

CHAPTER 135

HEALTH AND ENVIRONMENT

HOUSE BILL 97-1298

BY REPRESENTATIVES Pankey, Epps, Adkins, Grossman, Kreutz, Morrison, Reeser, Sinclair, Arrington, Kaufman, Leyba, Mace, Nichol, Snyder, Sullivant, Tool, Tupa, and Veiga;
also SENATORS Wham, Congrove, Hernandez, Hopper, J. Johnson, Martinez, Matsunaka, Pascoe, Perlmutter, Reeves, Tanner, and Weddig.

AN ACT

CONCERNING AUTHORITY OF THE STATE BOARD OF HEALTH TO REQUIRE HEALTH CARE FACILITIES TO REPORT INCIDENTS AND, IN CONNECTION THEREWITH, SPECIFYING LIMITATIONS ON THE RELEASE OF INFORMATION CONTAINED IN SUCH REPORTS.

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

SECTION 1. Part 1 of article 1 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

25-1-124. Health care facilities - consumer information - reporting - release.

(1) THE GENERAL ASSEMBLY HEREBY FINDS THAT AN INCREASING NUMBER OF PEOPLE ARE FACED WITH THE DIFFICULT TASK OF CHOOSING A HEALTH CARE FACILITY FOR THEMSELVES AND THEIR FAMILY MEMBERS. THIS TASK MAY BE MADE LESS DIFFICULT BY IMPROVED ACCESS TO RELIABLE, HELPFUL, AND UNBIASED INFORMATION CONCERNING THE QUALITY OF CARE AND THE SAFETY OF THE ENVIRONMENT OFFERED BY EACH HEALTH CARE FACILITY. THE GENERAL ASSEMBLY FURTHER FINDS THAT IT IS APPROPRIATE THAT THE DEPARTMENT, IN KEEPING WITH ITS ROLE OF PROTECTING AND IMPROVING THE PUBLIC HEALTH, SOLICIT THIS INFORMATION FROM HEALTH CARE FACILITIES AND DISSEMINATE IT TO THE PUBLIC IN A FORM THAT WILL ASSIST PEOPLE IN MAKING INFORMED CHOICES AMONG HEALTH CARE FACILITIES.

(2) EACH HEALTH CARE FACILITY LICENSED PURSUANT TO SECTION 25-3-101 OR CERTIFIED PURSUANT TO SECTION 25-1-107 (1) (I) (II) SHALL REPORT TO THE DEPARTMENT THE FOLLOWING OCCURRENCES:

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

(a) ANY OCCURRENCE THAT RESULTS IN THE DEATH OF A PATIENT OR RESIDENT OF THE FACILITY AND IS REQUIRED TO BE REPORTED TO THE CORONER PURSUANT TO SECTION 30-10-606, C.R.S., AS ARISING FROM AN UNEXPLAINED CAUSE OR UNDER SUSPICIOUS CIRCUMSTANCES;

(b) ANY OCCURRENCE THAT RESULTS IN ANY OF THE FOLLOWING SERIOUS INJURIES TO A PATIENT OR RESIDENT:

(I) BRAIN OR SPINAL CORD INJURIES;

(II) LIFE-THREATENING COMPLICATIONS OF ANESTHESIA OR LIFE-THREATENING TRANSFUSION ERRORS OR REACTIONS;

(III) SECOND- OR THIRD-DEGREE BURNS INVOLVING TWENTY PERCENT OR MORE OF THE BODY SURFACE AREA OF AN ADULT PATIENT OR RESIDENT OR FIFTEEN PERCENT OR MORE OF THE BODY SURFACE AREA OF A CHILD PATIENT OR RESIDENT;

(c) ANY TIME THAT A RESIDENT OR PATIENT OF THE FACILITY CANNOT BE LOCATED FOLLOWING A SEARCH OF THE FACILITY, THE FACILITY GROUNDS, AND THE AREA SURROUNDING THE FACILITY AND THERE ARE CIRCUMSTANCES THAT PLACE THE RESIDENT'S HEALTH, SAFETY, OR WELFARE AT RISK OR, REGARDLESS OF WHETHER SUCH CIRCUMSTANCES EXIST, THE PATIENT OR RESIDENT HAS BEEN MISSING FOR EIGHT HOURS;

(d) ANY OCCURRENCE INVOLVING PHYSICAL, SEXUAL, OR VERBAL ABUSE OF A PATIENT OR RESIDENT, AS DESCRIBED IN SECTION 18-3-202, 18-3-203, 18-3-204, 18-3-206, 18-3-402, 18-3-403, 18-3-404, OR 18-3-405, C.R.S., BY ANOTHER PATIENT OR RESIDENT, AN EMPLOYEE OF THE FACILITY, OR A VISITOR TO THE FACILITY;

(e) ANY OCCURRENCE INVOLVING NEGLIGENCE OF A PATIENT OR RESIDENT, AS DESCRIBED IN SECTION 26-3.1-101 (4) (b), C.R.S.;

(f) ANY OCCURRENCE INVOLVING MISAPPROPRIATION OF A PATIENT'S OR RESIDENT'S PROPERTY. FOR PURPOSES OF THIS PARAGRAPH (f), "MISAPPROPRIATION OF A PATIENT'S OR RESIDENT'S PROPERTY" MEANS A PATTERN OF OR DELIBERATELY MISPLACING, EXPLOITING, OR WRONGFULLY USING, EITHER TEMPORARILY OR PERMANENTLY, A PATIENT'S OR RESIDENT'S BELONGINGS OR MONEY WITHOUT THE PATIENT'S OR RESIDENT'S CONSENT.

(g) ANY OCCURRENCE IN WHICH DRUGS INTENDED FOR USE BY PATIENTS OR RESIDENTS ARE DIVERTED TO USE BY OTHER PERSONS; AND

(h) ANY OCCURRENCE INVOLVING THE MALFUNCTION OR INTENTIONAL OR ACCIDENTAL MISUSE OF PATIENT OR RESIDENT CARE EQUIPMENT THAT OCCURS DURING TREATMENT OR DIAGNOSIS OF A PATIENT OR RESIDENT AND THAT SIGNIFICANTLY ADVERSELY AFFECTS OR IF NOT AVERTED WOULD HAVE SIGNIFICANTLY ADVERSELY AFFECTED A PATIENT OR RESIDENT OF THE FACILITY.

(3) THE BOARD BY RULE SHALL SPECIFY THE MANNER, TIME PERIOD, AND FORM IN WHICH THE REPORTS REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL

BE MADE.

(4) ANY REPORT SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL BE STRICTLY CONFIDENTIAL; EXCEPT THAT INFORMATION IN ANY SUCH REPORT MAY BE TRANSMITTED TO AN APPROPRIATE REGULATORY AGENCY HAVING JURISDICTION FOR DISCIPLINARY OR LICENSE SANCTIONS. THE INFORMATION IN SUCH REPORTS SHALL NOT BE MADE PUBLIC UPON SUBPOENA, SEARCH WARRANT, DISCOVERY PROCEEDINGS, OR OTHERWISE, EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION.

(5) THE DEPARTMENT SHALL INVESTIGATE EACH REPORT SUBMITTED PURSUANT TO SUBSECTION (2) OF THIS SECTION THAT IT DETERMINES WAS APPROPRIATELY SUBMITTED. FOR EACH REPORT INVESTIGATED, THE DEPARTMENT SHALL PREPARE A SUMMARY OF ITS FINDINGS, INCLUDING THE DEPARTMENT'S CONCLUSIONS AND WHETHER THERE WAS A VIOLATION OF LICENSING STANDARDS OR A DEFICIENCY OR WHETHER THE FACILITY ACTED APPROPRIATELY IN RESPONSE TO THE OCCURRENCE. IF THE INVESTIGATION IS NOT CONDUCTED ON SITE, THE DEPARTMENT SHALL SPECIFY IN THE SUMMARY HOW THE INVESTIGATION WAS CONDUCTED. ANY INVESTIGATION CONDUCTED PURSUANT TO THIS SUBSECTION (5) SHALL BE IN ADDITION TO AND NOT IN LIEU OF ANY INSPECTION REQUIRED TO BE CONDUCTED PURSUANT TO SECTION 25-1-107 (1) (I), WITH REGARD TO LICENSING.

(6) (a) THE DEPARTMENT SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO THE PUBLIC:

(I) ANY INVESTIGATION SUMMARIES PREPARED PURSUANT TO SUBSECTION (5) OF THIS SECTION;

(II) ANY COMPLAINTS AGAINST A HEALTH CARE FACILITY THAT HAVE BEEN FILED WITH THE DEPARTMENT AND THAT THE DEPARTMENT HAS INVESTIGATED, INCLUDING THE CONCLUSIONS REACHED BY THE DEPARTMENT AND WHETHER THERE WAS A VIOLATION OF LICENSING STANDARDS OR A DEFICIENCY OR WHETHER THE FACILITY ACTED APPROPRIATELY IN RESPONSE TO THE SUBJECT OF THE COMPLAINT; AND

(III) A LISTING OF ANY DEFICIENCY CITATIONS ISSUED AGAINST EACH HEALTH CARE FACILITY.

(b) THE INFORMATION RELEASED PURSUANT TO THIS SUBSECTION (6) SHALL NOT IDENTIFY THE PATIENT OR RESIDENT OR THE HEALTH CARE PROFESSIONAL INVOLVED IN THE REPORT.

(7) PRIOR TO THE COMPLETION OF AN INVESTIGATION PURSUANT TO THIS SECTION, THE DEPARTMENT MAY RESPOND TO ANY INQUIRY REGARDING A REPORT RECEIVED PURSUANT TO SUBSECTION (2) OF THIS SECTION BY CONFIRMING THAT IT HAS RECEIVED SUCH REPORT AND THAT AN INVESTIGATION IS PENDING.

SECTION 2. 25-3-109 (1), (3), (7), (8), and (11), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

25-3-109. Quality management functions - confidentiality and immunity.
(1) The general assembly hereby finds and declares that the implementation of

quality management functions to evaluate and improve patient and resident care is essential to the operation of health care facilities licensed or certified by the department of public health and environment pursuant to section 25-1-107 (1) (l). For this purpose, it is necessary that the collection of information and data by such licensed or certified health care facilities be reasonably unfettered so a complete and thorough evaluation and improvement of the quality of patient and resident care can be accomplished. To this end, quality management information relating to the evaluation or improvement of the quality of health care services shall be confidential, SUBJECT TO THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION, and persons performing such functions shall be granted qualified immunity. 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.

(3) Except as otherwise provided in this section, any records, reports, or other information of a licensed or certified health care facility ~~which~~ THAT are part of a quality management program designed to identify, evaluate, and reduce the risk of patient or resident injury associated with care or to improve the quality of patient care shall be confidential information; except that such information shall be subject to ~~any right of inspection or investigation as otherwise provided by law by the department of public health and environment or other appropriate regulatory agency~~ THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION.

~~(7) Nothing in this section shall limit the department of public health and environment from:~~

~~(a) In response to an inquiry regarding a specific situation, confirming, without identifying a health care professional, that it has obtained a report concerning quality management information or that an investigation is pending;~~

~~(b) Disclosing information to a regulatory agency having jurisdiction to investigate the information; however, such information disclosed to a regulatory agency shall remain confidential;~~

~~(c) Releasing a summary report of its findings after an investigation is completed or the department determines no investigation is warranted;~~

~~(d) Releasing a summary report, notwithstanding its pending investigation, if it determines that such release is necessary for the immediate protection of the public health and safety.~~

(8) A summary report may not identify a health care professional. Prior to releasing a summary report which contains information identifying a health care facility, the department of public health and environment shall notify the health care facility, and the facility shall be allowed a reasonable time to comment. If immediate release of information is necessary and prior oral notification cannot be given, notification shall be given as soon as reasonably possible and shall state why prior notice could not be given.

(11) Nothing in this section shall be construed to limit admissibility into evidence of a summary report.

SECTION 3. 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.

Approved: April 24, 1997