

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 10-0468.03 Kristen Forrestal

HOUSE BILL 10-1283

HOUSE SPONSORSHIP

Riesberg, Balmer, Curry, Frangas, Kefalas, Massey, McNulty, Priola, Rice, Roberts,
Schafer S., Soper, Todd, Vaad

SENATE SPONSORSHIP

Sandoval, Hodge, Keller, Penry, Spence, White, Williams

House Committees

Health and Human Services
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASING PATIENT SAFETY OUTSIDE OF THE**
102 **LITIGATION PROCESS, AND, IN CONNECTION THEREWITH,**
103 **REQUIRING PHYSICIANS TO ENGAGE IN ONGOING PROFESSIONAL**
104 **DEVELOPMENT, FACILITATING INFORMATION SHARING ABOUT**
105 **HEALTH CARE WORKERS, AND REQUIRING DEMONSTRATION**
106 **PROJECT DATA ABOUT REDRESS FOR ADVERSE HEALTH CARE**
107 **OUTCOMES.**

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

http://www.leg.state.co.us/bills/summaries.)

Section 1 of the bill requires physicians to attest to a plan for ongoing professional development to obtain licensure.

Section 2 requires physicians to document participation in ongoing professional development activities to maintain licensure. It also provides protections for records of the activities.

Section 3 defines failure to comply with ongoing professional development as unprofessional conduct.

Section 4 provides an exception to the restriction on mandating continuing medical education as necessary to comply with ongoing professional development requirements.

Section 5 creates the "Patient Safety Act". The act requires health care providers to verify employment history of health care worker applicants. The section also requires employers to provide information to prospective employers about health care worker impairment, patient abuse, and violent crimes.

Section 5 allows for protected communications with patients and other interested persons as part of health care quality assessments. It also allows for sharing of health care information among certain health care providers without waiving the confidentiality or privilege of the information. This section also requires the health and human services committees to identify statewide professional associations to conduct, or compile data on, demonstration projects exploring alternatives to litigation for redress of adverse medical events.

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1.** Part 1 of article 36 of title 12,
3 Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW
4 SECTION to read:
5 **12-36-114.5. Continuing professional development - rules.** ON
6 OR BEFORE THE 2013 PHYSICIAN LICENSURE RENEWAL CYCLE, THE BOARD
7 SHALL PROMULGATE AND IMPLEMENT BY RULE, AN ONGOING
8 PROFESSIONAL DEVELOPMENT PROGRAM THAT SHALL BE DEVELOPED IN
9 CONJUNCTION WITH AND IN AGREEMENT WITH STATEWIDE PROFESSIONAL
10 ASSOCIATIONS THAT REPRESENT PHYSICIANS AND PHYSICIAN ASSISTANTS.
11 **SECTION 2.** Title 25, Colorado Revised Statutes, is amended BY

1 THE ADDITION OF A NEW ARTICLE to read:

2 **ARTICLE 43**

3 **Patient Safety Act**

4 **25-43-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
5 BE CITED AS THE "PATIENT SAFETY ACT".

6 **25-43-102. Legislative declaration.** THE GENERAL ASSEMBLY
7 FINDS, DETERMINES, AND DECLARES THAT ENHANCING THE ABILITY OF THE
8 HEALTH CARE SYSTEM TO PROVIDE SAFE, HIGH-QUALITY CARE AND
9 MINIMIZE THE POTENTIAL FOR ADVERSE OUTCOMES IS A COMPELLING
10 PUBLIC INTEREST. THE GENERAL ASSEMBLY FURTHER FINDS THAT
11 LEGISLATION CONCERNING ADVERSE MEDICAL EVENTS SHOULD MAXIMIZE
12 THE HEALTH CARE SYSTEM'S ABILITY TO ACHIEVE THE FOLLOWING GOALS:
13 TO TREAT EACH ADVERSE EVENT AS AN OPPORTUNITY FOR LEARNING AND
14 IMPROVEMENT TO MINIMIZE THE POTENTIAL FOR RECURRENCE; TO MAKE
15 HEALTH CARE PROVIDERS ACCOUNTABLE FOR THEIR PROFESSIONAL
16 CONDUCT; AND TO PROVIDE FAIR, EFFICIENT, AND TIMELY REDRESS TO
17 PATIENTS. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
18 THE LEGAL ENVIRONMENT SHOULD PROMOTE THE GOALS OF THIS ARTICLE,
19 INCLUDING ENCOURAGING OPEN COMMUNICATION BETWEEN PHYSICIANS
20 AND THEIR PATIENTS WITHOUT FEAR OF LITIGATION.

21 **25-43-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
22 CONTEXT OTHERWISE REQUIRES:

23 (1) "HEALTH CARE PROVIDER" MEANS A HEALTH CARE FACILITY OR
24 A NURSING HOME OR NURSING CARE FACILITY LICENSED UNDER SECTION
25 25-3-101; A HOME FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AS
26 DEFINED IN SECTION 27-10.5-102, C.R.S.; AN ASSISTED LIVING RESIDENCE
27 LICENSED PURSUANT TO SECTION 25-27-105; A RESIDENTIAL TREATMENT

1 FACILITY FOR MENTAL ILLNESS APPROVED PURSUANT TO SECTION
2 25-1-306; AN INDIVIDUAL AUTHORIZED TO PRACTICE SOME COMPONENT OF
3 THE HEALING ARTS BY LICENSE, CERTIFICATE, OR REGISTRATION; AND A
4 PROFESSIONAL CORPORATION OR OTHER ENTITY THAT PROVIDES OR
5 DELIVERS HEALTH CARE SERVICES AS PERMITTED BY THE LAWS OF THIS
6 STATE. "HEALTH CARE PROVIDER" INCLUDES GOVERNMENTAL ENTITIES
7 AND THE EMPLOYEES OF SUCH ENTITIES.

8 (2) "HEALTH CARE WORKER" MEANS AN INDIVIDUAL WHO
9 PROVIDES SERVICES FOR A HEALTH CARE PROVIDER AND WHO MAY HAVE
10 ACCESS TO PATIENTS, WHETHER OR NOT SUCH PERSON PROVIDES DIRECT
11 PATIENT CARE.

12 (3) "INTERESTED PERSON" MEANS A SPOUSE, DOMESTIC PARTNER,
13 GRANDPARENT, ADULT CHILD, SIBLING, OR GRANDCHILD OF THE PATIENT.

14 **25-43-104. Health care workers - verification.** (1) A HEALTH
15 CARE PROVIDER OR AN ENTITY THAT PROVIDES HEALTH CARE WORKERS TO
16 PERFORM SERVICES FOR A HEALTH CARE PROVIDER SHALL MAKE
17 REASONABLE EFFORTS TO VERIFY THE EMPLOYMENT HISTORY FOR THE
18 PREVIOUS SEVEN YEARS FOR, AND VERIFY THE EMPLOYMENT REFERENCES
19 OF, EACH HEALTH CARE WORKER APPLICANT. ANY LAPSE IN EMPLOYMENT
20 SHALL BE SUBJECT TO REASONABLE VERIFICATION. EFFORTS TO VERIFY
21 EMPLOYMENT SHALL BE PRESUMED TO BE REASONABLE IF THE
22 VERIFICATION COMMUNICATION SUBMITTED TO THE PREVIOUS EMPLOYERS
23 HAS IDENTIFIED THE APPLICANT, INCLUDES A REQUEST FOR VERIFICATION
24 OF DATES OF EMPLOYMENT, REQUESTS THE POSITION HELD, AND MAKES
25 EXPRESS INQUIRIES AS TO THE PREVIOUS EMPLOYERS' POSSESSION OF THE
26 INFORMATION DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (2) OF THIS
27 SECTION.

1 (2) (a) (I) UPON THE REQUEST OF A HEALTH CARE PROVIDER OR AN
2 ENTITY THAT PROVIDES HEALTH CARE WORKERS TO PERFORM SERVICES
3 FOR A HEALTH CARE PROVIDER, FOR THE PURPOSE OF VERIFICATION
4 PURSUANT TO SUBSECTION (1) OF THIS SECTION, AN EMPLOYER OR
5 CONTRACTING ENTITY SHALL DISCLOSE INFORMATION ██████████ IN ITS
6 POSSESSION ABOUT WORK PERFORMANCE AFFECTED BY DRUG OR ALCOHOL
7 USE, ANY VIOLATIONS OF ANY DRUG AND ALCOHOL POLICY, DRUG
8 DIVERSION, DRUG TAMPERING, PATIENT ABUSE, OR CRIMES OF VIOLENCE,
9 AS LISTED IN SECTION 18-1.3-406 (2) (a), C.R.S., COMMITTED BY AN
10 APPLICANT.

11 (II) AS SOON AS A HEALTH CARE PROVIDER COMES INTO
12 POSSESSION OF INFORMATION ABOUT WORK PERFORMANCE AFFECTED BY
13 DRUG OR ALCOHOL USE, ANY VIOLATIONS OF ANY DRUG AND ALCOHOL
14 POLICY, DRUG DIVERSION, DRUG TAMPERING, PATIENT ABUSE, OR CRIMES
15 OF VIOLENCE, AS LISTED IN SECTION 18-1.3-406 (2) (a), C.R.S.,
16 COMMITTED BY A HEALTH CARE WORKER IN HIS OR HER EMPLOY, THE
17 HEALTH CARE PROVIDER SHALL DISCLOSE SUCH INFORMATION TO ANY
18 OTHER HEALTH CARE PROVIDERS FOR WHOM THE EMPLOYEE IS KNOWN TO
19 PROVIDE SERVICES.

20 (b) A DISCLOSURE IN ACCORDANCE WITH PARAGRAPH (a) OF THIS
21 SUBSECTION (2) DOES NOT CONSTITUTE A VIOLATION OF THE PROHIBITION
22 AGAINST BLACKLISTING PURSUANT TO SECTIONS 8-2-110 AND 8-2-111,
23 C.R.S., AN UNFAIR LABOR PRACTICE IN VIOLATION OF SECTION 8-3-108,
24 C.R.S., OR A DISCIPLINARY ACTION PURSUANT TO SECTION 8-2-123, C.R.S.

25 (c) IN ADDITION TO THE PROTECTIONS PROVIDED IN SECTION
26 8-2-114 (3), C.R.S., AN EMPLOYER OR CONTRACTING ENTITY AND ANY
27 OFFICER, DIRECTOR, AGENT, OR EMPLOYEE THEREOF WHO DISCLOSES

1 INFORMATION IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION
2 (2) SHALL BE IMMUNE FROM ANY ACTION IN TORT OR CONTRACT AND
3 SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE
4 DISCLOSURE REGARDLESS OF THE NATURE OF THE CLAIM IF THE
5 DISCLOSURE WAS OBJECTIVELY REASONABLE. THE DISCLOSURE SHALL BE
6 PRESUMED TO HAVE BEEN OBJECTIVELY REASONABLE UNLESS IT IS SHOWN
7 BY A PREPONDERANCE OF THE EVIDENCE THAT THE EMPLOYER OR
8 CONTRACTING ENTITY, OFFICER, DIRECTOR, OR EMPLOYEE INTENTIONALLY
9 OR RECKLESSLY DISCLOSED FALSE INFORMATION.

10 (3) A HEALTH CARE PROVIDER OR AN ENTITY THAT PROVIDES
11 HEALTH CARE WORKERS TO PERFORM SERVICES FOR A HEALTH CARE
12 PROVIDER SHALL INFORM EACH APPLICANT OF THE DISCLOSURES OF
13 INFORMATION REQUIRED BY THIS SECTION.

14 **25-43-105. Patient involvement in quality process.** (1) AS
15 PART OF AN ASSESSMENT OF CARE, A PHYSICIAN WHO IS DIRECTLY
16 INVOLVED IN THE CARE OR THE PHYSICIAN'S AUTHORIZED
17 REPRESENTATIVE MAY, BUT SHALL NOT BE REQUIRED TO, GATHER
18 INFORMATION FROM, MEET WITH, OR PROVIDE INFORMATION TO PATIENTS
19 OR INTERESTED PERSONS. THIS MAY INCLUDE THE PROVISION OF WRITTEN
20 SUMMARIES OR HOLDING MEETINGS TO DISCUSS FINDINGS OF
21 ASSESSMENTS.

22 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION,
23 INFORMATION THAT ORIGINATES FROM PROFESSIONAL REVIEW
24 PROCEEDINGS CONDUCTED PURSUANT TO PART 1 OF ARTICLE 36.5 OF TITLE
25 12, C.R.S., SHALL BE DISCLOSED TO A PATIENT OR INTERESTED PERSON
26 ONLY IF THE REVIEWING ENTITY AND THE PHYSICIAN WHO IS THE SUBJECT
27 OF THE REVIEW EXPRESSLY AGREE TO THE DISCLOSURE.

1 (3) NO PERSON INVOLVED IN AN ASSESSMENT OF CARE, INCLUDING
2 PATIENTS, HEALTH CARE PROVIDERS, AND INTERESTED PERSONS OR THEIR
3 AGENTS, SHALL DISCLOSE OR, THROUGH DISCOVERY OR COMPULSORY
4 PROCESS, BE REQUIRED TO DISCLOSE, ANY WRITTEN OR ORAL
5 COMMUNICATIONS OR INFORMATION OBTAINED THROUGH AN ASSESSMENT
6 OF CARE EXCEPT AS NECESSARY FOR A PATIENT'S ONGOING HEALTH CARE.
7 A COMMUNICATION THAT IS DISCLOSED IN VIOLATION OF THIS SUBSECTION
8 (3) SHALL NOT BE ADMITTED INTO EVIDENCE IN ANY JUDICIAL OR
9 ADMINISTRATIVE PROCEEDING.

10 (4) NOTHING IN THIS SECTION SHALL PREVENT THE DISCOVERY OR
11 ADMISSIBILITY OF ANY EVIDENCE THAT IS OTHERWISE DISCOVERABLE,
12 MERELY BECAUSE THE EVIDENCE WAS PRESENTED IN AN ASSESSMENT OF
13 CARE.

14 (5) NOTHING IN THIS SECTION SHALL PREVENT THE GATHERING OF
15 INFORMATION FOR RESEARCH OR EDUCATIONAL PURPOSES, OR FOR THE
16 PURPOSE OF EVALUATING OR MONITORING PEER OR QUALITY
17 ASSESSMENTS, SO LONG AS THE PARTICIPANTS ARE NOT IDENTIFIED OR
18 IDENTIFIABLE.

19 **25-43-106. Exchange and sharing of health information - no**
20 **waiver of privilege.** (1) A HEALTH CARE PROVIDER, PROFESSIONAL
21 REVIEW COMMITTEE, OR GOVERNING BOARD OF A HEALTH CARE PROVIDER
22 MAY DISCLOSE PRIVILEGED AND CONFIDENTIAL INFORMATION IN
23 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE WITHOUT WAIVING
24 THE PRIVILEGE OF CONFIDENTIALITY PROVIDED PURSUANT TO SECTION
25 25-3-109 OR PART 1 OF ARTICLE 36.5 OF TITLE 12, C.R.S., FOR THE
26 PURPOSE OF GRANTING PRIVILEGES OR CREDENTIALS. THIS SUBSECTION
27 (1) DOES NOT REQUIRE THAT ANY INFORMATION BE DISCLOSED IF NOT

1 OTHERWISE REQUIRED BY LAW.

2 (2) INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL
3 PURSUANT TO SECTION 25-3-109 OR PART 1 OF ARTICLE 36.5 OF TITLE 12,
4 C.R.S., MAY BE RELEASED TO AN ORGANIZATION THAT PERFORMS HEALTH
5 CARE FACILITY ACCREDITATION OR CERTIFICATION SERVICES WITHOUT
6 WAIVING ANY PRIVILEGE OF CONFIDENTIALITY UPON AGREEMENT BY THE
7 PHYSICIAN WHO IS THE SUBJECT OF THE REVIEW. INFORMATION RELEASED
8 PURSUANT TO THIS SUBSECTION (2) SHALL BE LIMITED TO THAT WHICH IS
9 REASONABLY NECESSARY AND RELEVANT TO THE ORGANIZATION'S
10 DETERMINATION TO GRANT OR CONTINUE ACCREDITATION OR
11 CERTIFICATION. INFORMATION RELEASED PURSUANT TO THIS SUBSECTION
12 (2) RETAINS PRIVILEGED AND CONFIDENTIAL STATUS, AND THE
13 ACCREDITATION OR CERTIFICATION ORGANIZATION SHALL MAINTAIN THE
14 INFORMATION AS PRIVILEGED AND CONFIDENTIAL. THIS SUBSECTION (2)
15 SHALL NOT BE INTERPRETED TO REQUIRE THAT THE DISCLOSURE OF
16 INFORMATION TAKE PLACE IF NOT OTHERWISE REQUIRED BY LAW.

17 **25-43-107. Demonstration projects for improving patient**
18 **safety and patient redress processes.** (1) THE GENERAL ASSEMBLY
19 FINDS AND DECLARES THAT THERE IS A NEED FOR ADDITIONAL RESEARCH
20 AND DATA ON THE ABILITY OF ALTERNATIVES TO THE EXISTING MEDICAL
21 LIABILITY LITIGATION SYSTEM TO IMPROVE THE POTENTIAL FOR PATIENT
22 SAFETY, PROFESSIONAL ACCOUNTABILITY, AND FAIR AND TIMELY REDRESS
23 FOR INJURED PATIENTS. THEREFORE, THE HEALTH AND HUMAN SERVICES
24 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR THEIR
25 SUCCESSOR COMMITTEES, SHALL JOINTLY SEEK INPUT FROM ONE OR MORE
26 PROFESSIONAL ASSOCIATIONS THAT REPRESENT HEALTH CARE PROVIDERS
27 AND REQUEST THAT THE ASSOCIATION CONDUCT, OR COMPILE DATA ON,

1 ONE OR MORE DEMONSTRATION PROJECTS EXPLORING THESE
2 ALTERNATIVES AND PRESENT A REPORT TO THE HEALTH AND HUMAN
3 SERVICES COMMITTEES ON OR BEFORE JANUARY 31, 2012. THE REPORT
4 SHALL INCLUDE INPUT FROM PATIENT SAFETY ADVOCACY GROUPS.

5 (2) THE REPORT REQUIRED PURSUANT TO SUBSECTION (1) OF THIS
6 SECTION SHALL ADDRESS THE IMPACT OF THE ALTERNATIVES ADDRESSED
7 IN SUBSECTION (1) OF THIS SECTION ON ADVANCING PATIENT SAFETY,
8 PROVIDER ACCOUNTABILITY, AND THE FAIRNESS, EFFICIENCY, AND
9 TIMELINESS OF REDRESS FOR PATIENTS WHO EXPERIENCE ADVERSE HEALTH
10 CARE OUTCOMES.

11 **SECTION 3. Specified effective date.** This act shall take effect
12 July 1, 2010.

13 **SECTION 4. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.