

## CHAPTER 297

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**GOVERNMENT - STATE**

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## HOUSE BILL 14-1323

BY REPRESENTATIVE(S) Primavera, Becker, Conti, Exum, Fischer, Ginal, Hullinghorst, Kagan, Labuda, Landgraf, Lebsack, Lee, Mitsch Bush, Pabon, Pettersen, Rosenthal, Ryden, Schafer, Stephens, Tyler, Vigil, Williams, Young;  
also SENATOR(S) Lundberg and Kefalas, Guzman, Heath, Herpin, Hodge, Lambert, Newell, Nicholson, Steadman.

**AN ACT****CONCERNING RESTRICTIONS ON THE ABILITY OF A GOVERNMENT ENTITY TO ACCESS AN INDIVIDUAL'S PERSONAL MEDICAL INFORMATION.**

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

**SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article 72 of title 24 as follows:

**PART 6  
LIMITS ON GOVERNMENT ACCESS TO  
PERSONAL MEDICAL INFORMATION**

**24-72-601. Definitions.** AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(2) "MEDICAL INFORMATION" MEANS ANY INFORMATION CONTAINED IN THE MEDICAL RECORD OR ANY INFORMATION PERTAINING TO THE MEDICAL, MENTAL HEALTH, OR HEALTH CARE SERVICES PERFORMED AT THE DIRECTION OF A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROVIDER THAT IS PROTECTED BY THE PHYSICIAN-PATIENT PRIVILEGE ESTABLISHED BY SECTION 13-90-107 (1) (d), C.R.S.

(3) (a) "MEDICAL RECORD" MEANS THE WRITTEN OR GRAPHIC DOCUMENTATION, SOUND RECORDING, OR COMPUTER RECORD PERTAINING TO MEDICAL, MENTAL HEALTH, AND HEALTH CARE SERVICES, INCLUDING MEDICAL MARIJUANA SERVICES, PERFORMED AT THE DIRECTION OF A PHYSICIAN OR OTHER LICENSED HEALTH CARE PROVIDER ON BEHALF OF A PATIENT BY A PHYSICIAN, DENTIST, NURSE, SERVICE

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

PROVIDER, EMERGENCY MEDICAL SERVICE PROVIDER, MENTAL HEALTH PROFESSIONAL, PREHOSPITAL PROVIDER, OR OTHER HEALTH CARE PERSONNEL.

(b) "MEDICAL RECORD" INCLUDES DIAGNOSTIC DOCUMENTATION SUCH AS X RAYS, ELECTROCARDIOGRAMS, ELECTROENCEPHALOGRAMS, AND OTHER TEST RESULTS AND DATA ENTERED INTO THE PRESCRIPTION DRUG MONITORING PROGRAM UNDER SECTION 12-42.5-403, C.R.S.

(4) "PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD" MEANS AN INDIVIDUAL'S MEDICAL INFORMATION OR A MEDICAL RECORD:

(a) THAT IDENTIFIES THE INDIVIDUAL; OR

(b) WITH RESPECT TO WHICH THERE IS A REASONABLE BASIS TO BELIEVE THE INFORMATION CAN BE USED TO IDENTIFY THE INDIVIDUAL.

**24-72-602. Access to personal medical information prohibited - exceptions.**

(1) THE DEPARTMENT SHALL NEITHER ACCESS NOR DISTRIBUTE AN INDIVIDUAL'S PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD WITHOUT THE INDIVIDUAL'S CONSENT CONCURRENT WITH A REQUEST FOR ACCESS.

(2) WHEN THE DEPARTMENT REQUESTS ACCESS TO THE PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD OF AN EMPLOYEE OF THE DEPARTMENT IN CONNECTION WITH ONE OF THE FOLLOWING EMPLOYMENT-RELATED REQUESTS, OCCURRENCES, OR CLAIMS, THE EMPLOYEE'S CONSENT APPLIES THROUGHOUT THE DURATION OF THE EMPLOYMENT-RELATED REQUEST, OCCURRENCE, OR CLAIM FOR WHICH THE ACCESS TO THE EMPLOYEE'S PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD IS REQUESTED:

(a) FAMILY MEDICAL LEAVE;

(b) A REQUEST FOR A WORKPLACE ACCOMMODATION UNDER THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AS AMENDED;

(c) A REQUEST FOR SHORT- OR LONG-TERM DISABILITY BENEFITS;

(d) DETERMINING FITNESS TO RETURN TO WORK AFTER A LENGTHY ABSENCE;

(e) PHYSICIAN VERIFICATION OF AN ABSENCE EXCEEDING THREE DAYS;

(f) A REQUEST BY A JOB APPLICANT FOR AN ACCOMMODATION THROUGH THE APPLICATION PROCESS;

(g) A WORKERS' COMPENSATION CLAIM; OR

(h) DISABILITY RETIREMENT.

(3) THIS SECTION DOES NOT:

(a) PROHIBIT THE DEPARTMENT FROM ACCESSING AN INVOICE, A SALES RECEIPT,

OR OTHER DOCUMENTATION OF A SALE NECESSARY TO SUBSTANTIATE AN EXEMPTION FROM STATE SALES TAX UNDER SECTION 39-26-717, C.R.S., AS LONG AS:

(I) NO PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD IS CONTAINED IN THE DOCUMENTATION; AND

(II) ANY INFORMATION IN THE DOCUMENTATION THAT IDENTIFIES OR COULD BE USED TO IDENTIFY AN INDIVIDUAL PATIENT OR THAT INDICATES A PATIENT DIAGNOSIS OR TREATMENT PLAN HAS BEEN REDACTED FROM THE DOCUMENTATION; OR

(b) OVERRIDE THE AUTHORITY OF THE DEPARTMENT TO OBTAIN AND USE A WRITTEN MEDICAL OPINION IN ACCORDANCE WITH SECTION 42-2-112, C.R.S.

**24-72-603. Government access to personal medical information task force - creation - membership - duties - report - repeal.** (1) THERE IS HEREBY CREATED THE GOVERNMENT ACCESS TO PERSONAL MEDICAL INFORMATION TASK FORCE. THE TASK FORCE SHALL REVIEW, ANALYZE, AND MAKE RECOMMENDATIONS REGARDING THE ABILITY OF STATE AND LOCAL GOVERNMENT DEPARTMENTS AND AGENCIES TO ACCESS, USE, AND DISTRIBUTE PERSONAL MEDICAL INFORMATION AND MEDICAL RECORDS.

(2) (a) THE GOVERNOR SHALL APPOINT TO THE TASK FORCE REPRESENTATIVES FROM EACH STATE DEPARTMENT AND UNIVERSITY THAT ACCESSES, USES, OR DISTRIBUTES PERSONAL MEDICAL INFORMATION AND MEDICAL RECORDS. THE GOVERNOR MAY APPOINT A REPRESENTATIVE FROM THE GOVERNOR'S OFFICE TO SERVE ON THE TASK FORCE.

(b) THE GOVERNOR SHALL REQUEST PARTICIPATION ON THE TASK FORCE FROM REPRESENTATIVES OF QUASI-GOVERNMENTAL ENTITIES THAT ACCESS, USE, OR DISTRIBUTE PERSONAL MEDICAL INFORMATION OR MEDICAL RECORDS AND FROM STATEWIDE ORGANIZATIONS REPRESENTING: COUNTY GOVERNMENTS; MUNICIPAL GOVERNMENTS; HEALTH CARE PROVIDERS; HEALTH PLANS; MENTAL HEALTH CARE CONSUMERS; CONSUMER ADVOCACY GROUPS; CONSUMERS WITH CHRONIC ILLNESSES SUCH AS DIABETES AND HIV/AIDS; CONSUMERS WITH CANCER; AND PATIENT PRIVACY RIGHTS.

(c) THE GOVERNOR SHALL ALSO INVITE THE STATE AUDITOR OR HIS OR HER DESIGNEE TO PARTICIPATE ON THE TASK FORCE.

(3) (a) THE TASK FORCE SHALL SELECT A CHAIR AND VICE-CHAIR FROM AMONG ITS MEMBERSHIP.

(b) MEMBERS OF THE TASK FORCE SERVE WITHOUT COMPENSATION AND ARE NOT ENTITLED TO REIMBURSEMENT FOR THEIR EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

(c) THE TASK FORCE SHALL HOLD ITS FIRST MEETING NO LATER THAN JULY 15, 2014, AND SHALL HOLD AT LEAST ONE BUT NOT MORE THAN THREE ADDITIONAL MEETINGS ON OR BEFORE NOVEMBER 1, 2014.

(4) THE TASK FORCE SHALL EXAMINE AT LEAST THE FOLLOWING TOPICS:

(a) WHY AND TO WHAT EXTENT STATE AND LOCAL GOVERNMENT DEPARTMENTS OR AGENCIES HAVE ACCESS TO AND THE ABILITY TO USE OR DISTRIBUTE AN INDIVIDUALS' PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD WITH AND WITHOUT THE INDIVIDUAL'S CONSENT, INCLUDING:

(I) THE EXTENT OF GOVERNMENT ACCESS TO THE PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD OF AN EMPLOYEE OF A STATE OR LOCAL GOVERNMENT DEPARTMENT OR AGENCY IN CONNECTION WITH AN EMPLOYMENT-RELATED REQUEST, OCCURRENCE, OR CLAIM; WHETHER THE EMPLOYEE'S CONSENT IS REQUIRED; AND THE DURATION OF THE EMPLOYEE'S CONSENT;

(II) THE EXTENT OF GOVERNMENT ACCESS TO THE PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD OF AN INDIVIDUAL RECEIVING HEALTH CARE SERVICES FROM THE STATE OR LOCAL GOVERNMENT, WHETHER THE INDIVIDUAL'S CONSENT IS REQUIRED, AND THE DURATION OF THE INDIVIDUAL'S CONSENT;

(III) THE SPECIFIC STATE OR FEDERAL LAWS, RULES, OR REGULATIONS AUTHORIZING A STATE OR LOCAL GOVERNMENT DEPARTMENT OR AGENCY TO ACCESS AN INDIVIDUAL'S PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD WITHOUT THE INDIVIDUAL'S CONSENT AND THE CIRCUMSTANCES UNDER WHICH ACCESS TO PERSONAL MEDICAL INFORMATION OR MEDICAL RECORDS WITHOUT CONSENT IS NECESSARY FOR A GOVERNMENT DEPARTMENT OR AGENCY TO FULFILL ITS STATUTORY OR OTHER OBLIGATIONS;

(b) WHETHER GOVERNMENT ACCESS, USE, OR DISTRIBUTION OF AN INDIVIDUAL'S PERSONAL MEDICAL INFORMATION SHOULD BE RESTRICTED TO PROTECT PATIENT PRIVACY AND ENSURE COMPLIANCE WITH HIPAA; AND

(c) ANY OTHER MATTERS RELATED TO GOVERNMENT ACCESS TO AND USE OR DISTRIBUTION OF AN INDIVIDUAL'S PERSONAL MEDICAL INFORMATION AND MEDICAL RECORDS, THE CIRCUMSTANCES WHEN ACCESS IS ALLOWED WITHOUT THE INDIVIDUAL'S CONSENT AND WHEN CONSENT IS REQUIRED, PUBLIC AWARENESS OF GOVERNMENT ACCESS AND USE OF PERSONAL MEDICAL INFORMATION AND MEDICAL RECORDS, THE PROTECTION OF PATIENT PRIVACY, AND RECOMMENDATIONS TO IMPLEMENT ANY CHANGES TO CURRENT LAW, ADMINISTRATIVE RULES, OR GOVERNMENT PRACTICES NECESSARY TO PROTECT PATIENT PRIVACY AND ENSURE HIPAA COMPLIANCE.

(5) BY NOVEMBER 1, 2014, THE TASK FORCE SHALL SUBMIT A REPORT TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON PUBLIC HEALTH CARE AND HUMAN SERVICES AND THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES, OR THEIR SUCCESSOR COMMITTEES, DETAILING ITS ANALYSIS, FINDINGS, AND RECOMMENDATIONS. THE TASK FORCE SHALL PRESENT ITS REPORT TO THE COMMITTEES DURING THE COMMITTEES' HEARINGS HELD UNDER THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2, C.R.S., BETWEEN NOVEMBER 1, 2014, AND THE START OF THE FIRST REGULAR SESSION OF THE SEVENTIETH GENERAL ASSEMBLY.

(6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

**SECTION 2. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**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: May 31, 2014