

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

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.** 12-36-107 (2), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **12-36-107. Qualifications for licensure.** (2) No person shall be
5 granted a license to practice medicine as provided by subsection (1) of
6 this section unless such person:

7 (d) ATTESTS TO HAVING A PLAN FOR COMPLIANCE WITH THE
8 CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENTS IN SECTION
9 12-36-114.5.

10 **SECTION 2.** Part 1 of article 36 of title 12, Colorado Revised
11 Statutes, is amended BY THE ADDITION OF A NEW SECTION to

1 read:

2 **12-36-114.5. Continuing professional assessment - board rules**

3 **- definitions.** (1) (a) AFTER A LICENSE IS ISSUED TO AN APPLICANT
4 PURSUANT TO SECTION 12-36-114, THE LICENSEE SHALL DOCUMENT
5 PARTICIPATION IN ONGOING PROFESSIONAL DEVELOPMENT ACTIVITIES
6 THAT INCLUDE:

- 7 (I) SELF-ASSESSMENT AND PRACTICE ASSESSMENT;
- 8 (II) OBJECTIVE QUALITY ASSESSMENT BY A LICENSED PEER, AN
9 ENTITY MADE UP OF LICENSED PEERS, OR A PEER REVIEW ORGANIZATION;
- 10 AND
- 11 (III) EDUCATION TAILORED TO THE LICENSEE'S PRACTICE AND ANY
12 OUTCOMES OF THE ASSESSMENTS.

13 (b) THE BOARD MAY PUBLISH A LIST OF PROGRAMS OR ACTIVITIES
14 CONSISTENT WITH NATIONALLY RECOGNIZED GUIDELINES THAT ARE
15 DEEMED TO SATISFY THE ONGOING PROFESSIONAL DEVELOPMENT
16 REQUIREMENTS OF THIS SECTION. THE LIST MAY INCLUDE MEDICAL
17 SPECIALTY CERTIFICATION OR ACTIVE CANDIDACY FOR THE
18 CERTIFICATION.

19 (c) A PERSON LICENSED TO PRACTICE MEDICINE SHALL ATTEST TO
20 COMPLIANCE WITH ONGOING PROFESSIONAL DEVELOPMENT
21 REQUIREMENTS IN ORDER TO RENEW OR REINSTATE A LICENSE TO
22 PRACTICE MEDICINE IN COLORADO ON AND AFTER JANUARY 1, 2013.

23 (d) THIS SECTION APPLIES TO INDIVIDUALS LICENSED TO PRACTICE
24 MEDICINE, AND NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
25 REQUIRE A PERSON WHO EMPLOYS OR CONTRACTS WITH A PERSON
26 LICENSED TO PRACTICE MEDICINE TO COMPLY WITH THIS SECTION.

27 (e) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROVIDE

1 AN INDEPENDENT BASIS FOR THE BOARD TO INITIATE A COMPLAINT
2 AGAINST A LICENSEE. THE BOARD MAY REQUEST DOCUMENTATION OF
3 COMPLIANCE WITH THIS SECTION AS PART OF A COMPLAINT
4 INVESTIGATION.

5 (2) (a) RECORDS OF ASSESSMENTS OR OTHER PROFESSIONAL
6 DEVELOPMENT ACTIVITIES ARE CONFIDENTIAL, ARE NOT SUBJECT TO
7 SUBPOENA OR DISCOVERY, AND ARE NOT ADMISSIBLE IN A CIVIL ACTION OR
8 OTHER LEGAL OR ADMINISTRATIVE PROCEEDING; EXCEPT THAT SUCH
9 RECORDS MAY BE USED IN PROCEEDINGS BEFORE THE BOARD OF MEDICAL
10 EXAMINERS OR BY AN ENTITY AUTHORIZED TO CONDUCT PROFESSIONAL
11 REVIEW ACTIVITY.

12 (b) OTHER THAN AS SPECIFIED IN PARAGRAPH (a) OF THIS
13 SUBSECTION (2), NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
14 RESTRICT THE DISCOVERY OF INFORMATION OR DOCUMENTS THAT ARE
15 OTHERWISE DISCOVERABLE UNDER THE COLORADO RULES OF CIVIL
16 PROCEDURE IN CONNECTION WITH A CIVIL ACTION AGAINST A PERSON
17 LICENSED TO PRACTICE MEDICINE.

18 (3) AS USED IN THIS SECTION:

19 (a) "ONGOING PROFESSIONAL DEVELOPMENT" MEANS THE
20 ASSESSMENT PROCESSES AND EDUCATION BY WHICH A PHYSICIAN LEARNS,
21 INTEGRATES, AND APPLIES THE KNOWLEDGE, SKILL, AND JUDGMENT TO
22 PRACTICE MEDICINE ACCORDING TO GENERALLY ACCEPTED STANDARDS.

23 (b) "RECORDS" MEANS ALL WRITTEN AND ORAL COMMUNICATION
24 RELATED TO A LICENSEE'S ONGOING PROFESSIONAL DEVELOPMENT
25 ACTIVITIES. "RECORDS" INCLUDES ALL COMMUNICATIONS, INFORMATION,
26 DOCUMENTS, NOTES, INTERVIEWS, REPORTS, STATEMENTS, MEMORANDA,
27 APPLICATIONS, RECOMMENDATIONS, LETTERS, FINDINGS, TRANSCRIPTS,

1 STUDIES, TESTS, SELF ASSESSMENTS, THIRD-PARTY ASSESSMENTS, AND
2 OTHER MATERIALS THAT ARE RELATED TO A LICENSEE'S PROFESSIONAL
3 DEVELOPMENT ACTIVITIES.

4 **SECTION 3.** 12-36-117 (1), Colorado Revised Statutes, is
5 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6 **12-36-117. Unprofessional conduct - repeal.**

7 (1) "Unprofessional conduct" as used in this article means:

8 (mm) FAILURE TO COMPLY WITH THE CONTINUING PROFESSIONAL
9 DEVELOPMENT REQUIREMENTS IN SECTION 12-36-114.5.

10 **SECTION 4.** 12-36-123 (1) (c), Colorado Revised Statutes, is
11 amended to read:

12 **12-36-123. Procedure - registration - fees.** (1) (c) Applicants
13 for relicensure shall not be required to attend and complete continuing
14 medical education programs, except AS NECESSARY TO COMPLY WITH THE
15 CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENTS IN SECTION
16 12-36-114.5 OR as directed by the board to correct deficiencies of training
17 or education as directed under section 12-36-118 (5) (g) (III) (B).

18 **SECTION 5.** Title 25, Colorado Revised Statutes, is amended BY
19 THE ADDITION OF A NEW ARTICLE to read:

20 **ARTICLE 43**

21 **Patient Safety Act**

22 **25-43-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
23 BE CITED AS THE "PATIENT SAFETY ACT".

24 **25-43-102. Legislative declaration.** THE GENERAL ASSEMBLY
25 FINDS, DETERMINES, AND DECLARES THAT ENHANCING THE ABILITY OF THE
26 HEALTH CARE SYSTEM TO PROVIDE SAFE, HIGH-QUALITY CARE AND
27 MINIMIZE THE POTENTIAL FOR ADVERSE OUTCOMES IS A COMPELLING

1 PUBLIC INTEREST. THE GENERAL ASSEMBLY FURTHER FINDS THAT
2 LEGISLATION CONCERNING ADVERSE MEDICAL EVENTS SHOULD MAXIMIZE
3 THE HEALTH CARE SYSTEM'S ABILITY TO ACHIEVE THE FOLLOWING GOALS:
4 TO TREAT EACH ADVERSE EVENT AS AN OPPORTUNITY FOR LEARNING AND
5 IMPROVEMENT TO MINIMIZE THE POTENTIAL FOR RECURRENCE; TO MAKE
6 HEALTH CARE PROVIDERS ACCOUNTABLE FOR THEIR PROFESSIONAL
7 CONDUCT; AND TO PROVIDE FAIR, EFFICIENT, AND TIMELY REDRESS TO
8 PATIENTS. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
9 THE LEGAL ENVIRONMENT SHOULD PROMOTE THE GOALS OF THIS ARTICLE,
10 INCLUDING ENCOURAGING OPEN COMMUNICATION BETWEEN PHYSICIANS
11 AND THEIR PATIENTS WITHOUT FEAR OF LITIGATION.

12 **25-43-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
13 CONTEXT OTHERWISE REQUIRES:

14 (1) "HEALTH CARE PROVIDER" MEANS A HEALTH CARE FACILITY OR
15 A NURSING HOME OR NURSING CARE FACILITY LICENSED UNDER SECTION
16 25-3-101; A HOME FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AS
17 DEFINED IN SECTION 27-10.5-102, C.R.S.; AN ASSISTED LIVING RESIDENCE
18 LICENSED PURSUANT TO SECTION 25-27-105; A RESIDENTIAL TREATMENT
19 FACILITY FOR MENTAL ILLNESS APPROVED PURSUANT TO SECTION
20 25-1-306; AN INDIVIDUAL AUTHORIZED TO PRACTICE SOME COMPONENT OF
21 THE HEALING ARTS BY LICENSE, CERTIFICATE, OR REGISTRATION; AND A
22 PROFESSIONAL CORPORATION OR OTHER PROFESSIONAL ENTITY
23 COMPRISING SUCH HEALTH CARE PROVIDERS AS PERMITTED BY THE LAWS
24 OF THIS STATE. "HEALTH CARE PROVIDER" INCLUDES GOVERNMENTAL
25 ENTITIES AND THE EMPLOYEES OF SUCH ENTITIES.

26 (2) "HEALTH CARE WORKER" MEANS A PERSON WHO PROVIDES
27 SERVICES FOR A HEALTH CARE PROVIDER AND WHO MAY HAVE ACCESS TO

1 PATIENTS, WHETHER OR NOT SUCH PERSON PROVIDES DIRECT PATIENT
2 CARE.

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

5 **25-43-104. Health care workers - verification.** (1) A HEALTH
6 CARE PROVIDER OR AN ENTITY THAT PROVIDES HEALTH CARE WORKERS TO
7 PERFORM SERVICES FOR A HEALTH CARE PROVIDER SHALL MAKE
8 REASONABLE EFFORTS TO VERIFY THE EMPLOYMENT HISTORY FOR THE
9 PREVIOUS SEVEN YEARS FOR, AND VERIFY THE EMPLOYMENT REFERENCES
10 OF, EACH HEALTH CARE WORKER APPLICANT. ANY LAPSE IN EMPLOYMENT
11 SHALL BE SUBJECT TO REASONABLE VERIFICATION.

12 (2) (a) UPON THE REQUEST OF A HEALTH CARE PROVIDER OR AN
13 ENTITY THAT PROVIDES HEALTH CARE WORKERS TO PERFORM SERVICES
14 FOR A HEALTH CARE PROVIDER, FOR THE PURPOSE OF VERIFICATION
15 PURSUANT TO SUBSECTION (1) OF THIS SECTION, AN EMPLOYER OR
16 CONTRACTING ENTITY SHALL DISCLOSE INFORMATION KNOWN ABOUT
17 IMPAIRED WORK FUNCTION, DRUG DIVERSION, PATIENT ABUSE, OR CRIMES
18 OF VIOLENCE BY AN APPLICANT.

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

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

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

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

13 **25-43-105. Patient involvement in quality process.** (1) AS
14 PART OF AN ASSESSMENT OF CARE, A PHYSICIAN WHO IS DIRECTLY
15 INVOLVED IN THE CARE OR THE PHYSICIAN'S AUTHORIZED
16 REPRESENTATIVE MAY, BUT SHALL NOT BE REQUIRED TO, GATHER
17 INFORMATION FROM, MEET WITH, OR PROVIDE INFORMATION TO PATIENTS
18 OR INTERESTED PERSONS. THIS MAY INCLUDE THE PROVISION OF WRITTEN
19 SUMMARIES OR HOLDING MEETINGS TO DISCUSS FINDINGS OF
20 ASSESSMENTS.

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

27 (3) NO PERSON INVOLVED IN AN ASSESSMENT OF CARE, INCLUDING

1 PATIENTS, HEALTH CARE PROVIDERS, AND INTERESTED PERSONS OR THEIR
2 AGENTS, SHALL DISCLOSE OR, THROUGH DISCOVERY OR COMPULSORY
3 PROCESS, BE REQUIRED TO DISCLOSE, ANY WRITTEN OR ORAL
4 COMMUNICATIONS OR INFORMATION OBTAINED THROUGH AN ASSESSMENT
5 OF CARE EXCEPT AS NECESSARY FOR A PATIENT'S ONGOING HEALTH CARE.
6 A COMMUNICATION THAT IS DISCLOSED IN VIOLATION OF THIS SUBSECTION
7 (3) SHALL NOT BE ADMITTED INTO EVIDENCE IN ANY JUDICIAL OR
8 ADMINISTRATIVE PROCEEDING.

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

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

18 **25-43-106. Exchange and sharing of health information - no**
19 **waiver of privilege.** (1) A HEALTH CARE PROVIDER, PROFESSIONAL
20 REVIEW COMMITTEE, OR GOVERNING BOARD OF A HEALTH CARE PROVIDER
21 MAY DISCLOSE PRIVILEGED AND CONFIDENTIAL INFORMATION IN
22 ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE WITHOUT WAIVING
23 THE PRIVILEGE OF CONFIDENTIALITY PROVIDED PURSUANT TO SECTION
24 25-3-109 OR PART 1 OF ARTICLE 36.5 OF TITLE 12, C.R.S., FOR THE
25 PURPOSE OF GRANTING PRIVILEGES OR CREDENTIALS. THIS SUBSECTION
26 (1) DOES NOT REQUIRE THAT ANY INFORMATION BE DISCLOSED IF NOT
27 OTHERWISE REQUIRED BY LAW.

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

16 **25-43-107. Demonstration projects for improving patient**
17 **safety and patient redress processes.** (1) THE GENERAL ASSEMBLY
18 FINDS AND DECLARES THAT THERE IS A NEED FOR ADDITIONAL RESEARCH
19 AND DATA ON THE ABILITY OF ALTERNATIVES TO THE EXISTING MEDICAL
20 LIABILITY LITIGATION SYSTEM TO IMPROVE THE POTENTIAL FOR PATIENT
21 SAFETY, PROFESSIONAL ACCOUNTABILITY, AND FAIR AND TIMELY REDRESS
22 FOR INJURED PATIENTS. THEREFORE, THE HEALTH AND HUMAN SERVICES
23 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR THEIR
24 SUCCESSOR COMMITTEES, SHALL JOINTLY SEEK INPUT FROM ONE OR MORE
25 PROFESSIONAL ASSOCIATIONS THAT REPRESENT HEALTH CARE PROVIDERS
26 AND REQUEST THAT THE ASSOCIATION CONDUCT, OR COMPILE DATA ON,
27 ONE OR MORE DEMONSTRATION PROJECTS EXPLORING THESE

1 ALTERNATIVES AND PRESENT A REPORT TO THE HEALTH AND HUMAN
2 SERVICES COMMITTEES ON OR BEFORE JANUARY 31, 2012.

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

9 **SECTION 6. Specified effective date.** This act shall take effect
10 July 1, 2010.

11 **SECTION 7. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.