

CHAPTER 181

PROFESSIONS AND OCCUPATIONS

SENATE BILL 19-234

BY SENATOR(S) Rodriguez and Foote, Bridges, Cooke, Crowder, Fields, Gardner, Ginal, Hisey, Holbert, Pettersen, Priola, Rankin, Scott, Story, Todd, Woodward, Zenzinger, Garcia;
also REPRESENTATIVE(S) Weissman, Buckner, Catlin, Garnett, Gray, Humphrey, Kennedy, Michaelson Jenet, Sirota, Becker.

AN ACT

CONCERNING THE CONTINUATION OF THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE 2018 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.

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

SECTION 1. In Colorado Revised Statutes, 24-34-104, **repeal** (17)(a)(VII); and **add** (31)(a)(IV) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (17) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2019:

(VII) ~~The functions of professional review committees specified in article 36.5 of title 12, C.R.S.;~~

(31) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2030:

(IV) THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES SPECIFIED IN ARTICLE 36.5 OF TITLE 12.

SECTION 2. In Colorado Revised Statutes, **amend** 12-36.5-107 as follows:

12-36.5-107. Repeal of article. This ~~article~~ ARTICLE 36.5 is repealed, effective ~~September 1, 2019.~~ Prior to such SEPTEMBER 1, 2030. BEFORE THE repeal, ~~the~~ department of regulatory agencies shall review the functions of professional review

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

committees ~~and the committee on anticompetitive conduct~~ ARE SCHEDULED FOR REVIEW in accordance with section 24-34-104. ~~C.R.S.~~

SECTION 3. In Colorado Revised Statutes, 12-36.5-102, **amend** the introductory portion, (7)(a) introductory portion, (7)(a)(V), and (7)(b); and **add** (5.5) as follows:

12-36.5-102. Definitions. As used in this ~~article~~ ARTICLE 36.5, unless the context otherwise requires:

(5.5) "ORIGINAL SOURCE DOCUMENT" MEANS ANY SEPARATE WRITTEN DOCUMENT CREATED OR PREPARED IN THE ORDINARY COURSE OF BUSINESS THAT IS NOT OTHERWISE PRIVILEGED OR CONFIDENTIAL, INCLUDING ELECTRONIC RECORDS AND ELECTRONIC COMMUNICATIONS, CONTAINING FACTUAL INFORMATION RELATING SOLELY TO THE INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION THAT IS NOT CREATED OR PREPARED AS PART OF THE PROFESSIONAL REVIEW ACTIVITIES OR CREATED BY OR AT THE DIRECTION OF A PROFESSIONAL REVIEW COMMITTEE.

(7) (a) "Records" means any and all written, electronic, or oral communications by any person arising from any activities of a professional review committee, including a governing board, established by an authorized entity under this ~~article~~ ARTICLE 36.5 or by the agent or staff thereof, including any:

(V) Recordings or transcripts of proceedings, minutes, formal recommendations, decisions, exhibits, and other similar items or documents related to professional review activities ~~or the committee on anticompetitive conduct~~ and typically constituting the records of administrative proceedings.

(b) "Records" does not include any written, electronic, or oral communications by any person that are otherwise available from a source outside the scope of professional review activities, including medical records and other health information, INCIDENT REPORTS PREPARED IN THE ORDINARY COURSE OF BUSINESS, AND RELEVANT HOSPITAL OR FACILITY POLICIES, PROCEDURES, AND PROTOCOLS, OR OTHER ORIGINAL SOURCE DOCUMENTS.

SECTION 4. In Colorado Revised Statutes, 12-36.5-104, **amend** (3) and (13); **repeal** (7)(f); and **add** (2.7) and (17) as follows:

12-36.5-104. Establishment of professional review committees - function - rules. (2.7) A PROFESSIONAL REVIEW COMMITTEE OF A HOSPITAL LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a) IS ENCOURAGED TO APPOINT A CONSUMER TO SERVE AS A NONVOTING MEMBER OF THE PROFESSIONAL REVIEW COMMITTEE, SO LONG AS THE CONSUMER COMPLIES WITH THE HOSPITAL'S CONFLICT OF INTEREST POLICIES, ENTERS INTO A CONFIDENTIALITY AGREEMENT ACCEPTABLE TO THE HOSPITAL, AND ENTERS INTO A BUSINESS ASSOCIATE AGREEMENT IN ACCORDANCE WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED.

(3) A ~~utilization and quality control peer review~~ IMPROVEMENT organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization performing

similar review services under federal or state law is an approved professional review committee under this ~~article~~ ARTICLE 36.5.

(7) The written bylaws, policies, or procedures of any professional review committee for persons licensed under article 36 of this title or licensed under article 38 of this title and granted authority as advanced practice nurses must provide for at least the following:

~~(f) The professional review committee shall forward a copy of any recommendations made pursuant to paragraph (d) of this subsection (7) promptly to the medical board if the subject of the investigation is licensed under article 36 of this title, or to the nursing board if the subject of the investigation is licensed under article 38 of this title and granted authority as an advanced practice nurse.~~

(13) Responding to a subpoena or disclosing or sharing of otherwise privileged records and information pursuant to subsection (10), (11), or (12) of this section does not constitute a waiver of the privilege specified in ~~paragraph (a) of subsection (10)~~ SUBSECTION (10)(a) of this section or a violation of the confidentiality requirements of subsection (15) of this section. Records provided to any governmental agency, including the department of public health and environment, ~~the committee on anticompetitive conduct~~, the medical board, and the nursing board pursuant to subsection (10) or (11) of this section are not public records subject to the "Colorado Open Records Act", part 2 of article 72 of title 24. ~~C.R.S.~~ A person providing the records to an authorized entity or its professional review committee or governing board, the department of public health and environment, ~~the committee on anticompetitive conduct~~, the medical board, the nursing board, CMS, the Joint Commission, or other governmental agency is entitled to the same immunity from liability as provided under section 12-36.5-105 for the disclosure of the records.

(17) (a) ORIGINAL SOURCE DOCUMENTS ARE NOT PROTECTED FROM SUBPOENA, DISCOVERY, OR USE IN ANY CIVIL ACTION MERELY BECAUSE THEY WERE CONSIDERED BY OR PRESENTED TO A PROFESSIONAL REVIEW COMMITTEE. ORIGINAL SOURCE DOCUMENTS ARE SUBJECT TO SUBPOENA OR DISCOVERY ONLY FROM THE ORIGINAL SOURCES AND ARE PROTECTED FROM SUBPOENA OR DISCOVERY FROM THE PROFESSIONAL REVIEW FILES OF A PROFESSIONAL REVIEW COMMITTEE OF AN AUTHORIZED ENTITY EXCEPT AS PROVIDED BELOW:

(I) UPON SUBPOENA OR REQUEST FOR DISCOVERY FOR ORIGINAL SOURCE DOCUMENTS, AN AUTHORIZED ENTITY SHALL PROVIDE A LOG OF ALL ORIGINAL SOURCE DOCUMENTS CONTAINED IN THE AUTHORIZED ENTITY'S PROFESSIONAL REVIEW FILES INCLUDING THE SOURCE AND NATURE OF EACH ORIGINAL SOURCE DOCUMENT;

(II) THE INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION BY SUCH PERSON, NEXT FRIEND, OR LEGAL REPRESENTATIVE MAY SUBPOENA OR SEEK DISCOVERY OF ANY ORIGINAL SOURCE DOCUMENT IDENTIFIED ON THE AUTHORIZED ENTITY'S PROFESSIONAL REVIEW COMMITTEE LOG ONLY IF THE ORIGINAL SOURCE DOCUMENT WAS NOT PRODUCED IN RESPONSE TO A PRIOR SUBPOENA OR DISCOVERY REQUEST TO THE ORIGINAL SOURCE; AND

(b) THIS SUBSECTION (17) DOES NOT RELIEVE ANY PARTY OF THEIR OBLIGATION

UNDER THE COLORADO RULES OF CIVIL PROCEDURE.

SECTION 5. In Colorado Revised Statutes, 12-36.5-104.6, **amend** (2) introductory portion and (4); and **add** (2)(a.5) and (2)(c)(IV) as follows:

12-36.5-104.6. Governing boards to register with division - annual reports - aggregation and publication of data - definition - rules. (2) Each governing board that establishes or uses one or more professional review committees to review the practice of persons licensed under article 36 of this ~~title~~ TITLE 12 or licensed under article 38 of this ~~title~~ TITLE 12 and granted authority as advanced practice nurses shall:

(a.5) UPDATE THE GOVERNING BOARD'S INFORMATION, AS SPECIFIED BY THE DIVISION BY RULE IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION, WITH THE DIVISION ANNUALLY, INCLUDING WHETHER THE GOVERNING BOARD IS CURRENTLY ENGAGED IN A PROFESSIONAL REVIEW ACTIVITY OR INTENDS TO ENGAGE IN A PROFESSIONAL REVIEW ACTIVITY IN THE FUTURE;

(c) (IV) THE IDENTITY OF THE GOVERNING BOARD REPORTING THE DATA AND THE DATA REPORTED PURSUANT TO THIS SUBSECTION (2)(c) OR SUBSECTION (2)(b) OF THIS SECTION MAY BE KNOWN TO THE DIVISION.

(4) The division:

(a) Shall adopt rules to:

(I) Implement this section;

(II) DETERMINE THE DE-IDENTIFIED INFORMATION REGARDING INVESTIGATIONS AND OUTCOMES A GOVERNING BOARD IS REQUIRED TO REPORT; AND

(III) ESTABLISH A PROCESS TO REMOVE A GOVERNING BOARD FROM THE REGISTRY WHEN THE GOVERNING BOARD IS NO LONGER REQUIRED TO REGISTER WITH THE DIVISION PURSUANT TO THIS SECTION; and

(b) May collect a reasonable registration fee to recover its direct and indirect costs of administering the registration and publication systems required by this section.

SECTION 6. In Colorado Revised Statutes, **amend as relocated by House Bill 19-1172** 12-30-209 as follows:

12-30-209. Repeal of part. This part 2 is repealed, effective September 1, ~~2019~~ 2030. Before the repeal, the functions of professional review committees are scheduled for review in accordance with section 24-34-104.

SECTION 7. In Colorado Revised Statutes, 12-30-202, **amend as relocated by House Bill 19-1172** (8)(b); and **add as relocated by House Bill 19-1172** (6.5) as follows:

12-30-202. Definitions. As used in this part 2, unless the context otherwise

requires:

(6.5) "ORIGINAL SOURCE DOCUMENT" MEANS ANY SEPARATE WRITTEN DOCUMENT CREATED OR PREPARED IN THE ORDINARY COURSE OF BUSINESS THAT IS NOT OTHERWISE PRIVILEGED OR CONFIDENTIAL, INCLUDING ELECTRONIC RECORDS AND ELECTRONIC COMMUNICATIONS, CONTAINING FACTUAL INFORMATION RELATING SOLELY TO THE INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION THAT IS NOT CREATED OR PREPARED AS PART OF THE PROFESSIONAL REVIEW ACTIVITIES OR CREATED BY OR AT THE DIRECTION OF A PROFESSIONAL REVIEW COMMITTEE.

(8) (b) "Records" does not include any written, electronic, or oral communications by any person that are otherwise available from a source outside the scope of professional review activities, including medical records and other health information, INCIDENT REPORTS PREPARED IN THE ORDINARY COURSE OF BUSINESS, AND RELEVANT HOSPITAL OR FACILITY POLICIES, PROCEDURES, AND PROTOCOLS, OR OTHER ORIGINAL SOURCE DOCUMENTS.

SECTION 8. In Colorado Revised Statutes, 12-30-204, **repeal as relocated by House Bill 19-1172** (8)(f); and **add as relocated by House Bill 19-1172** (3.5) and (18) as follows:

12-30-204. Establishment of professional review committees - function - rules. (3.5) A PROFESSIONAL REVIEW COMMITTEE OF A HOSPITAL LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a) IS ENCOURAGED TO APPOINT A CONSUMER TO SERVE AS A NONVOTING MEMBER OF THE PROFESSIONAL REVIEW COMMITTEE, SO LONG AS THE CONSUMER COMPLIES WITH THE HOSPITAL'S CONFLICT OF INTEREST POLICIES, ENTERS INTO A CONFIDENTIALITY AGREEMENT ACCEPTABLE TO THE HOSPITAL, AND ENTERS INTO A BUSINESS ASSOCIATE AGREEMENT IN ACCORDANCE WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED.

(8) The written bylaws, policies, or procedures of any professional review committee for persons licensed under article 240 of this title 12 or advanced practice nurses must provide for at least the following:

~~(f) The professional review committee shall forward a copy of any recommendations made pursuant to subsection (8)(d) of this section promptly to the medical board if the subject of the investigation is licensed under article 240 of this title 12, or to the nursing board if the subject of the investigation is an advanced practice nurse.~~

(18) (a) ORIGINAL SOURCE DOCUMENTS ARE NOT PROTECTED FROM SUBPOENA, DISCOVERY, OR USE IN ANY CIVIL ACTION MERELY BECAUSE THEY WERE CONSIDERED BY OR PRESENTED TO A PROFESSIONAL REVIEW COMMITTEE. ORIGINAL SOURCE DOCUMENTS ARE SUBJECT TO SUBPOENA OR DISCOVERY ONLY FROM THE ORIGINAL SOURCES AND ARE PROTECTED FROM SUBPOENA OR DISCOVERY FROM THE PROFESSIONAL REVIEW FILES OF A PROFESSIONAL REVIEW COMMITTEE OF AN AUTHORIZED ENTITY EXCEPT AS PROVIDED BELOW:

(I) UPON SUBPOENA OR REQUEST FOR DISCOVERY FOR ORIGINAL SOURCE

DOCUMENTS, AN AUTHORIZED ENTITY SHALL PROVIDE A LOG OF ALL ORIGINAL SOURCE DOCUMENTS CONTAINED IN THE AUTHORIZED ENTITY'S PROFESSIONAL REVIEW FILES INCLUDING THE SOURCE AND NATURE OF EACH ORIGINAL SOURCE DOCUMENT;

(II) THE INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION BY SUCH PERSON, NEXT FRIEND, OR LEGAL REPRESENTATIVE MAY SUBPOENA OR SEEK DISCOVERY OF ANY ORIGINAL SOURCE DOCUMENT IDENTIFIED ON THE AUTHORIZED ENTITY'S PROFESSIONAL REVIEW COMMITTEE LOG ONLY IF THE ORIGINAL SOURCE DOCUMENT WAS NOT PRODUCED IN RESPONSE TO A PRIOR SUBPOENA OR DISCOVERY REQUEST TO THE ORIGINAL SOURCE; AND

(b) THIS SUBSECTION (18) DOES NOT RELIEVE ANY PARTY OF THEIR OBLIGATION UNDER THE COLORADO RULES OF CIVIL PROCEDURE.

SECTION 9. In Colorado Revised Statutes, 12-30-206, **amend as relocated by House Bill 19-1172** (4); and **add** (2)(a.5) and (2)(c)(IV) as follows:

12-30-206. Governing boards to register with division - annual reports - aggregation and publication of data - definition - rules. (2) Each governing board that establishes or uses one or more professional review committees to review the practice of persons licensed under article 240 of this title 12 or of advanced practice nurses shall:

(a.5) UPDATE THE GOVERNING BOARD'S INFORMATION, AS SPECIFIED BY THE DIVISION BY RULE IN ACCORDANCE WITH SUBSECTION (4)(a) OF THIS SECTION, WITH THE DIVISION ANNUALLY, INCLUDING WHETHER THE GOVERNING BOARD IS CURRENTLY ENGAGED IN A PROFESSIONAL REVIEW ACTIVITY OR INTENDS TO ENGAGE IN A PROFESSIONAL REVIEW ACTIVITY IN THE FUTURE;

(c)(IV) THE IDENTITY OF THE GOVERNING BOARD REPORTING THE DATA AND THE DATA REPORTED PURSUANT TO THIS SUBSECTION (2)(c) OR SUBSECTION (2)(b) OF THIS SECTION MAY BE KNOWN TO THE DIVISION.

(4) The division:

(a) Shall adopt rules to:

(I) Implement this section;

(II) DETERMINE THE DE-IDENTIFIED INFORMATION REGARDING INVESTIGATIONS AND OUTCOMES A GOVERNING BOARD IS REQUIRED TO REPORT; AND

(III) ESTABLISH A PROCESS TO REMOVE A GOVERNING BOARD FROM THE REGISTRY WHEN THE GOVERNING BOARD IS NO LONGER REQUIRED TO REGISTER WITH THE DIVISION PURSUANT TO THIS SECTION; and

(b) May collect a reasonable registration fee to recover its direct and indirect costs of administering the registration and publication systems required by this section.

SECTION 10. Act subject to petition - effective date. (1) Except as otherwise provided in subsection (2) of this section, this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Sections 6 through 9 of this act take effect only if House Bill 19-1172 becomes law, in which case sections 6 through 9 take effect October 1, 2019.

Approved: May 16, 2019