

CHAPTER 67

LABOR AND INDUSTRY

HOUSE BILL 07-1133

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also SENATOR(S) Hagedorn, Boyd, Fitz-Gerald, Mitchell S., Shaffer, Tochtrop, Tupa, and Williams.

AN ACT**CONCERNING PROTECTION FOR HEALTH CARE WORKERS WHO REPORT PATIENT SAFETY INFORMATION.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Patient safety is of paramount importance in the delivery of health care to Colorado citizens. A patient is at his or her safest when a health care worker has the right to speak out on the patient's behalf without fear of reprisal or retaliation. Health care providers recognize that, in order to deliver the highest quality health care, it is imperative that all health care workers have the right to report patient safety concerns and to advocate for a patient's well being without the risk of disciplinary action or loss of employment.

(b) Colorado also recognizes the importance of unimpeded access to legislative and judicial processes and has prescribed penalties against employers who retaliate against an employee for exercising the employee's rights in this arena in section 8-2.5-101, Colorado Revised Statutes.

(c) Many health care professions are under existing legal, licensing, or ethical obligations to report unsafe practices. It is a violation of public policy in the state of Colorado for a health care worker to be fired or penalized for fulfilling his or her professional obligations. If an employer is able to retaliate against an employee for fulfilling his or her professional obligations, then Colorado is putting its health care workers in a state of contradiction, ultimately penalizing the worker for following

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

the law or, alternately, the internal reporting requirements of a health care employer.

(2) The general assembly hereby declares its obligation to remedy the existing silence in state law and create a framework for health care employers and employees to protect patients, safeguard professional obligations, and maintain the standards that employers and health care workers need to deliver quality health care to Colorado citizens.

SECTION 2. Part 1 of article 2 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-2-123. Health care workers - retaliation prohibited - definitions. (1) AS USED IN THIS SECTION:

(a) "DISCIPLINARY ACTION" MEANS ANY DIRECT OR INDIRECT FORM OF DISCIPLINE OR PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, DEMOTION, TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION, REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW-STANDARD PERFORMANCE EVALUATION, REDUCTION IN FORCE, WITHHOLDING OF WORK, CHANGES IN WORK HOURS, NEGATIVE REFERENCE, CREATING OR TOLERATING A HOSTILE WORK ENVIRONMENT, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY. "DISCIPLINARY ACTION" SHALL NOT INCLUDE ACTION TAKEN THAT IS RELATED TO STAFFING OR PATIENT CARE NEEDS.

(b) "GOOD FAITH REPORT OR DISCLOSURE" MEANS A REPORT REGARDING PATIENT SAFETY INFORMATION OR QUALITY OF PATIENT CARE THAT IS MADE WITHOUT MALICE OR CONSIDERATION OF PERSONAL BENEFIT AND THAT THE HEALTH CARE WORKER MAKING THE REPORT HAS REASONABLE CAUSE TO BELIEVE IS TRUE. "GOOD FAITH REPORT OR DISCLOSURE" ALSO INCLUDES, WITH RESPECT TO PATIENT CARE, A REPORT REGARDING ANY PRACTICE, PROCEDURE, ACTION, OR FAILURE TO ACT WITH REGARD TO PATIENT SAFETY THAT CONCERNS INFORMATION REGARDING A GENERALLY ACCEPTED STANDARD OF CARE; A LAW, RULE, REGULATION, OR DECLARATORY RULING ADOPTED PURSUANT TO LAW; OR COMPLIANCE WITH A PROFESSIONAL LICENSURE REQUIREMENT, WHICH REPORT IS MADE WITHOUT MALICE OR CONSIDERATION OF PERSONAL BENEFIT AND THAT THE HEALTH CARE WORKER MAKING THE REPORT HAS REASONABLE CAUSE TO BELIEVE IS TRUE.

(c) "HEALTH CARE PROVIDER" MEANS ANY HEALTH CARE FACILITY LICENSED UNDER SECTION 25-3-101, C.R.S., OR ANY INDIVIDUAL WHO IS AUTHORIZED TO PRACTICE SOME COMPONENT OF THE HEALING ARTS BY LICENSE, CERTIFICATE, OR REGISTRATION.

(d) "HEALTH CARE WORKER" MEANS ANY PERSON CERTIFIED, REGISTERED, OR LICENSED PURSUANT TO ARTICLE 22, 29.5, 32, 33, 35, 36, OR 37, OR 38 TO 43 OF TITLE 12, C.R.S., OR CERTIFIED PURSUANT TO SECTION 25-3.5-203, C.R.S.

(2) (a) A HEALTH CARE PROVIDER SHALL NOT TAKE DISCIPLINARY ACTION AGAINST A HEALTH CARE WORKER IN RETALIATION FOR MAKING A GOOD FAITH REPORT OR DISCLOSURE.

(b) PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL NOT APPLY TO A HEALTH CARE WORKER WHO DISCLOSES INFORMATION THAT THE WORKER KNOWS TO BE FALSE,

WHO DISCLOSES INFORMATION WITH DISREGARD FOR THE TRUTH OR FALSITY THEREOF, OR WHO DISCLOSES INFORMATION WITHOUT FULLY COMPLYING WITH SUBSECTION (3) OF THIS SECTION.

(c) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO GRANT IMMUNITY TO A HEALTH CARE WORKER FOR HIS OR HER OWN ACTS OF MEDICAL NEGLIGENCE, FOR UNPROFESSIONAL CONDUCT SUBJECT TO PROFESSIONAL REVIEW ACTIVITIES AUTHORIZED BY STATE OR FEDERAL LAW, FOR A BREACH OF A PROFESSIONAL LICENSURE REQUIREMENT, OR FOR A VIOLATION OF ANY STATE OR FEDERAL LAW REQUIRING CONFIDENTIALITY OF PATIENT INFORMATION.

(3) WHEN MAKING A GOOD FAITH REPORT OR DISCLOSURE REGARDING PATIENT SAFETY OR QUALITY OF PATIENT CARE, A HEALTH CARE WORKER SHALL FOLLOW THE INTERNAL REPORTING PROCEDURES OF THE HEALTH CARE PROVIDER, TO THE EXTENT SUCH PROCEDURES EXIST AND ARE PROVIDED TO THE HEALTH CARE WORKER IN WRITING, AND SHALL EXHAUST SUCH PROCEDURES PRIOR TO PURSUING ANY FURTHER REPORTING OR DISCLOSURE ACTIVITY.

(4) NOTHING IN THIS SECTION SHALL PREVENT A HEALTH CARE PROVIDER FROM TAKING DISCIPLINARY ACTION AGAINST A HEALTH CARE WORKER FOR REASONS OTHER THAN THOSE SPECIFIED IN SUBSECTION (2) OF THIS SECTION.

(5) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREEMPT EXISTING LAWS, REGULATIONS, OR RULES PERTAINING TO PATIENT CARE, INCLUDING PROFESSIONAL REVIEW PROCEEDINGS FOR HEALTH PROFESSIONALS OR FOR PHYSICIANS PURSUANT TO PART 1 OF ARTICLE 36.5 OF TITLE 12, C.R.S., OR QUALITY AND SAFETY STANDARDS FOR A HEALTH CARE FACILITY LICENSED PURSUANT TO SECTION 25-3-101, C.R.S.

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: March 29, 2007