ISSUE BRIEF

House Bills 19-1025, 19-1041, 19-1248, 19-1289
Senate Bills 19-049, 19-065, 19-085

2019 Regulatory Changes Impacting Hospitals as Employers

Background

As an industry, health care is increasingly dependent on the legal and regulatory environments of local, state and federal jurisdictions. The 2019 legislative session brought significant new regulatory requirements for the industry, particularly impacting hospitals as employers. CHA was able to amend and mitigate some of the negative impacts, and the Association was also successful in passing legislation to create and safeguard a regulatory and legal environment in which hospitals and health care providers can thrive.

HB 19-1025: Limits on Job Applicant Criminal History Inquiries

HB 19-1025, often referred to as "ban the box," prohibits employers from stating in a job posting or on any job application form that a person with a criminal history may not apply and also prohibits employers from inquiring about applicants' criminal history on an initial application.

What You Need to Know

Under the law and beginning Sept. 1, 2019, for employers with 11 or more employees, and beginning Sept. 1, 2021, for all employers, employers shall not:

- State in an employment advertisement that a person with a criminal history may not apply for a position;
- State on any job application form, including electronic applications, that a person with a criminal history may not apply for a position; or
- Inquire into, or require disclosure of, an applicant's criminal history on an initial written or electronic application.

This bill does not apply if an employer is advertising a position that federal, state or local law or regulation prohibits individuals with specific criminal convictions from holding. Additionally, employers may continue to obtain a criminal background report during any stage of the hiring process. Penalties for employers who violate this law include a warning for the first violation, a $1,000 penalty for the second violation and a $2,500 penalty for subsequent violations, and the Colorado Department of Labor and Employment will adopt rules regarding procedures for handling complaints.

Additional Resources

- HB 19-1025: Final Bill and Fiscal Note
- HB 19-1025 takes effect Sept. 1, 2019

This guidance does not constitute legal advice to CHA members or others. Each hospital should consult with legal counsel on these matters and have legal counsel review any policies proposed as a result of this guidance.

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HB 19-1041: Require Surgical Smoke Protection Policies

HB 19-1041 requires hospitals and ambulatory surgical centers that perform surgeries to adopt and implement a policy to use a surgical smoke evacuation system during any planned procedure using energy-generating surgical medical devices that produce a gaseous byproduct known as surgical smoke.

What You Need to Know

- Surgical smoke evacuation policies must be adopted and implemented on or before May 1, 2021.
- Surgical smoke evacuation systems must be used during all planned procedures and are defined as "equipment designed to capture and neutralize surgical smoke at the point of origin and before the surgical smoke contacts the eyes or the respiratory tract of occupants of a room."
- The Colorado Department of Public Health and Environment (CDHPE) will monitor compliance as part of its existing facility survey process.

HB 19-1248: Lobbyist Transparency Act

HB 19-1248 clarifies the definition of "client" to include a person, organization or entity that employs or retains the professional services of one or more lobbyists and requires that lobbyists provide additional disclosure statements to the Secretary of State when the General Assembly is in regular or special session.

What You Need to Know

On or after Sept. 1, 2019, new disclosure statements must be filed electronically within 48 hours after a lobbyist:

- Agrees to lobby on new legislation for either an existing or a new client; or
- Takes a new position on an existing bill or new legislation for either an existing client or a new client.

HB 19-1289: Consumer Protection Act

HB 19-1289 adds "recklessly" as a culpable mental state for violating the Colorado Consumer Protection Act (CCPA), raises the potential penalty cap for CCPA violations and prohibits certain terms from contracts.

What You Need to Know

- Under this bill, "recklessly" means a reckless disregard for the truth or falsity of a statement or advertisement.
- Potential penalty caps for CCPA violations are raised from $2,000 to $20,000 and, for violations committed against an elderly person, from $10,000 to $50,000.
- The following non-exhaustive list of terms are prohibited in standard form contracts:
  - Requirement that consumers or employees adjudicate a claim arising in a location that is more than 100 miles from where that party resides;
  - Requirement that a party to the contract be allowed to unilaterally select the individual or entity who will resolve disputes between the parties; or
  - A term that attempts to award or limit costs or fees inconsistent with Colorado law or controlling case law.

Additional Resources

- HB 19-1041: Final Bill and Fiscal Note
- HB 19-1041 takes effect on May 1, 2021
- HB 19-1248: Final Bill and Fiscal Note
- HB 19-1248 takes effect on Sept. 1, 2019
- HB 19-1298: Final Bill and Fiscal Note
- HB 19-1298 took effect March 23, 2019

For questions or more information, contact Amber Burkhart, CHA public policy manager, at 503.333.7973.

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SB 19-049: Statute of Limitation Failure Report Child Abuse

A number of professionals are required to report child abuse or neglect including, but not limited to, physicians, dentists, podiatrists, mental health professionals, clergy members and public school teachers. In the last three fiscal years, seven individuals have been convicted and sentenced for failing to report child abuse. SB 19-049 increases the statute of limitations for failure to report child abuse.

What You Need to Know

- The law increases the statute of limitations for mandatory reporters who fail to report child abuse from 18 months to three years.
- Applies when a mandatory reporter has a reasonable cause to know or suspect that a child has been subject to unlawful sexual behavior or who has observed the child being subject to circumstances or conditions that would reasonably result in unlawful sexual behavior.
- This bill does not affect the statute of limitations for failure to report other types of child abuse or neglect.

SB 19-065: Peer Assistance Emergency Medical Service Provider

SB 19-065 directs the Board of Health at CDPHE to designate one or more peer health assistance programs to provide assistance to emergency medical service (EMS) providers dealing with physical, emotional or psychological conditions that are affecting their ability to work.

What You Need to Know

- The peer health assistance programs must be available to all EMS providers who do not have access to an employee assistance program, and the program must provide counseling and support to EMS providers and evaluate the extent of physical, emotional and psychological conditions and, as needed, refer EMS providers for treatment and monitor the status of that treatment.
- All documents, records or reports generated in the provision of services are confidential and not subject to subpoena and shall not be used as evidence in any proceeding, other than disciplinary action by CDPHE.
- CDPHE will conduct a stakeholder process to develop rules for the program. Rules will address various components of implementation including referral protocols (including both self-referral and employer referral), determining consequences for failure to complete the program and future fee adjustments based on program utilization.

Additional Resources

- SB 19-049: Final Bill and Fiscal Note
- SB 19-049 took effect on March 28, 2019
- SB 19-065: Final Bill and Fiscal Note
- SB 19-065 takes effect Aug. 2, 2019

For questions or more information, contact Amber Burkhart, CHA public policy manager, at 503.333.7973.

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SB 19-085: Equal Pay for Equal Work Act

SB 19-085 modifies existing sex-based wage discrimination law and creates new provisions regarding transparency in wages and promotions.

What You Need to Know

- The bill removes the authority of the Colorado Department of Labor and Employment (CDLE) to enforce sex-based wage discrimination complaints and allows a person to commence a civil action in district court within two years of a violation. A wage differential is allowed if the employer can demonstrate the differential is based on seniority or merit or a system that measures earnings by quantity or quality of production.
- Employers are prohibited from seeking the wage history of a prospective employee or discriminating or retaliating against a prospective employee for failing to disclose wage history.
- Employers are required to make reasonable efforts to notify all current employees of promotion opportunities on the same day and prior to making a promotion decision.
- Employers are required to disclose an hourly wage rate or range for all job postings.
- CDLE has the authority to enforce the wage and promotion transparency provisions, and employers are subject to penalties of $500 to $10,000 per violation.
- If an employee who brings suit for wage discrimination also demonstrates violation of the wage and promotion transparency provisions, the court may order appropriate relief, including a presumption that records not kept by the employer can be considered evidence that the violation was not made in good faith.
- The bill takes effect Jan. 1, 2021, and applies to violations that occur on or after the effective date.

Additional Resources

- SB 19-085: Final Bill and Fiscal Note
- SB 19-085 takes effect Jan. 1, 2021

For questions or more information, contact Amber Burkhart, CHA public policy manager, at 503.333.7973.

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