

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0167.02 Bart Miller

HOUSE BILL 11-1175

HOUSE SPONSORSHIP

Balmer,

SENATE SPONSORSHIP

Morse,

House Committees

Health and Environment

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIREMENTS FOR HEALTH CARE PRACTITIONERS TO**
102 **IDENTIFY TO PATIENTS THE TYPE OF PROFESSIONAL LICENSE**
103 **HELD BY THE PRACTITIONER, AND, IN CONNECTION THEREWITH,**
104 **ENACTING THE "HEALTH CARE PROFESSIONAL TRANSPARENCY**
105 **ACT".**

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 <http://www.leg.state.co.us/billsummaries>.)

The bill enacts the "Health Care Professional Transparency Act".

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.

The bill requires health care practitioners to identify the type of professional license they hold in an advertisement for health care services. Advertisements for health care services must be free from deceptive or misleading information. Health care practitioners working in patient care settings must post and communicate the practitioner's specific licensure by:

- ! Wearing a photo identification name tag during all patient encounters. The name tag must contain a recent photo, the practitioner's name, the type of license the practitioner holds, and the expiration date of the license.
- ! Displaying in the practitioner's office a written notice clearly identifying the type of license held by the practitioner;
- ! Complying with these requirements at all office locations where the practitioner sees patients;
- ! Posting a schedule of regular hours when a medical doctor or osteopathic doctor is present in offices where the practitioner practices in collaborative settings with other non-M.D. or non-D.O. practitioners; and
- ! Informing a patient or the patient's family, or both, when a portion of patient care is performed by a qualified provider other than a medical doctor or doctor of osteopathic medicine.

Violations of the bill are punished as acts of unprofessional conduct under the appropriate licensure laws governing the respective health care practitioner. The bill specifies that in the event of violations any fees or charges paid by a patient must be refunded to the patient.

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

2 **SECTION 1.** Title 12, Colorado Revised Statutes, is amended BY
3 THE ADDITION OF A NEW ARTICLE to read:

4 **ARTICLE 28.5**

5 **Health Care Professional Transparency Act**

6 **12-28.5-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND
7 MAY BE CITED AS THE "HEALTH CARE PROFESSIONAL TRANSPARENCY
8 ACT".

9 **12-28.5-102. Legislative declaration.** (1) THE GENERAL
10 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

1 (a) THERE ARE A MULTITUDE OF PROFESSIONAL DEGREES USING
2 THE TERM "DOCTOR", INCLUDING MEDICAL DOCTOR (M.D.); DOCTOR OF
3 OSTEOPATHIC MEDICINE (D.O.); DOCTOR OF DENTAL SURGERY (D.D.S.);
4 DOCTOR OF PODIATRIC MEDICINE (D.P.M.); DOCTOR OF OPTOMETRY
5 (O.D.); DOCTOR OF CHIROPRACTIC (D.C.); AND OTHER DESIGNATIONS
6 THAT MAY BE USED BY HEALTH CARE PRACTITIONERS;

7 (b) AN AUGUST 2008 STUDY BY THE AMERICAN MEDICAL
8 ASSOCIATION FOUND THAT THIRTY-EIGHT PERCENT OF PATIENTS BELIEVE
9 THAT A CHIROPRACTOR IS A MEDICAL DOCTOR; THIRTY-EIGHT PERCENT OF
10 PATIENTS BELIEVE THAT A DOCTOR OF NURSING PRACTICE IS A MEDICAL
11 DOCTOR; FORTY-NINE PERCENT OF PATIENTS BELIEVE THAT A
12 PSYCHOLOGIST IS A MEDICAL DOCTOR; FIFTY-FOUR PERCENT OF PATIENTS
13 BELIEVE THAT AN OPTOMETRIST IS A MEDICAL DOCTOR; AND SIXTY-SEVEN
14 PERCENT OF PATIENTS BELIEVE A PODIATRIST IS A MEDICAL DOCTOR;

15 (c) THERE ARE WIDESPREAD DIFFERENCES REGARDING THE
16 TRAINING AND QUALIFICATIONS REQUIRED TO EARN THE PROFESSIONAL
17 DEGREES DESCRIBED IN AND SUBJECT TO THIS ARTICLE. THESE
18 DIFFERENCES OFTEN CONCERN THE TRAINING AND SKILLS NECESSARY TO
19 CORRECTLY DETECT, DIAGNOSE, PREVENT, AND TREAT SERIOUS HEALTH
20 CARE CONDITIONS.

21 (d) THERE IS A COMPELLING STATE INTEREST IN PATIENTS BEING
22 PROMPTLY AND CLEARLY INFORMED OF THE TRAINING AND
23 QUALIFICATIONS OF THE HEALTH CARE PRACTITIONERS WHO PROVIDE
24 HEALTH CARE SERVICES; AND

25 (e) THERE IS A COMPELLING STATE INTEREST IN THE PUBLIC BEING
26 PROTECTED FROM POTENTIALLY MISLEADING AND DECEPTIVE HEALTH
27 CARE ADVERTISING THAT MIGHT CAUSE PATIENTS TO HAVE UNDUE

1 EXPECTATIONS REGARDING THEIR TREATMENT AND OUTCOME.

2 **12-28.5-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
3 CONTEXT OTHERWISE REQUIRES:

4 (1) "ADVERTISEMENT" MEANS ANY COMMUNICATION OR
5 STATEMENT, WHETHER PRINTED, ELECTRONIC, OR ORAL, THAT NAMES THE
6 HEALTH CARE PRACTITIONER IN RELATION TO HIS OR HER PRACTICE,
7 PROFESSION, OR INSTITUTION IN WHICH THE INDIVIDUAL IS EMPLOYED,
8 VOLUNTEERS, OR OTHERWISE PROVIDES HEALTH CARE SERVICES. THIS
9 INCLUDES BUSINESS CARDS, LETTERHEAD, PATIENT BROCHURES, E-MAIL,
10 INTERNET, AUDIO AND VIDEO, AND ANY OTHER COMMUNICATION OR
11 STATEMENT USED IN THE COURSE OF BUSINESS.

12 (2) "DECEPTIVE" OR "MISLEADING" INCLUDES ANY
13 ADVERTISEMENT OR AFFIRMATIVE COMMUNICATION OR REPRESENTATION
14 THAT MISSTATES, FALSELY DESCRIBES, HOLDS OUT, OR FALSELY DETAILS
15 THE HEALTH CARE PRACTITIONER'S PROFESSION, SKILLS, TRAINING,
16 EXPERTISE, EDUCATION, BOARD CERTIFICATION, LICENSURE, OR
17 REGISTRATION.

18 (3) "HEALTH CARE PRACTITIONER" MEANS ANY PERSON WHO
19 ENGAGES IN THE FOLLOWING ACTS THAT ARE THE SUBJECT OF LICENSURE
20 OR REGISTRATION:

21 (a) PRACTITIONERS OF ALLOPATHIC MEDICINE, SIGNIFIED BY THE
22 LETTERS "M.D." OR THE TERMS "SURGEON", "MEDICAL DOCTOR", OR
23 "DOCTOR OF MEDICINE" BY A PERSON LICENSED TO PRACTICE MEDICINE
24 AND SURGERY;

25 (b) PRACTITIONERS OF OSTEOPATHIC MEDICINE, SIGNIFIED BY THE
26 LETTERS "D.O." OR THE TERMS "SURGEON", "OSTEOPATHIC SURGEON",
27 "OSTEOPATH", "DOCTOR OF OSTEOPATHY", OR "DOCTOR OF OSTEOPATHIC

1 MEDICINE";

2 (c) PRACTITIONERS OF NURSING, SIGNIFIED BY THE LETTERS
3 "D.N.P.", "N.P.", "R.N.", "L.P.N.", "C.R.N.A.", OR "C.N.A." OR ANY
4 OTHER COMMONLY USED SIGNIFIER TO DENOTE A DOCTORATE OF NURSING
5 PRACTICE, NURSE PRACTITIONER, REGISTERED NURSE, LICENSED
6 PRACTICAL NURSE, CERTIFIED REGISTERED NURSE ANESTHETIST, OR
7 CERTIFIED NURSE ASSISTANT, RESPECTIVELY, AS APPROPRIATE TO SIGNIFY
8 THE TYPE OF LICENSURE AND DEGREE EARNED FROM A REGIONALLY
9 ACCREDITED INSTITUTION OF HIGHER EDUCATION IN THE APPROPRIATE
10 FIELD OF LEARNING;

11 (d) PRACTITIONERS OF PODIATRY, SIGNIFIED BY THE LETTERS
12 "D.P.M." OR THE TERMS "PODIATRIST", "DOCTOR OF PODIATRY",
13 "PODIATRIC SURGEON", OR "DOCTOR OF PODIATRIC MEDICINE";

14 (e) PRACTITIONERS OF CHIROPRACTIC, SIGNIFIED BY THE LETTERS
15 "D.C." OR THE TERMS "CHIROPRACTOR" OR "DOCTOR OF CHIROPRACTIC";

16 (f) PRACTITIONERS OF DENTISTRY, SIGNIFIED BY THE LETTERS
17 "D.D.S." OR "D.M.D.", AS APPROPRIATE, OR THE TERMS "DENTIST",
18 "DOCTOR OF DENTAL SURGERY", OR "DOCTOR OF DENTAL MEDICINE", AS
19 APPROPRIATE;

20 (g) PRACTITIONERS OF OPTOMETRY, SIGNIFIED BY THE LETTERS
21 "O.D." OR THE TERMS "OPTOMETRIST" OR "DOCTOR OF OPTOMETRY";

22 (h) PRACTITIONERS OF NATUROPATHY, SIGNIFIED BY THE LETTERS
23 "N.D." OR THE TERMS "NATUROPATHIC DOCTOR" OR "DOCTOR OF
24 NATUROPATHY";

25 (i) PHYSICIAN AND MEDICAL ASSISTANTS, SIGNIFIED BY THE
26 LETTERS "P.A." OR "M.A." OR THE TERMS "PHYSICIAN ASSISTANT" OR
27 "MEDICAL ASSISTANT", RESPECTIVELY;

1 (j) PRACTITIONERS OF AUDIOLOGY, SIGNIFIED BY THE LETTERS
2 "AU.D.", "SC.D.", OR "PH.D." OR THE TERMS "AUDIOLOGIST" OR "DOCTOR
3 OF AUDIOLOGY";

4 (k) PSYCHOLOGISTS, THERAPISTS, SPEECH-LANGUAGE
5 PATHOLOGISTS, COUNSELORS, OR ANY OTHER HEALTH CARE PRACTITIONER
6 NOT COVERED UNDER THIS SUBSECTION (3), INCLUDING THOSE SIGNIFIED
7 BY THE LETTERS "PH.D.", "ED.D.", "P.T.", "M.P.T.", "PSY.D.", OR "SC.D."
8 AS APPROPRIATE TO SIGNIFY THE TYPE OF LICENSURE AND DEGREE EARNED
9 FROM A REGIONALLY ACCREDITED INSTITUTION OF HIGHER EDUCATION IN
10 THE APPROPRIATE FIELD OF LEARNING.

11 (4) "LICENSEE" MEANS A HEALTH CARE PRACTITIONER WHO HOLDS
12 AN ACTIVE LICENSE WITH THE LICENSING BOARD GOVERNING HIS OR HER
13 PRACTICE IN THIS STATE.

14 **12-28.5-104. Requirements.** (1) AN ADVERTISEMENT FOR
15 HEALTH CARE SERVICES THAT NAMES A HEALTH CARE PRACTITIONER MUST
16 IDENTIFY THE TYPE OF LICENSE HELD PURSUANT TO THE DEFINITIONS IN
17 SECTION 12-28.5-103. THE ADVERTISEMENT MUST BE FREE FROM ANY AND
18 ALL DECEPTIVE OR MISLEADING INFORMATION.

19 (2) A HEALTH CARE PRACTITIONER PROVIDING HEALTH CARE
20 SERVICES IN THIS STATE SHALL CONSPICUOUSLY POST AND AFFIRMATIVELY
21 COMMUNICATE THE PRACTITIONER'S SPECIFIC LICENSURE AS DEFINED IN
22 SECTION 12-28.5-103. THE HEALTH CARE PRACTITIONER SHALL:

23 (a) (I) WEAR A PHOTO IDENTIFICATION NAME TAG DURING ALL
24 PATIENT ENCOUNTERS THAT INCLUDES:

- 25 (A) A RECENT PHOTOGRAPH OF THE HEALTH CARE PRACTITIONER;
- 26 (B) THE HEALTH CARE PRACTITIONER'S NAME;
- 27 (C) THE TYPE OF LICENSE THE HEALTH CARE PRACTITIONER HOLDS;

1 AND

2 (D) THE EXPIRATION DATE OF THE LICENSE.

3 (II) THE NAME TAG MUST BE OF SUFFICIENT SIZE AND BE WORN IN
4 A CONSPICUOUS MANNER SO AS TO BE VISIBLE AND APPARENT.

5 (b) DISPLAY IN HIS OR HER OFFICE A WRITTEN NOTICE THAT
6 CLEARLY IDENTIFIES THE TYPE OF LICENSE HELD BY THE HEALTH CARE
7 PRACTITIONER. THE NOTICE MUST BE OF SUFFICIENT SIZE SO AS TO BE
8 VISIBLE AND APPARENT TO ALL CURRENT AND PROSPECTIVE PATIENTS.

9 (3) A HEALTH CARE PRACTITIONER WHO PRACTICES IN MORE THAN
10 ONE OFFICE SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION IN
11 EACH PRACTICE SETTING.

12 (4) A MEDICAL DOCTOR OR DOCTOR OF OSTEOPATHIC MEDICINE
13 WHO SUPERVISES OR PARTICIPATES IN COLLABORATIVE PRACTICE
14 AGREEMENTS WITH NON-M.D. OR NON-D.O. HEALTH CARE PRACTITIONERS
15 SHALL CONSPICUOUSLY POST IN EACH OFFICE A SCHEDULE OF THE
16 REGULAR HOURS WHEN HE OR SHE WILL BE PRESENT IN THAT OFFICE.

17 (5) A HEALTH CARE PRACTITIONER WHO IS PART OF A PATIENT
18 CARE TEAM THAT INCLUDES MEDICAL DOCTORS, DOCTORS OF
19 OSTEOPATHIC MEDICINE, AND OTHER TYPES OF HEALTH CARE
20 PRACTITIONERS SHALL IDENTIFY HIMSELF OR HERSELF CLEARLY TO THE
21 PATIENT AND MEMBERS OF THE PATIENT'S FAMILY AS TO THE TYPE OF
22 LICENSE HELD BY THE HEALTH CARE PRACTITIONER. A HEALTH CARE
23 PRACTITIONER SHALL NOT PERMIT THE MISREPRESENTATION OF
24 NONPHYSICIAN PERSONNEL AS RESIDENT PHYSICIANS OR PRACTICING
25 PHYSICIANS. WHEN ANY PORTION OF A PATIENT'S CARE IS PERFORMED BY
26 A QUALIFIED HEALTH CARE PRACTITIONER WHO IS NOT A MEDICAL DOCTOR
27 OR DOCTOR OF OSTEOPATHIC MEDICINE, A MEDICAL DOCTOR OR DOCTOR

1 OF OSTEOPATHIC MEDICINE SHALL INFORM THE PATIENT OR THE PATIENT'S
2 FAMILY, OR BOTH, THAT DELEGATION OF DUTIES IS INCLUDED IN CARE
3 PROVIDED BY THE PATIENT CARE TEAM.

4 (6) HEALTH CARE PRACTITIONERS WORKING IN NONPATIENT CARE
5 SETTINGS, AND WHO DO NOT HAVE ANY DIRECT PATIENT CARE
6 INTERACTIONS, ARE NOT SUBJECT TO THIS SECTION.

7 **12-28.5-105. Violations and enforcement.** (1) FAILURE TO
8 COMPLY WITH THIS ARTICLE CONSTITUTES A VIOLATION OF THIS ARTICLE.

9 (2) KNOWINGLY AIDING, ASSISTING, PROCURING, EMPLOYING, OR
10 ADVISING ANY UNLICENSED PERSON OR ENTITY TO PRACTICE OR ENGAGE
11 IN ACTS CONTRARY TO THE HEALTH CARE PRACTITIONER'S TYPE OF
12 LICENSURE CONSTITUTES A VIOLATION OF THIS ARTICLE.

13 (3) DELEGATING OR CONTRACTING FOR THE PERFORMANCE OF
14 HEALTH CARE SERVICES BY A HEALTH CARE PRACTITIONER WHEN THE
15 LICENSEE DELEGATING OR CONTRACTING FOR PERFORMANCE KNOWS, OR
16 HAS REASON TO KNOW, THAT THE PERSON DOES NOT HAVE THE REQUIRED
17 AUTHORITY PURSUANT TO THE PERSON'S LICENSURE, CONSTITUTES A
18 VIOLATION OF THIS ARTICLE.

19 (4) EACH DAY THIS ARTICLE IS VIOLATED CONSTITUTES A
20 SEPARATE OFFENSE AND IS PUNISHABLE AS SUCH.

21 (5) A HEALTH CARE PRACTITIONER WHO VIOLATES THIS ARTICLE
22 IS GUILTY OF UNPROFESSIONAL CONDUCT AND SUBJECT TO DISCIPLINARY
23 ACTION UNDER THE APPROPRIATE LICENSURE PROVISIONS GOVERNING THE
24 RESPECTIVE HEALTH CARE PRACTITIONER.

25 (6) IN THE EVENT OF A VIOLATION OF THIS ARTICLE, ANY FEES OR
26 OTHER AMOUNTS BILLED TO AND PAID BY THE PATIENT SHALL BE
27 REFUNDED TO THE PATIENT. THIS INCLUDES THIRD PARTIES CONTRACTED

1 TO COLLECT FEES ON BEHALF OF THE HEALTH CARE PRACTITIONER, THE
2 HEALTH CARE PRACTITIONER'S EMPLOYER, OR OTHER ENTITIES
3 CONTRACTING WITH THE HEALTH CARE PRACTITIONER.

4 (7) THE IMPOSITION OF PROFESSIONAL SANCTIONS,
5 ADMINISTRATIVE FINES, OR OTHER DISCIPLINARY ACTIONS SHALL BE
6 PUBLICLY REPORTED IN A JOURNAL OF OFFICIAL RECORD.

7 (8) NOTWITHSTANDING THE IMPOSITION OF ANY PENALTY UNDER
8 THIS ARTICLE, A PROFESSIONAL LICENSING BOARD OR OTHER
9 ADMINISTRATIVE AGENCY WITH JURISDICTION MAY SEEK AN INJUNCTION
10 OR OTHER LEGAL MEANS, AS APPROPRIATE, AGAINST A PERSON OR ENTITY
11 VIOLATING THIS ARTICLE.

12 **SECTION 2. Act subject to petition - effective date -**
13 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
14 following the expiration of the ninety-day period after final adjournment
15 of the general assembly (August 10, 2011, if adjournment sine die is on
16 May 11, 2011); except that, if a referendum petition is filed pursuant to
17 section 1 (3) of article V of the state constitution against this act or an
18 item, section, or part of this act within such period, then the act, item,
19 section, or part shall not take effect unless approved by the people at the
20 general election to be held in November 2012 and shall take effect on the
21 date of the official declaration of the vote thereon by the governor.

22 (2) The provisions of this act shall apply to health care
23 practitioners on or after the applicable effective date of this act.