

CHAPTER 251

HEALTH AND ENVIRONMENT

SENATE BILL 08-220

BY SENATOR(S) Boyd, Kester, Morse, Isgar, Shaffer, Taylor, and Tochtrop;
also REPRESENTATIVE(S) Riesberg, Gardner B., Kefalas, Labuda, Massey, McFadyen, Summers, and Todd.

AN ACT

CONCERNING THE AUTHORITY OF CERTAIN HEALTH CARE FACILITIES TO EMPLOY PHYSICIANS.

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

SECTION 1. 25-3-103.7, Colorado Revised Statutes, is amended to read:

25-3-103.7. Employment of physicians - when permissible - conditions.

(1) For purposes of this section:

(a) "COMMUNITY MENTAL HEALTH CENTER" MEANS A COMMUNITY MENTAL HEALTH CENTER, AS DEFINED IN SECTION 25-1.5-103 (2), THAT IS CURRENTLY LICENSED AND REGULATED BY THE DEPARTMENT PURSUANT TO THE DEPARTMENT'S AUTHORITY UNDER SECTION 25-1.5-103 (1) (a).

(b) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

(c) "FEDERALLY QUALIFIED HEALTH CENTER" OR "FQHC" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 1861(aa) (4) OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1395x (aa) (4).

(d) "HEALTH CARE FACILITY" MEANS A HOSPITAL, HOSPICE, COMMUNITY MENTAL HEALTH CENTER, FEDERALLY QUALIFIED HEALTH CENTER, SCHOOL-BASED HEALTH CENTER, OR RURAL HEALTH CLINIC.

~~(a)~~ (e) "Hospice" means an entity that administers services to a terminally ill person utilizing palliative care or treatment and that is currently licensed and regulated by the department of public health and environment pursuant to the department's authority under section 25-1.5-103 (1) (a).

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

~~(b)~~ (f) "Hospital" means a hospital currently licensed or certified by the department of public health and environment pursuant to the department's authority under section 25-1.5-103 (1) (a).

~~(c)~~ (g) "Physician" means a person duly licensed to practice under article 32, 35, or 36 of title 12, C.R.S.

(h) "RURAL HEALTH CLINIC" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 1861(aa) (2) OF THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1395x (aa) (2).

(i) "SCHOOL-BASED HEALTH CENTER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 25-20.5-502.

(2) A ~~hospital or hospice~~ HEALTH CARE FACILITY may employ physicians, subject to the limitations set forth in subsections (3) to (6) of this section.

(3) Nothing in this section shall be construed to allow any ~~hospital or hospice~~ HEALTH CARE FACILITY that employs a physician to limit or otherwise exercise control over the physician's independent professional judgment concerning the practice of medicine or diagnosis or treatment or to require physicians to refer exclusively to the ~~hospital or hospice~~ HEALTH CARE FACILITY or to the ~~hospital's or hospice's~~ HEALTH CARE FACILITY'S employed physicians. Any ~~hospital or hospice~~ HEALTH CARE FACILITY that knowingly or recklessly so limits or controls a physician in such manner or attempts to do so shall be deemed to have violated ~~hospital or hospice~~ standards of operation FOR THE PARTICULAR TYPE OF HEALTH CARE FACILITY and may be held liable to the patient or the physician, or both, for such violations, including proximately caused damages. Nothing in this section shall be construed to affect any ~~hospital's or hospice's~~ HEALTH CARE FACILITY'S decisions with respect to the availability of services, technology, equipment, facilities, or treatment programs, or as requiring any ~~hospital or hospice~~ HEALTH CARE FACILITY to make available to patients or physicians additional services, technology, equipment, facilities, or treatment programs.

(4) Nothing in this section shall be construed to allow a ~~hospital or hospice~~ HEALTH CARE FACILITY that employs a ~~health care professional~~ PHYSICIAN to offer the ~~health care professional~~ PHYSICIAN any percentage of fees charged to patients by the ~~hospital or hospice~~ HEALTH CARE FACILITY or other financial incentive to artificially increase services provided to patients.

(5) The medical staff bylaws or policies or ~~hospital~~ THE policies of any ~~hospital; or the medical staff bylaws or policies or hospice policies of any hospice;~~ HEALTH CARE FACILITY that employs physicians shall not discriminate with regard to credentials or staff privileges on the basis of whether a physician is an employee of, a physician with staff privileges at, or a contracting physician with, the ~~hospital or hospice~~ HEALTH CARE FACILITY. Any ~~hospital or hospice~~ HEALTH CARE FACILITY that discriminates with regard to credentials or staff privileges on the basis of whether a physician is an employee of, a physician with staff privileges at, or a contracting physician with, the ~~hospital or hospice~~ HEALTH CARE FACILITY shall be deemed to have violated ~~hospital or hospice~~ standards of operation FOR THE

PARTICULAR TYPE OF HEALTH CARE FACILITY and may be held liable to the physician for such violations, including proximately caused damages. This subsection (5) shall not affect the terms of any contract or written employment arrangement that provides that the credentials or staff and clinical privileges of any practitioner are incident to or coterminous with the contract or employment arrangement or the individual's association with a group holding the contract.

(6) Every ~~hospital or hospice~~ HEALTH CARE FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT that employs a physician shall report to the department ~~of public health and environment~~ when applying for initial facility licensure and upon each application for license renewal, the number of physicians on the ~~hospital's~~ HEALTH CARE FACILITY'S medical staff and shall separately identify the number of such physicians who are employed by the ~~hospital or hospice~~ HEALTH CARE FACILITY under separate contract to the ~~hospital or hospice~~ HEALTH CARE FACILITY, and independent of the ~~hospital or hospice~~ HEALTH CARE FACILITY. A HEALTH CARE FACILITY THAT IS A FQHC, RURAL HEALTH CLINIC, OR SCHOOL-BASED HEALTH CENTER THAT EMPLOYS A PHYSICIAN SHALL REPORT THE INFORMATION REQUIRED BY THIS SUBSECTION (6) TO THE DEPARTMENT BY JANUARY 1 OF EACH YEAR.

(7) The medical staff bylaws or policies or ~~hospital~~ THE policies of any ~~hospital,~~ ~~or the medical staff bylaws or policies or hospice~~ policies of any ~~hospice,~~ HEALTH CARE FACILITY that employs physicians shall contain a procedure by which complaints by physicians alleging a violation of subsection (3), (4), or (5) of this section may be heard and resolved, which procedure shall ensure that the due process rights of the parties are protected. A physician who believes he or she has been the subject of a violation of subsection (3), (4), or (5) of this section has a right to complain and request review of the matter pursuant to such procedure.

(8) Nothing in this section shall preclude a physician or a patient from seeking other remedies available to the physician or to the patient at law or in equity.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 20, 2008