTMENT'S AUTHORITY ESTABLISHED PURSUANT TO SECTION 25-1.5-103. THE FACILITY STANDARDS MUST REFLECT THE FEDERAL RULES AND REGULATIONS DESCRIBED IN 42 CFR 489.24 AND ADOPTED PURSUANT TO THE FEDERAL "EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT", 42 U.S.C. SEC. 1395DD.

(b) IF A PATIENT HAS NOT BEEN STABILIZED, DISCHARGING THE PATIENT IS ONLY PERMITTED IF:

(I) AFTER BEING INFORMED OF THE FACILITY'S OBLIGATIONS PURSUANT TO THIS SECTION AND THE RISK OF DISCHARGE, THE PATIENT OR THE PATIENT'S REPRESENTATIVE REQUESTS A DISCHARGE IN WRITING; OR

(II) THE FACILITY OFFERS THE PATIENT FURTHER MEDICAL EXAMINATION AND TREATMENT AND INFORMS THE PATIENT OR THE PATIENT'S REPRESENTATIVE OF THE RISKS AND BENEFITS OF THE EXAMINATION AND TREATMENT BUT THE PATIENT OR THE PATIENT'S REPRESENTATIVE DOES NOT CONSENT TO THE MEDICAL EXAMINATION AND TREATMENT. THE PATIENT'S MEDICAL RECORD MUST CONTAIN A

DESCRIPTION OF THE EXAMINATION AND, IF APPLICABLE, THE TREATMENT, AND A STATEMENT THAT THE PATIENT OR THE PATIENT'S REPRESENTATIVE REFUSED. THE FACILITY SHALL TAKE ALL REASONABLE STEPS TO SECURE THE PATIENT'S WRITTEN INFORMED REFUSAL, WHICH MUST INDICATE THE PATIENT HAS BEEN INFORMED OF THE RISKS AND BENEFITS OF THE EXAMINATION AND TREATMENT, IF APPLICABLE.

(8) **Nonliability.** A FACILITY OR HEALTH-CARE PROVIDER DOES NOT VIOLATE THIS SECTION IF:

(a) THE PATIENT IS PROVIDED AN APPROPRIATE MEDICAL SCREENING EXAMINATION AS DESCRIBED IN SUBSECTION (10)(c)(I)(A) OF THIS SECTION BY A HEALTH-CARE PROVIDER AND THE EXAMINING HEALTH-CARE PROVIDER DETERMINES THAT NO EMERGENCY MEDICAL CONDITION EXISTS AND RECORDS THE DETERMINATION IN THE PATIENT'S MEDICAL RECORD;

(b) THE PATIENT IS PROVIDED AN APPROPRIATE MEDICAL SCREENING EXAMINATION AS DESCRIBED IN SUBSECTION (10)(c)(I)(A) OF THIS SECTION BY A HEALTH-CARE PROVIDER AND THE EXAMINING HEALTH-CARE PROVIDER DETERMINES THAT AN EMERGENCY MEDICAL CONDITION EXISTS AND THE PATIENT IS APPROPRIATELY TRANSFERRED OR DISCHARGED PURSUANT TO SUBSECTION (6) OR (7) OF THIS SECTION; OR

(c) THE PATIENT IS PROVIDED AN APPROPRIATE MEDICAL SCREENING EXAMINATION AS DESCRIBED IN SUBSECTION (10)(c)(I)(A) OF THIS SECTION BY A HEALTH-CARE PROVIDER AND THE EXAMINING HEALTH-CARE PROVIDER DETERMINES THAT AN EMERGENCY MEDICAL CONDITION EXISTS AND THE PATIENT IS ADMITTED IN GOOD FAITH TO THE FACILITY AS AN INPATIENT FOR FURTHER STABILIZING TREATMENT.

(9) **Investigation and penalty.** (a) THE DEPARTMENT MAY

INVESTIGATE A FACILITY THAT NEGLIGENTLY VIOLATES THIS SECTION PURSUANT TO SECTION 25-1.5-103 (1)(a).

(b) (I) A PHYSICIAN WHO NEGLIGENTLY VIOLATES THIS SECTION ENGAGES IN UNPROFESSIONAL CONDUCT AND IS SUBJECT TO DISCIPLINE PURSUANT TO SECTION 12-240-121.

(II) THIS SUBSECTION (9)(b) APPLIES TO A PHYSICIAN WHO:

(A) SIGNS A CERTIFICATION PURSUANT TO SUBSECTION (6)(f)(II) OF THIS SECTION THAT STATES THE MEDICAL BENEFITS REASONABLY EXPECTED FROM APPROPRIATE MEDICAL TREATMENT AT ANOTHER FACILITY OUTWEIGH THE INCREASED RISKS TO THE PATIENT FROM BEING TRANSFERRED IF THE PHYSICIAN KNEW OR SHOULD HAVE KNOWN THE BENEFITS DID NOT OUTWEIGH THE RISKS;

(B) MISREPRESENTS A PATIENT'S CONDITION OR OTHER INFORMATION, INCLUDING A FACILITY'S OBLIGATIONS PURSUANT TO THIS SECTION; OR

(C) IS THE ON-CALL PHYSICIAN AND FAILS OR REFUSES TO PRESENT TO THE FACILITY WITHIN A REASONABLE PERIOD OF TIME PURSUANT TO SUBSECTION (10)(c)(I)(B) OF THIS SECTION AFTER BEING CONTACTED.

(c) IF A CIVIL MONETARY PENALTY IS IMPOSED PURSUANT TO SECTION 25-1.5-103 OR 12-240-121, THE MAXIMUM CIVIL MONETARY PENALTY AMOUNT MUST BE REDUCED BY ANY CIVIL MONETARY PENALTY IMPOSED PURSUANT TO THE FEDERAL "EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT", 42 U.S.C. 1395dd (d) FOR THE SAME VIOLATION.

(10) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ABORTION" HAS THE SAME MEANING AS SET FORTH IN SECTION

25-6-402.

(b) (I) "EMERGENCY MEDICAL CONDITION" MEANS:

(A) A MEDICAL CONDITION MANIFESTING ITSELF BY ACUTE SIGNS AND SYMPTOMS OF SUFFICIENT SEVERITY, INCLUDING SEVERE PAIN, SUCH THAT THE ABSENCE OF IMMEDIATE MEDICAL ATTENTION COULD REASONABLY BE EXPECTED TO RESULT IN PLACING THE HEALTH OF THE PERSON IN SERIOUS JEOPARDY, SERIOUS IMPAIRMENT OF BODILY FUNCTIONS, OR SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART; OR

(B) WITH RESPECT TO A PREGNANT PERSON WHO IS HAVING CONTRACTIONS, THERE IS INADEQUATE TIME TO EFFECTUATE A SAFE TRANSFER TO ANOTHER FACILITY BEFORE DELIVERY, OR THAT TRANSFERRING THE PATIENT MAY POSE A THREAT TO THE HEALTH OR SAFETY OF THE PATIENT.

(II) "EMERGENCY MEDICAL CONDITION" INCLUDES, BUT IS NOT LIMITED TO, LABOR, ECTOPIC PREGNANCY, A COMPLICATION RESULTING FROM PREGNANCY LOSS, AND EMERGENT HYPERTENSIVE DISORDERS WHEN THE ABSENCE OF IMMEDIATE MEDICAL ATTENTION COULD REASONABLY BE EXPECTED TO RESULT IN PLACING THE HEALTH OF THE PATIENT IN SERIOUS JEOPARDY, SERIOUS IMPAIRMENT TO BODILY FUNCTIONS, OR SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART.

(c) (I) "EMERGENCY MEDICAL SERVICES" MEANS:

(A) AN APPROPRIATE MEDICAL SCREENING EXAMINATION WITHIN THE CAPABILITY OF THE FACILITY, INCLUDING ANCILLARY SERVICES ROUTINELY AVAILABLE TO THE FACILITY, TO DETERMINE IF AN EMERGENCY MEDICAL CONDITION EXISTS; AND

(B) WHEN THE EXAMINING HEALTH-CARE PROVIDER DETERMINES

THAT AN EMERGENCY MEDICAL CONDITION EXISTS, THE MEDICAL TREATMENT NECESSARY TO STABILIZE THE EMERGENCY MEDICAL CONDITION THAT IS WITHIN THE CAPABILITY OF THE FACILITY. IF THE PATIENT'S EMERGENCY MEDICAL CONDITION REQUIRES THE SERVICES OF AN ON-CALL PHYSICIAN, THE EXAMINING HEALTH-CARE PROVIDER SHALL ATTEMPT TO CONTACT THE ON-CALL PHYSICIAN.

(II) "EMERGENCY MEDICAL SERVICES" INCLUDES PROVIDING AN ABORTION OR STERILIZATION PROCEDURES WHEN A PATIENT HAS AN EMERGENCY MEDICAL CONDITION AND AN ABORTION OR STERILIZATION PROCEDURES ARE NECESSARY TO STABILIZE THE PATIENT AND ARE WITHIN THE CAPABILITY AND CAPACITY OF THE FACILITY.

(d) "FACILITY" MEANS A HOSPITAL LICENSED PURSUANT TO SECTION 25-3-101; A FREESTANDING EMERGENCY DEPARTMENT, AS DEFINED IN SECTION 25-1.5-114 (5)(b); OR A COMMUNITY CLINIC, AS DEFINED IN SECTION 25-3-101 (2)(a)(I)(B).

(e) "LABOR" MEANS THE PROCESS OF CHILDBIRTH BEGINNING WITH THE LATENT OR EARLY PHASE OF LABOR AND CONTINUING THROUGH THE DELIVERY OF THE PLACENTA. A PERSON EXPERIENCING CONTRACTIONS IS IN LABOR UNLESS A PHYSICIAN, CERTIFIED NURSE MIDWIFE, OR OTHER QUALIFIED MEDICAL PERSONNEL, ACTING WITHIN THE PERSON'S SCOPE OF PRACTICE AS DEFINED IN THE FACILITY'S MEDICAL STAFF BYLAWS AND STATE LAW, CERTIFIES AFTER A REASONABLE TIME OF OBSERVATION THAT THE PERSON IS IN FALSE LABOR.

(f) "STABILIZE" MEANS TO PROVIDE MEDICAL TREATMENT THAT MAY BE NECESSARY TO ENSURE, WITHIN REASONABLE MEDICAL PROBABILITY, THAT NO MATERIAL DETERIORATION OF THE PATIENT'S CONDITION, SERIOUS IMPAIRMENT OF BODILY FUNCTIONS OR DYSFUNCTION

OF ANY BODILY ORGAN OR PART, OR A THREAT TO THE PATIENT'S LIFE IS LIKELY TO RESULT FROM OR OCCUR DURING THE TRANSFER OR DISCHARGE OF THE PATIENT.

SECTION 2. In Colorado Revised Statutes, 12-240-121, **add** (1)(jj) as follows:

12-240-121. Unprofessional conduct - definitions. (1) "Unprofessional conduct" as used in this article 240 means:

(jj) NEGLIGENTLY VIOLATING SECTION 25-3-132.

SECTION 3. In Colorado Revised Statutes, 24-31-101, **amend** (1)(i)(XXII) and (1)(i)(XXIII); and **add** (1)(i)(XXIV) as follows:

24-31-101. Powers and duties of attorney general. (1) The attorney general:

(i) May independently initiate and bring civil and criminal actions to enforce state laws, including actions brought pursuant to:

(XXII) Part 14 of article 12 of title 38; ~~and~~

(XXIII) Section 24-34-806; AND

(XXIV) SECTION 25-3-132.

SECTION 4. Severability. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.