LEGAL UPDATES

PUBLISHED: APRIL 24, 2025

Colorado Legislature Proposes Heightened Protections for Healthcare Activity

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The Colorado General Assembly has introduced Senate Bill 25-129, the purpose of which is to provide comprehensive protections for individuals and entities engaged in legally protected healthcare activities, particularly those involving gender-affirming healthcare and reproductive healthcare. The bill establishes legal safeguards against out-of-state investigations, subpoenas, and civil or criminal actions that seek to penalize individuals or providers for participating in or supporting such healthcare activities. It explicitly prohibits Colorado public entities, state-regulated entities, and their employees from cooperating with out-of-state or federal investigations or proceedings that aim to impose liability or sanctions for legally protected healthcare services. The bill also allows individuals targeted by out-of-state actions related to these services to file civil lawsuits in Colorado for damages, injunctive relief, and other remedies within six years of the action.

The bill also introduces specific provisions regarding the confidentiality of healthcare data, particularly for abortion-related services. It prohibits the Colorado Department of Public Health and Environment from collecting or sharing personally identifiable information about patients receiving induced terminations of pregnancy and restricts the use of such data to aggregate statistical analysis for public health purposes. Violations of these confidentiality provisions are classified as data privacy breaches, subject to significant civil penalties. Additionally, the bill modifies prescription labeling requirements for medications like mifepristone and misoprostol, allowing practitioners to list the healthcare practice instead of their own name to enhance privacy protections.

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The bill further establishes penalties for individuals who misuse subpoenas or provide false affirmations to obtain information related to legally protected healthcare activities. It empowers the Colorado Attorney General to enforce these provisions and to intervene in cases where out-of-state entities attempt to enforce judgments or actions against Colorado residents or entities. The bill also includes a severability clause, ensuring that if any part of the legislation is found invalid, the remaining provisions will still stand. Declared necessary for the immediate preservation of public peace, health, and safety, this legislation underscores Colorado's commitment to safeguarding access to gender-affirming and reproductive healthcare against external legal challenges.

Conflict with current administration's executive orders and HIPAA considerations

The current administration's executive orders—notably, EO 14168 and EO 14187—prohibit federal funding for healthcare providers promoting "gender ideology" or offering gender-affirming medical care[1] to individuals under the age of 19. Under the Supremacy Clause of the United States Constitution, federal law generally takes precedence over conflicting state laws. However, the enforcement of the executive order banning federal funds for such healthcare providers is currently stayed nationwide. The ultimate implementation of these measures, including their potential impact on SB 25-129, remains uncertain and will depend on the outcomes of ongoing legal challenges and future federal and state policy developments.

Healthcare providers should exercise caution and carefully review any applicable legal mandates before disclosing or refusing to disclose information related to gender-affirming care. It is essential to ensure compliance with HIPAA regulations, which generally prohibit the disclosure of protected health information without patient authorization, except in limited circumstances explicitly required by law and enforceable in court.

Given the fluid and evolving legal landscape, healthcare providers are strongly advised to closely monitor federal and state developments to remain compliant with applicable laws and regulations.

What this means to you

SB 25-129 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 25-129 will require providers to adapt their practices to comply with new operational and confidentiality requirements, while navigating potential legal and political conflicts with other states.

Contact us

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If you have questions regarding SB 25-129 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, Kristina Abdalla, or your Husch Blackwell attorney.

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[1] The Executive Order refers to "gender affirming care" as synonymous with "chemical and surgical mutilation." Thus, for compliance purposes, the scope of "gender-affirming care" is limited to include the use of puberty blockers, sex hormones, and surgical procedures that attempt to either (1) transform an individual's physical appearance to align with an identity that is different than the individual's sex or (2) change or remove an individual's sexual organs to "minimize or destroy their natural biological functions." Exec. Order No. 14187, 90 FR 8771.

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