SENATE BILL REPORT
SB 5557

As of February 7, 2025

Title: An act relating to codifying emergency rules to protect the right of a pregnant person to access treatment for emergency medical conditions in hospital emergency departments.

Brief Description: Codifying emergency rules to protect the right of a pregnant person to access treatment for emergency medical conditions in hospital emergency departments.

Sponsors: Senators Krishnadasan, Dhingra, Kauffman, Slatter, Wilson, C., Saldaña, Orwall, Lovelett, Stanford, Cortes, Frame, Hasegawa, Liias, Nobles, Pedersen, Trudeau and Valdez.

Brief History:
Committee Activity: Health & Long-Term Care: 2/07/25.

Brief Summary of Bill

- Requires hospitals when providing emergency services to comply with federal code and its implementing regulations related to the Examination and Treatment for Emergency Medical Conditions and Women in Labor as the code existed on January 1, 2025.
- Permits a pregnant person's right to exercise informed consent in prioritizing the person's health and safety when receiving treatment for emergency medical conditions in a hospital emergency department.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Julie Tran (786-7283)

Background: As of January 2025, 42 U.S.C §1395dd (federal regulations) on the Examination and Treatment for Emergency Medical Conditions and Women in Labor is detailed below.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Medical Screening Requirement. In the case of a hospital that has a hospital emergency department (ED), if any individual comes to the ED and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's ED, including ancillary services routinely available to the ED, to determine whether or not an emergency medical condition exists.

Necessary Stabilizing Treatment for Emergency Medical Conditions and Labor. If any individual comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either:

- within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition; or
- transfer of the individual to another medical facility in accordance with the transfer requirements.

A hospital is deemed to meet the requirement for providing further medical examination and such treatment to stabilize the medical condition with respect to an individual if the hospital offers the individual the further medical examination and treatment and informs the individual, or a person acting on the individual's behalf, refuses to consent to the examination and treatment. The hospital must take all reasonable steps to secure the individual's, or person acting on the individual's behalf, written informed consent to refuse such examination and treatment.

A hospital is deemed to meet the requirement of necessary stabilizing treatment for emergency medical conditions and labor with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with the transfer requirements and informs the individual, or a person acting on the individual's behalf, of the risks and benefits to the individual of such transfer, but the individual, or a person acting on the individual's behalf, refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's, or person acting on the individual's behalf, written informed consent to refuse such transfer.

Restricting Transfers Until Individual Stabilized. If an individual at a hospital has an emergency medical condition which has not been stabilized, as defined below, the hospital may not transfer the individual unless the transfer is an appropriate transfer to that facility and one of the three following clauses are met:

- clause one—the individual, or a legally responsible person acting on the individual's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility;
- clause two—a physician has signed a certification that based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from

effecting the transfer; or

- clause three—if a physician is not physically present in the ED at the time an individual is transferred, a qualified medical person has signed a certification described in clause two after a physician, in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification.

A certification described in clause two or three shall include a summary of the risks and benefits upon which the certification is based.

An appropriate transfer to a medical facility is a transfer:

- in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;
- in which the receiving facility: has available space and qualified personnel for the treatment of the individual, and has agreed to accept transfer of the individual and to provide appropriate medical treatment;
- in which the transferring hospital sends to the receiving facility all medical records, or copies thereof, related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification, or copy thereof, and the name and address of any on-call physician who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;
- in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and
- which meets such other requirements as the secretary of Health and Human Services (HHS) may find necessary in the interest of the health and safety of individuals transferred.

Enforcement—Civil Penalties. *Subparagraph A.* A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000—or not more than $25,000 in the case of a hospital with less than 100 beds—for each such violation.

Subparagraph B. Subject to Subparagraph C, any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, including a physician who:

- signs a certification under subsection (c)(1)(A) that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not

outweigh the risks; or

- misrepresents an individual's condition or other information, including a hospital's obligations under this section, is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is gross and flagrant or is repeated, to exclusion from participation in state health care programs.

Subparagraph C. If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under Subparagraph B. However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.

Enforcement—Civil Enforcement. *Personal Harm.* Any individual who suffers personal harm as a direct result of a participating hospital's violation of any of these requirements may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the state in which the hospital is located, and such equitable relief as is appropriate.

Financial Loss to Other Medical Facility. Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of any of these requirement may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the state in which the hospital is located, and such equitable relief as is appropriate.

Limitations on Actions. No action may be brought more than two years after the date of the violation with respect to which the action is brought.

Enforcement—Consultation with Quality Improvement Organizations. In considering allegations of violations of these federal requirements in imposing sanctions or in terminating a hospital's participation, the HHS secretary shall request the appropriate quality improvement organization to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings.

Except in the case in which a delay would jeopardize the individual's health or safety, the HHS secretary shall request such a review before effecting a sanction and shall provide a period of at least 60 days for such review.

Except in the case in which a delay would jeopardize the individual's health or safety, the HHS secretary shall also request such a review before making a compliance determination as part of the process of terminating a hospital's participation for violations related to the

appropriateness of a medical screening examination, stabilizing treatment, or an appropriate transfer, and shall provide a period of five days for such review.

The HHS secretary shall provide a copy of the organization's report to the hospital or physician consistent with confidentiality requirements imposed on the organization.

Definitions. Emergency medical condition means:

- a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
    1. placing the health of the individual or, with respect to a pregnant woman, the health of the woman or the unborn child in serious jeopardy;
    2. serious impairment to bodily functions; or
    3. serious dysfunction of any bodily organ or part; or
- with respect to a pregnant woman who is having contractions:
    1. that there is inadequate time to effect a safe transfer to another hospital before delivery; or
    2. that transfer may pose a threat to the health or safety of the woman or the unborn child.

Participating hospital means a hospital that has entered into a Medicare provider agreement.

To stabilize means with respect to an emergency medical condition, as described in Subparagraph A, to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition, as described in Subparagraph B, to deliver, including the placenta.

Transfer means the movement, including the discharge, of an individual outside a hospital's facilities at the direction of any person employed by—or affiliated or associated, directly or indirectly, with—the hospital, but does not include such a movement of an individual who: has been declared dead; or leaves the facility without the permission of any such person.

The term hospital includes a critical access hospital and a rural emergency hospital.

Nondiscrimination. A participating hospital that has specialized capabilities or facilities—such as burn units, shock-trauma units, neonatal intensive care units, or with respect to rural areas regional referral centers as identified by the HHS secretary in regulation—shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

No Delay in Examination or Treatment. A participating hospital may not delay provision of

an appropriate medical screening examination or further medical examination and treatment in order to inquire about the individual's method of payment or insurance status.

Whistleblower Protections. A participating hospital may not penalize or take adverse action against a qualified medical person or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of these requirements.

Summary of Bill: When providing emergency services, hospitals must comply with the federal regulations as they existed on January 1, 2025, and that, for any references to emergency medical condition and unborn child has the meaning as follows for whenever they are referred to in the federal regulations and its implementing regulations:

- emergency medical condition has the same meaning as defined in this bill; and
- unborn child must mean embryo or fetus.

Hospitals must comply with any requirements in state statute or any other law that provide greater access to care or are otherwise more favorable to patients than the requirements in federal regulations and its implementing regulations as they existed on January 1, 2025.

When providing emergency services, hospitals must provide treatment to a pregnant person who comes to the hospital with an emergency condition that is consistent with the applicable standard of care for such condition or, if authorized by law, transfer the patient to another hospital capable of providing the treatment, with the patient's informed consent.

If the pregnancy's termination is the treatment consistent with the applicable standard of care, the hospital must provide such treatment following and as promptly as dictated by the standard of care or, if authorized by law, transfer the patient to another hospital capable of providing the treatment, with the patient's informed consent.

Neither the pregnancy's continuation nor any embryo or fetus' health must be a basis for withholding care from the pregnant person, and neither the pregnancy's continuation nor any embryo or fetus' health must be prioritized over the pregnant person's health or safety absent the pregnant person's informed consent

No hospitals which maintains an ED shall transfer a patient with an emergency medical condition or who is in active labor, in such circumstances and as promptly as dictated by the standard of care, unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital.

Emergency medical condition means a condition of such severity that the absence of immediate medical attention could result in:

- placing an individual's health or, with respect to a pregnant person, the pregnant person's or their embryo or fetus' health in serious jeopardy;

- serious impairment to bodily functions; or
- serious dysfunction of a bodily organ or part.

Emergency medical condition also means with respect to a pregnant person who is having contractions that:

- there is inadequate time to affect a safe transfer to another hospital before delivery; or
- transfer may pose a threat to the pregnant person's or their embryo or fetus's health or safety.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Current law allows pregnant patients to seek medical care without interference. Hospitals in the state do currently comply with the federal Emergency Medical Treatment & Labor Act and emergency care requirements. The federal safeguards are under threat nationwide and it is putting people's lives and rights at risk. This bill codifies long-standing federal standards into state law and is a common sense piece of legislation. It guarantees that everyone will have the best and appropriate care when in Washington State and that the health choice of the patient is made not by the hospital but by the patient in consultation with her provider. This legislation provides the state with clear and comprehensive standards guiding emergency medical care for pregnant patients. There are some suggested amendments.

CON: The bill is designed to force hospitals to perform abortions regardless of their religious or moral opposition to the procedure. Hospitals should not be required to perform abortion when a woman's life is not at stake. This bill promotes abortion in all cases and strips all other institutions and individuals of their own rights of choice and conscience.

Persons Testifying: PRO: Senator Deborah Krishnadasan, Prime Sponsor; Nicole Kern, Planned Parenthood Alliance Advocates; Zosia Stanley, Washington State Hospital Association; Sarah Goh; Molly Voris, Washington State Women's Commission; Dr. Stephanie Sola; Dr. Shannon Bailey, American College of Obstetricians and Gynecologists (ACOG); Lacy Fehrenbach, Washington State Department of Health; Nancy Sapiro, American College of Obstetricians and Gynecologists.

CON: Richard Grunewald; Theresa Schrempp; Beth Daranciang.

Persons Signed In To Testify But Not Testifying: No one.