

NOTE: The governor signed this measure on 6/5/2014.

An Act

SENATE BILL 14-162

BY SENATOR(S) Nicholson, Aguilar, Newell;
also REPRESENTATIVE(S) Mitsch Bush, Becker, Ginal, Hulinghorst,
Kraft-Tharp, Ryden, Schafer, Singer, Tyler.

CONCERNING QUALITY MANAGEMENT PROGRAMS FOR EMERGENCY
MEDICAL SERVICE PROVIDERS PROVIDING CARE IN THE PREHOSPITAL
SETTING.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 9 to article 3.5 of title 25 as follows:

PART 9 QUALITY MANAGEMENT

25-3.5-901. Short title. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE "CAROL J. SHANABERGER ACT".

25-3.5-902. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE IMPLEMENTATION OF QUALITY MANAGEMENT FUNCTIONS TO EVALUATE AND IMPROVE PREHOSPITAL EMERGENCY MEDICAL SERVICE PATIENT CARE IS ESSENTIAL TO THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OPERATION OF EMERGENCY MEDICAL SERVICES ORGANIZATIONS. FOR THIS PURPOSE, IT IS NECESSARY THAT THE COLLECTION OF INFORMATION BY PREHOSPITAL MEDICAL DIRECTORS AND EMERGENCY MEDICAL SERVICES ORGANIZATIONS BE REASONABLY UNFETTERED SO THAT A COMPLETE AND THOROUGH EVALUATION AND IMPROVEMENT OF THE QUALITY OF PATIENT CARE CAN BE ACCOMPLISHED. TO THIS END, QUALITY MANAGEMENT INFORMATION RELATING TO THE EVALUATION OR IMPROVEMENT OF THE QUALITY OF PREHOSPITAL EMERGENCY MEDICAL SERVICES IS CONFIDENTIAL, SUBJECT TO SECTION 25-3.5-904 (3), AND PERSONS PERFORMING QUALITY MANAGEMENT FUNCTIONS ARE GRANTED QUALIFIED IMMUNITY AS SPECIFIED IN SECTION 25-3.5-904 (4). IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT NOTHING IN THIS SECTION REVISE, AMEND, OR ALTER ARTICLE 36 OR PART 1 OF ARTICLE 36.5 OF TITLE 12, C.R.S.

25-3.5-903. Definitions. AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "EMERGENCY MEDICAL SERVICES ORGANIZATION" MEANS:

(a) LOCAL EMERGENCY MEDICAL AND TRAUMA SERVICE PROVIDERS, AS DEFINED IN SECTION 25-3.5-602 (4), EXCLUDING A HEALTH CARE FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103 (1) (a) THAT HAS A QUALITY MANAGEMENT PROGRAM PURSUANT TO SECTION 25-3-109;

(b) REGIONAL EMERGENCY MEDICAL AND TRAUMA SERVICES ADVISORY COUNCILS, AS DEFINED IN SECTION 25-3.5-703 (6.8) AND ESTABLISHED UNDER SECTION 25-3.5-704 (2) (c); AND

(c) PUBLIC SAFETY ANSWERING POINTS, AS DEFINED IN SECTION 29-11-101 (6.5), C.R.S., PERFORMING EMERGENCY MEDICAL DISPATCH.

(2) "PREHOSPITAL MEDICAL DIRECTOR" OR "MEDICAL DIRECTOR" MEANS A LICENSED PHYSICIAN WHO SUPERVISES CERTIFIED EMERGENCY MEDICAL SERVICE PROVIDERS WHO PROVIDE PREHOSPITAL CARE.

(3) "QUALITY MANAGEMENT ASSESSMENT" MEANS A REVIEW AND ASSESSMENT OF THE PERFORMANCE OF PREHOSPITAL CARE PROVIDED BY EMERGENCY MEDICAL SERVICE PROVIDERS OPERATING UNDER A MEDICAL DIRECTOR.

(4) (a) "QUALITY MANAGEMENT PROGRAM" MEANS A PROGRAM ESTABLISHED UNDER THIS PART 9 THAT IS DESIGNED TO PERFORM QUALITY MANAGEMENT ASSESSMENTS FOR THE PURPOSE OF IMPROVING PATIENT CARE AND INCLUDES:

(I) QUALITY ASSURANCE AND RISK MANAGEMENT ACTIVITIES;

(II) PEER REVIEW OF EMERGENCY MEDICAL SERVICE PROVIDERS;
AND

(III) OTHER QUALITY MANAGEMENT FUNCTIONS.

(b) "QUALITY MANAGEMENT PROGRAM" DOES NOT INCLUDE REVIEW OR ASSESSMENT OF THE LICENSING, USE, OR MAINTENANCE OF VEHICLES USED BY AN EMERGENCY MEDICAL SERVICES ORGANIZATION.

25-3.5-904. Quality management programs - creation - assessments - confidentiality of information - exceptions - immunity for good-faith participants. (1) EACH EMERGENCY MEDICAL SERVICES ORGANIZATION THAT INSTITUTES A QUALITY MANAGEMENT PROGRAM TO CONDUCT QUALITY MANAGEMENT ASSESSMENTS SHALL INCLUDE IN THAT PROGRAM AT LEAST THE FOLLOWING COMPONENTS:

(a) PERIODIC REVIEW OF TREATMENT PROTOCOLS, COMPLIANCE WITH TREATMENT PROTOCOLS, AND PREHOSPITAL EMERGENCY MEDICAL CARE PROVIDED TO PATIENTS;

(b) PEER REVIEW OF EMERGENCY MEDICAL SERVICE PROVIDERS, INCLUDING REVIEW OF THEIR QUALIFICATIONS AND COMPETENCE AND QUALITY AND APPROPRIATENESS OF PATIENT CARE;

(c) THE COLLECTION OF DATA IF REQUIRED PURSUANT TO SECTION 25-3.5-704 (2) (h) (II);

(d) A GENERAL DESCRIPTION OF THE TYPES OF CASES, PROBLEMS, OR RISKS TO BE REVIEWED AND THE PROCESS USED FOR IDENTIFYING POTENTIAL RISKS;

(e) IDENTIFICATION OF THE PERSONNEL OR COMMITTEES RESPONSIBLE FOR COORDINATING QUALITY MANAGEMENT ACTIVITIES AND

THE MEANS OF REPORTING WITHIN THE QUALITY MANAGEMENT PROGRAM;

(f) A DESCRIPTION OF THE METHOD FOR SYSTEMATICALLY REPORTING INFORMATION TO THE ORGANIZATION'S MEDICAL DIRECTOR;

(g) A DESCRIPTION OF THE METHOD FOR INVESTIGATING AND ANALYZING CAUSES OF INDIVIDUAL PROBLEMS AND PATTERNS OF PROBLEMS;

(h) A DESCRIPTION OF POSSIBLE CORRECTIVE ACTIONS TO ADDRESS THE PROBLEMS, INCLUDING EDUCATION, PREVENTION, AND MINIMIZING POTENTIAL PROBLEMS OR RISKS; AND

(i) A DESCRIPTION OF THE METHOD FOR FOLLOWING UP IN A TIMELY MANNER ON CORRECTIVE ACTION TO DETERMINE THE EFFECTIVENESS OF THE ACTION.

(2)(a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2) OR SUBSECTION (3) OF THIS SECTION, INFORMATION REQUIRED TO BE COLLECTED AND MAINTAINED, INCLUDING INFORMATION FROM THE PREHOSPITAL CARE REPORTING SYSTEM THAT IDENTIFIES AN INDIVIDUAL, AND RECORDS, REPORTS, AND OTHER INFORMATION OBTAINED AND MAINTAINED IN ACCORDANCE WITH A QUALITY MANAGEMENT PROGRAM ESTABLISHED PURSUANT TO THIS SECTION ARE CONFIDENTIAL AND SHALL NOT BE RELEASED EXCEPT TO THE DEPARTMENT IN CASES OF AN ALLEGED VIOLATION OF BOARD RULES PERTAINING TO EMERGENCY MEDICAL SERVICE PROVIDER CERTIFICATION OR EXCEPT IN ACCORDANCE WITH SECTION 25-3.5-205 (4).

(b) (I) AN EMERGENCY MEDICAL SERVICES ORGANIZATION OR PREHOSPITAL MEDICAL DIRECTOR MAY SHARE QUALITY MANAGEMENT RECORDS RELATED TO PEER REVIEW OF AN EMERGENCY MEDICAL SERVICE PROVIDER WITH ANOTHER EMERGENCY MEDICAL SERVICES ORGANIZATION OR A LICENSED OR CERTIFIED HEALTH CARE FACILITY THAT HAS A QUALITY MANAGEMENT PROGRAM UNDER THIS SECTION OR SECTION 25-3-109, AS APPLICABLE, WITHOUT VIOLATING THE CONFIDENTIALITY REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (2) AND WITHOUT WAIVING THE PRIVILEGE SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IF THE EMERGENCY MEDICAL SERVICE PROVIDER SEEKS TO SUBJECT HIMSELF OR HERSELF TO, OR IS CURRENTLY SUBJECT TO, THE AUTHORITY OF THE

EMERGENCY MEDICAL SERVICES ORGANIZATION OR HEALTH CARE FACILITY.

(II) A HEALTH CARE FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103 (1) (a) THAT HAS A QUALITY MANAGEMENT PROGRAM PURSUANT TO SECTION 25-3-109 MAY SHARE QUALITY MANAGEMENT RECORDS RELATED TO PEER REVIEW OF AN EMERGENCY MEDICAL SERVICE PROVIDER WITH AN EMERGENCY MEDICAL SERVICES ORGANIZATION OR PREHOSPITAL MEDICAL DIRECTOR IF THE EMERGENCY MEDICAL SERVICE PROVIDER SEEKS TO SUBJECT HIMSELF OR HERSELF TO, OR IS CURRENTLY SUBJECT TO, THE AUTHORITY OF THE EMERGENCY MEDICAL SERVICES ORGANIZATION OR PREHOSPITAL MEDICAL DIRECTOR WITHOUT VIOLATING THE CONFIDENTIALITY REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION AND SECTION 25-3-109 (3) AND WITHOUT WAIVING THE PRIVILEGE SPECIFIED IN SUBSECTION (3) OF THIS SECTION AND SECTION 25-3-109 (4).

(c) THE CONFIDENTIALITY OF INFORMATION PROVIDED FOR IN THIS SECTION IS NOT IMPAIRED OR OTHERWISE ADVERSELY AFFECTED SOLELY BECAUSE THE PREHOSPITAL MEDICAL DIRECTOR OR EMERGENCY MEDICAL SERVICES ORGANIZATION SUBMITS THE INFORMATION TO A NONGOVERNMENTAL ENTITY TO CONDUCT STUDIES THAT EVALUATE, DEVELOP, AND ANALYZE INFORMATION ABOUT EMERGENCY MEDICAL CARE OPERATIONS, PRACTICES, OR ANY OTHER FUNCTION OF EMERGENCY MEDICAL CARE ORGANIZATIONS. THE RECORDS, REPORTS, AND OTHER INFORMATION COLLECTED OR DEVELOPED BY A NONGOVERNMENTAL ENTITY REMAIN PROTECTED AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (2). IN ORDER TO ADEQUATELY PROTECT THE CONFIDENTIALITY OF THE INFORMATION, THE FINDINGS, CONCLUSIONS, OR RECOMMENDATIONS CONTAINED IN THE STUDIES CONDUCTED BY A NONGOVERNMENTAL ENTITY ARE NOT DEEMED TO ESTABLISH A STANDARD OF CARE FOR EMERGENCY MEDICAL CARE ORGANIZATIONS.

(3) (a) THE RECORDS, REPORTS, AND OTHER INFORMATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION ARE NOT SUBJECT TO SUBPOENA AND ARE NOT DISCOVERABLE OR ADMISSIBLE AS EVIDENCE IN ANY CIVIL OR ADMINISTRATIVE PROCEEDING. A PERSON WHO PARTICIPATES IN THE REPORTING, COLLECTION, EVALUATION, OR USE OF QUALITY MANAGEMENT INFORMATION WITH REGARD TO A SPECIFIC CIRCUMSTANCE SHALL NOT TESTIFY ABOUT HIS OR HER PARTICIPATION IN ANY CIVIL OR ADMINISTRATIVE PROCEEDING.

(b) THIS SUBSECTION (3) DOES NOT APPLY TO:

(I) ANY CIVIL OR ADMINISTRATIVE PROCEEDING, INSPECTION, OR INVESTIGATION AS OTHERWISE PROVIDED BY LAW BY THE DEPARTMENT OR OTHER APPROPRIATE REGULATORY AGENCY HAVING JURISDICTION FOR DISCIPLINARY OR LICENSING SANCTIONS;

(II) A PERSON GIVING TESTIMONY CONCERNING FACTS OF WHICH HE OR SHE HAS PERSONAL KNOWLEDGE ACQUIRED INDEPENDENTLY OF THE QUALITY MANAGEMENT PROGRAM OR FUNCTION;

(III) THE AVAILABILITY, AS PROVIDED BY LAW OR THE RULES OF CIVIL PROCEDURE, OF FACTUAL INFORMATION RELATING SOLELY TO THE INDIVIDUAL IN INTEREST IN A CIVIL SUIT BY THE PERSON, NEXT FRIEND OR LEGAL REPRESENTATIVE, BUT FACTUAL INFORMATION DOES NOT INCLUDE OPINIONS OR EVALUATIONS PERFORMED AS A PART OF THE QUALITY MANAGEMENT PROGRAM;

(IV) A PERSON GIVING TESTIMONY CONCERNING AN ACT OR OMISSION THAT HE OR SHE OBSERVED OR IN WHICH HE OR SHE PARTICIPATED, NOTWITHSTANDING ANY PARTICIPATION BY HIM OR HER IN THE QUALITY MANAGEMENT PROGRAM;

(V) A PERSON GIVING TESTIMONY CONCERNING FACTS HE OR SHE HAD RECORDED IN A MEDICAL RECORD RELATING SOLELY TO THE INDIVIDUAL IN INTEREST IN A CIVIL SUIT.

(4) A PERSON, ACTING IN GOOD FAITH, WITHIN THE SCOPE AND FUNCTIONS OF A QUALITY MANAGEMENT PROGRAM, AND WITHOUT VIOLATING ANY APPLICABLE LAWS, WHO PARTICIPATES IN THE REPORTING, COLLECTION, EVALUATION, OR USE OF QUALITY MANAGEMENT INFORMATION OR PERFORMS OTHER FUNCTIONS AS PART OF A QUALITY MANAGEMENT PROGRAM WITH REGARD TO A SPECIFIC CIRCUMSTANCE IS IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BASED ON HIS OR HER PARTICIPATION IN THE QUALITY MANAGEMENT PROGRAM BROUGHT BY AN EMERGENCY MEDICAL SERVICE PROVIDER OR PERSON TO WHOM THE QUALITY MANAGEMENT INFORMATION PERTAINS. THIS IMMUNITY DOES NOT APPLY TO ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN THE PROVISION OF CARE.

(5) NOTHING IN THIS SECTION:

(a) AFFECTS OR PREVENTS THE VOLUNTARY RELEASE OF ANY QUALITY MANAGEMENT RECORD OR INFORMATION BY A PREHOSPITAL MEDICAL DIRECTOR OR EMERGENCY MEDICAL SERVICES ORGANIZATION; EXCEPT THAT NO PATIENT-IDENTIFYING INFORMATION MAY BE RELEASED WITHOUT THE PATIENT'S CONSENT;

(b) LIMITS ANY STATUTORY OR COMMON-LAW PRIVILEGE, CONFIDENTIALITY, OR IMMUNITY; OR

(c) AFFECTS A PERSON'S ABILITY TO ACCESS HIS OR HER MEDICAL RECORDS AS PROVIDED IN SECTION 25-1-801 OR THE RIGHT OF ANY FAMILY MEMBER OR OTHER PERSON TO OBTAIN MEDICAL RECORD INFORMATION UPON THE CONSENT OF THE PATIENT OR HIS OR HER AUTHORIZED REPRESENTATIVE.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO