

Professional Review of Health Care Providers - DRAFT Relocation Proposal

1 **12-30-201. [Formerly 12-36.5-101] Legislative declaration.** (1) The general
2 assembly hereby finds, determines, and declares that the Colorado medical board created in
3 article ~~36 240~~ of this title *12* and the state board of nursing created in article ~~38 255~~ of this
4 title *12* act for the state in their sovereign capacity to govern licensure, discipline, and
5 professional review of persons licensed to practice medicine, licensed as physician
6 assistants, and licensed to practice nursing and granted authority as advanced practice
7 nurses, respectively, in this state. The general assembly further finds, determines, and
8 declares that:

9 (a) The authority to provide health care in this state is a privilege granted by the
10 legislative authority of the state; and

11 (b) It is necessary for the health, safety, and welfare of the people of this state that
12 the appropriate regulatory boards exercise their authority to protect the people of this state
13 from unauthorized practice and unprofessional conduct by persons licensed to provide health
14 care under articles ~~36 240~~ and ~~38 255~~ of this title *12*.

15 (2) The general assembly recognizes that:

16 (a) Many patients of persons licensed to provide health care in this state have
17 restricted choices of health care providers under a variety of circumstances and conditions;

18 (b) Many patients lack the knowledge, experience, or education to properly evaluate
19 the quality of medical or nursing practice or the professional conduct of those licensed to
20 practice medicine, licensed to act as physician assistants, and licensed to practice nursing
21 and granted authority as advanced practice nurses; and

22 (c) It is necessary and proper that the respective regulatory boards exercise their
23 regulatory authority to protect the health, safety, and welfare of the people of this state.

24 (3) The general assembly recognizes that, in the proper exercise of their authority and
25 responsibilities under this ~~article~~ PART 2, the Colorado medical board and the state board of
26 nursing must, to some extent, replace competition with regulation, and that the replacement
27 of competition by regulation, particularly with regard to persons licensed under article ~~36~~
28 ~~240~~ of this title *12* or licensed under article ~~38 255~~ of this title *12* and granted authority as
29 advanced practice nurses, is related to a legitimate state interest in the protection of the
30 health, safety, and welfare of the people of this state.

31 **12-30-202. [Formerly 12-36.5-102] Definitions.** As used in this ~~article~~ PART 2,
32 unless the context otherwise requires:

33 (1) "Authorized entity" means a corporation, organization, or entity that is authorized
34 to establish a professional review committee under section ~~12-36.5-104 (4) or (5)~~ **12-30-204**
35 **(5)** OR **(6)** or under rules of the medical board or nursing board adopted pursuant to section
36 ~~12-36.5-104 (5)~~ **12-30-204 (6)**.

37 (2) "CMS" means the federal centers for medicare and medicaid services.

1 ~~(2.5) "Division" means the division of professions and occupations in the department~~
2 ~~of regulatory agencies.~~

3 (3) "Governing board" means a board, board of trustees, governing board, or other
4 body, or duly authorized subcommittee thereof, of an authorized entity, which board or body
5 has final authority pursuant to the entity's written bylaws, policies, or procedures to take final
6 action regarding the recommendations of a professional review committee.

7 (4) "Joint commission" means the joint commission or its successor entity.

8 (5) "Medical board" means the Colorado medical board created in section ~~12-36-103~~
9 ~~(1) 12-240-1__ (1).~~

10 (6) "Professional review committee" means any committee authorized under this
11 ~~article~~ PART 2 to review and evaluate the competence, professional conduct of, or the quality
12 and appropriateness of patient care provided by, any person licensed under article ~~36~~ **240**
13 of this title **12** or licensed under article ~~38~~ **255** of this title **12** and granted authority as an
14 advanced practice nurse. "Professional review committee" includes a governing board, a
15 hearing panel appointed by a governing board to conduct a hearing under section
16 ~~12-36.5-104 (7)(a)~~ **12-30-104 (8)(a)**, and an independent third party designated by a
17 governing board under section ~~12-36.5-104(8)(b)~~ **12-30-204 (9)(b)**.

18 (7) (a) "Records" means any and all written, electronic, or oral communications by
19 any person arising from any activities of a professional review committee, including a
20 governing board, established by an authorized entity under this ~~article~~ PART 2 or by the agent
21 or staff thereof, including any:

22 (I) Letters of reference;

23 (II) Complaint, response, or correspondence related to the complaint or response;

24 (III) Interviews or statements, reports, memoranda, assessments, and progress reports
25 developed to assist in professional review activities;

26 (IV) Assessments and progress reports to assist in professional review activities,
27 including reports and assessments developed by independent consultants in connection with
28 professional review activities; and

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

33 (b) "Records" does not include any written, electronic, or oral communications by
34 any person that are otherwise available from a source outside the scope of professional
35 review activities, including medical records and other health information.

36 (8) "State board of nursing" or "nursing board" means the state board of nursing
37 created in section ~~12-38-104~~ **12-255-1__**.

38 **12-30-203. [Formerly 12-36.5-103] Use of professional review committees.**

39 (1) (a) The general assembly recognizes that:

40 (I) The medical board and the nursing board, while assuming and retaining ultimate

1 authority for licensure and discipline in accordance with articles ~~36 240~~ and ~~38 255~~ of this
2 title *12*, respectively, and in accordance with this ~~article~~ PART 2, cannot practically and
3 economically assume responsibility over every single allegation or instance of purported
4 deviation from the standards of quality for the practice of medicine or nursing, from the
5 standards of professional conduct, or from the standards of appropriate care; and

6 (II) An attempt to exercise such oversight would result in extraordinary delays in the
7 determination of the legitimacy of the allegations and would result in the inappropriate and
8 unequal exercise of their authority to license and discipline persons licensed under article
9 ~~36 240~~ of this title *12* or licensed under article ~~38 255~~ of this title *12* and granted authority
10 as advanced practice nurses.

11 (b) It is therefore the intent of the general assembly that the medical board and the
12 nursing board utilize and allow professional review committees and governing boards to
13 assist them in meeting their responsibilities under articles ~~36 240~~ and ~~38 255~~ of this title *12*,
14 respectively, and under this ~~article~~ PART 2.

15 (2) All persons licensed under article ~~36 240~~ of this title *12* or licensed under article
16 ~~38 255~~ of this title *12* and granted authority as advanced practice nurses are encouraged to
17 serve upon professional review committees when called to do so and to study and review in
18 an objectively reasonable manner the professional conduct of persons licensed under article
19 ~~36 240~~ of this title *12* or licensed under article ~~38 255~~ of this title *12* and granted authority
20 as advanced practice nurses, including the competence, professional conduct of, or the
21 quality and appropriateness of patient care provided by, those persons.

22 (3) (a) The use of professional review committees is an extension of the authority of
23 the medical board and nursing board. However, except as otherwise provided in this ~~article~~
24 PART 2, nothing in this ~~article~~ PART 2 limits the authority of professional review committees
25 properly constituted under this ~~article~~ PART 2.

26 (b) Professional review committees, the members who constitute the committees,
27 governing boards, authorized entities, and persons who participate directly or indirectly in
28 professional review activities are granted certain immunities from liability arising from
29 actions that are within the scope of their activities as provided in section ~~12-36.5-105~~
30 *12-30-207*. These grants of immunity from liability are necessary to ensure that professional
31 review committees and governing boards can exercise their professional knowledge and
32 judgment.

33 **12-30-204. [Formerly 12-36.5-104] Establishment of professional review**
34 **committees - function - rules.** (1) A professional review committee may be established
35 pursuant to this section to review and evaluate the competence of, the quality and
36 appropriateness of patient care provided by, or the professional conduct of, any person
37 licensed under article ~~36 240~~ of this title *12* or licensed under article ~~38 255~~ of this title *12*
38 and granted authority as an advanced practice nurse.

39 (2) Licensed physicians who are actively engaged in the practice of medicine in this
40 state must constitute a majority of the voting members of any professional review committee

1 established pursuant to this section for physicians and physician assistants; except that
2 physicians need not constitute the majority of the voting members of a governing board
3 authorized by ~~paragraph (g) of subsection (4)~~ SUBSECTION (5)(i) of this section or an
4 independent third party designated by a governing board under ~~paragraph (b) of subsection~~
5 ~~(8)~~ SUBSECTION (9)(b) of this section.

6 ~~(2.5)~~ (3) A professional review committee that is reviewing the competence of, the
7 quality and appropriateness of patient care provided by, or the professional conduct of, a
8 person licensed under article ~~38 255~~ of this title **12** and granted authority as an advanced
9 practice nurse must either:

10 (a) Have, as a voting member, at least one person licensed under article ~~38 255~~ of
11 this title **12** and granted authority as an advanced practice nurse with a scope of practice
12 similar to that of the person who is the subject of the review; or

13 (b) Engage, to perform an independent review as appropriate, an independent person
14 licensed under article ~~38 255~~ of this title **12** and granted authority as an advanced practice
15 nurse with a scope of practice similar to that of the person who is the subject of the review.
16 The person conducting the independent review must be a person who was not previously
17 involved in the review.

18 ~~(3)~~ (4) A ~~utilization and quality control peer review~~ QUALITY IMPROVEMENT
19 organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other organization
20 performing similar review services under federal or state law is an approved professional
21 review committee under this ~~article~~ PART 2.

22 ~~(4)~~ (5) A professional review committee established by any of the following
23 authorized entities is an approved professional review committee under this ~~article~~ PART 2
24 if it operates in compliance with written bylaws, policies, or procedures that are in
25 compliance with this ~~article~~ PART 2 and that have been approved by the authorized entity's
26 governing board and if it is registered with the division in accordance with section
27 ~~12-36.5-104.6~~ **12-30-206**:

28 (a) The medical staff of a hospital licensed pursuant to part 1 of article 3 of title 25
29 ~~C.R.S.~~, or certified pursuant to section 25-1.5-103 (1)(a)(II); ~~C.R.S.~~;

30 (b) The medical staff of a hospital-related corporation. For the purposes of this
31 ~~paragraph (b)~~ SUBSECTION (5)(b), an entity is a "hospital-related corporation" if the licensed
32 or certified hospital or holding company of the licensed or certified hospital has ownership
33 or control of the entity.

34 (c) A society or association of physicians whose membership includes not less than
35 one-third of the doctors of medicine or doctors of osteopathy licensed to practice and
36 residing in this state, if the physician whose services are the subject of the review is a
37 member of the society or association;

38 ~~(e.5)~~ (d) A society or association of advanced practice nurses licensed and registered
39 pursuant to article ~~38 255~~ of this title **12** and residing in this state, if the advanced practice
40 nurse whose services are the subject of the review is a member of the society or association;

1 ~~(d)~~ (e) A society or association of physicians licensed to practice and residing in this
2 state and specializing in a specific discipline of medicine, whose society or association has
3 been designated by the medical board as a specialty society or association representative of
4 physicians practicing the specific discipline of medicine, if the physician whose services are
5 the subject of the review is a member of the specialty society or association;

6 ~~(d.5)~~ (f) A society or association of advanced practice nurses licensed and registered
7 pursuant to article 38 255 of this title 12 and practicing in a specified nursing role and
8 population focus, as defined by the nursing board, which society or association has been
9 designated by the nursing board as the specific nursing society or association representative
10 of those advanced practice nurses practicing in that nursing role and population focus, if the
11 advanced practice nurse whose services are the subject of the review is a member of the
12 designated nursing society or association.

13 ~~(e)~~ (g) An individual practice association or a preferred provider organization
14 consisting of persons licensed under article 36 240 of this title 12, or licensed under article
15 38 255 of this title 12 and granted authority as advanced practice nurses, or a medical group
16 that predominantly serves members of a health maintenance organization licensed pursuant
17 to parts 1 and 4 of article 16 of title 10. ~~C.R.S.~~ A professional review committee established
18 pursuant to this ~~paragraph~~ ~~(e)~~ SUBSECTION (5)(g) has jurisdiction to review only persons
19 licensed under article 36 240 of this title 12, or licensed under article 38 255 of this title 12
20 and granted authority as advanced practice nurses, who are members of the association or
21 organization creating and authorizing that committee; except that the professional review
22 committee may review the care provided to a particular patient referred by a member of the
23 association or organization to another person licensed under article 36 240 of this title 12,
24 or licensed under article 38 255 of this title 12 and granted authority as an advanced practice
25 nurse, who is not a member of the association or organization.

26 ~~(f)~~ (h) A corporation authorized PURSUANT TO ARTICLE 3 OF TITLE 10 to insure
27 persons licensed under article 36 240 of this title 12 or licensed under article 38 255 of this
28 title 12 and granted authority as advanced practice nurses ~~pursuant to article 3 of title 10,~~
29 ~~C.R.S.~~, or any other organization authorized to insure such persons in this state when
30 designated by the medical board or nursing board under subsection ~~(5)~~ (6) of this section;

31 ~~(g)~~ (i) The governing board of any authorized entity that has a professional review
32 committee established pursuant to article 36 240 or article 38 255 of this title 12;

33 ~~(h)~~ (j) Any professional review committee established or created by a combination
34 or pooling of any authorized entities;

35 ~~(i)~~ (k) (I) A nonprofit corporation or association consisting of representatives from
36 a statewide professional society and a statewide hospital association. The association must
37 consist of persons licensed under article 36 240 of this title 12 or licensed under article 38
38 255 of this title 12 and granted authority as advanced practice nurses, hospital
39 administrators, and hospital trustees, with a majority of the representatives being persons
40 licensed under article 36 240 of this title 12 when the subject of the investigation is a person

1 licensed under article ~~36~~ **240** of this title **12**, and at least one of the representatives being a
 2 person licensed under article ~~38~~ **255** of this title **12** and granted authority as an advanced
 3 practice nurse when the subject of the investigation is a person licensed under article ~~38~~ **255**
 4 of this title **12** and granted authority as an advanced practice nurse. The association may
 5 establish, or contract for, one or more professional review committees to review the care by
 6 hospital staff personnel who are licensed under article ~~36~~ **240** of this title **12** or licensed
 7 under article ~~38~~ **255** of this title **12** and granted authority as advanced practice nurses, with
 8 priority given to small rural hospital staffs. These professional review services must be
 9 available statewide on a fee-for-service basis to licensed or certified hospitals at the joint
 10 request of the governing board and the medical or nursing staff of the hospital or at the sole
 11 request of the governing board of the hospital. If a member being reviewed specializes in
 12 a generally recognized specialty of medicine or nursing, at least one of the health care
 13 providers on the professional review committee must be a person licensed under article ~~36~~
 14 **240** of this title **12**, or licensed under article ~~38~~ **255** of this title **12** and granted authority as
 15 an advanced practice nurse, AND who practices such specialty.

16 (II) For purposes of the introductory portion to this subsection ~~(4)~~ **(5)** and this
 17 paragraph ~~(i)~~ SUBSECTION (5)(k), the bylaws, policies, or procedures must be in compliance
 18 with this ~~article~~ PART 2 and approved by the nonprofit corporation or association.

19 ~~(j)~~ (l) The medical or nursing staff of an ambulatory surgical center licensed pursuant
 20 to part 1 of article 3 of title 25; ~~C.R.S.~~;

21 ~~(k)~~ (m) A professional services entity organized pursuant to section ~~12-36-134~~
 22 **12-240-1** ___;

23 ~~(l)~~ (n) A provider network that includes persons licensed under article ~~36~~ **240** of this
 24 title **12**, or licensed under article ~~38~~ **255** of this title **12** and granted authority as advanced
 25 practice nurses, and is organized pursuant to part 3 of article 18 of title 6; ~~C.R.S.~~;

26 ~~(m)~~ (o) A health system that includes two or more authorized entities with a common
 27 governing board;

28 ~~(n)~~ (p) A trust organization established under article 70 of title 11; ~~C.R.S.~~;

29 ~~(o)~~ (q) An entity licensed pursuant to parts 1 and 4 of article 16 of title 10; ~~C.R.S.~~;

30 ~~(p)~~ (r) An accountable care organization established under the federal "Patient
 31 Protection and Affordable Care Act", Pub.L. 111-148, AS AMENDED, or other organization
 32 with a similar function;

33 ~~(q)~~ (s) A hospital licensed pursuant to part 1 of article 3 of title 25 ~~C.R.S.~~, or certified
 34 pursuant to section 25-1.5-103 (1)(a)(II); ~~C.R.S.~~; and

35 ~~(r)~~ (t) An ambulatory surgical center licensed pursuant to part 1 of article 3 of title
 36 25. ~~C.R.S.~~

37 ~~(5)~~ (6) The medical board and the nursing board, with respect to the licensees subject
 38 to their jurisdiction, may establish by rule procedures necessary to authorize other health care
 39 or physician organizations or professional societies as authorized entities that may establish
 40 professional review committees.

1 ~~(6)~~ (7) (a) A professional review committee acting pursuant to this part ~~2~~ may
2 investigate or cause to be investigated:

3 (I) The qualifications and competence of any person licensed under article ~~36~~ **240**
4 of this title **12** or licensed under article ~~38~~ **255** of this title **12** and granted authority as an
5 advanced practice nurse who seeks to subject himself or herself to the authority of any
6 authorized entity; or

7 (II) The quality or appropriateness of patient care rendered by, or the professional
8 conduct of, any person licensed under article ~~36~~ **240** of this title **12** or licensed under article
9 ~~38~~ **255** of this title **12** and granted authority as an advanced practice nurse who is subject to
10 the authority of the authorized entity.

11 (b) The professional review committee shall conduct the investigation in conformity
12 with written bylaws, policies, or procedures adopted by the authorized entity's governing
13 board.

14 ~~(7)~~ (8) The written bylaws, policies, or procedures of any professional review
15 committee for persons licensed under article ~~36~~ **240** of this title **12** or licensed under article
16 ~~38~~ **255** of this title **12** and granted authority as advanced practice nurses must provide for
17 at least the following:

18 (a) (I) Except as provided in ~~subparagraph (II) of this paragraph~~ (a) SUBSECTION
19 (8)(a)(II) OF THIS SECTION, if the findings of any investigation indicate that a person licensed
20 under article ~~36~~ **240** of this title **12** or licensed under article ~~38~~ **255** of this title **12** and
21 granted authority as an advanced practice nurse, and who is the subject of the investigation,
22 is lacking in qualifications or competency, has provided substandard or inappropriate patient
23 care, or has exhibited inappropriate professional conduct and the professional review
24 committee takes or recommends an action to adversely affect the person's membership,
25 affiliation, or privileges with the authorized entity, the professional review committee shall
26 hold a hearing to consider the findings and recommendations unless the person waives, in
27 writing, the right to a hearing or is given notice of a hearing and fails to appear.

28 (II) If the professional review committee is submitting its findings and
29 recommendations to another professional review committee for review, only one hearing is
30 necessary prior to any appeal before the governing board.

31 (b) A person who has participated in the course of an investigation is disqualified as
32 a member of the professional review committee that conducts a hearing pursuant to
33 ~~paragraph (a) of this subsection~~ ~~(7)~~ SUBSECTION (8)(a) OF THIS SECTION, but the person may
34 participate as a witness in the hearing.

35 (c) The authorized entity shall give to the subject of any investigation under this
36 subsection ~~(7)~~ (8) reasonable notice of the hearing and of any finding or recommendation
37 that would adversely affect the person's membership, affiliation, or privileges with the
38 authorized entity, and the subject of the investigation has a right to be present, to be
39 represented by legal counsel at the hearing, and to offer evidence in ~~his or her~~ THE PERSON'S
40 own behalf.

1 (d) After the hearing, the professional review committee that conducted the hearing
2 shall make any recommendations it deems necessary to the governing board, unless
3 otherwise provided by federal law or regulation.

4 (e) The professional review committee shall give a copy of the recommendations to
5 the subject of the investigation, who then has the right to appeal to the governing board to
6 which the recommendations are made with regard to any finding or recommendation that
7 would adversely affect his or her membership, affiliation, or privileges with the authorized
8 entity.

9 (f) The professional review committee shall forward a copy of any recommendations
10 made pursuant to ~~paragraph (d) of this subsection (7)~~ SUBSECTION (8)(d) OF THIS SECTION
11 promptly to the medical board if the subject of the investigation is licensed under article 36
12 **240** of this title **12**, or to the nursing board if the subject of the investigation is licensed
13 under article ~~38~~ **255** of this title **12** and granted authority as an advanced practice nurse.

14 ~~(8)~~ (9) (a) All governing boards shall adopt written bylaws, policies, or procedures
15 under which a person licensed under article 36 **240** of this title **12** or licensed under article
16 ~~38~~ **255** of this title **12** and granted authority as an advanced practice nurse who is the subject
17 of an adverse recommendation by a professional review committee may appeal to the
18 governing board following a hearing in accordance with subsection ~~(7)~~ (8) of this section.
19 The bylaws, policies, or procedures must provide that the person be given reasonable notice
20 of his or her right to appeal and, unless waived by the person, has the right to appear before
21 the governing board, to be represented by legal counsel, and to offer the argument on the
22 record ~~as he or she~~ THAT THE PERSON deems appropriate.

23 (b) The bylaws may provide that a committee of not fewer than three members of the
24 governing board may hear the appeal. Also, the bylaws may allow for an appeal to be heard
25 by an independent third party designated by a governing board under this ~~paragraph (b)~~
26 SUBSECTION (9)(b).

27 ~~(9)~~ (10) All governing boards that are required to report their final actions to the
28 medical board or the nursing board, as appropriate, are not otherwise relieved of their
29 obligations by virtue of this ~~article~~ PART 2.

30 ~~(10)~~ (11) (a) Except as specified in ~~paragraph (b) of this subsection (10)~~ SUBSECTION
31 (11)(b) OF THIS SECTION, the records of an authorized entity, its professional review
32 committee, and its governing board are not subject to subpoena or discovery and are not
33 admissible in any civil suit.

34 (b) Subject to subsection ~~(13)~~ (14) of this section, the records are subject to subpoena
35 and available for use:

36 ~~(1)~~ Repealed.

37 ~~(H)~~ (I) By either party in an appeal or de novo proceeding brought pursuant to this
38 part ~~1~~ 2;

39 ~~(H)~~ (II) By a person licensed under article 36 **240** of this title **12**, or licensed under
40 article ~~38~~ **255** of this title **12** and granted authority as an advanced practice nurse, in a suit

1 seeking judicial review of an action by the governing board;

2 ~~(IV)~~ (III) By the Colorado department of public health and environment in
3 accordance with its authority to issue or continue a health facility license or certification for
4 an authorized entity;

5 ~~(V)~~ (IV) By CMS in accordance with its authority over federal health care program
6 participation by an authorized entity;

7 ~~(VI)~~ (V) By an authorized entity or governing board seeking judicial review;

8 ~~(VII)~~ (VI) By the medical board within the scope of its authority over licensed
9 physicians and physician assistants; and

10 ~~(VIII)~~ (VII) By the nursing board within the scope of its authority over advanced
11 practice nurses.

12 ~~(11)~~ (12) (a) Except as provided in ~~paragraph (b) of this subsection~~ (11) SUBSECTION
13 (12)(b) OF THIS SECTION, the records of an authorized entity or its professional review
14 committee may be disclosed to:

15 (I) The medical board, as requested by the medical board acting within the scope of
16 its authority or as required or appropriate under this ~~article~~ PART 2 or article 36 **240** of this
17 title **12**;

18 (II) The nursing board, as requested by the nursing board acting within the scope of
19 its authority or as required or appropriate under this ~~article~~ PART 2 or article 38 **255** of this
20 title **12**;

21 (III) The Colorado department of public health and environment acting within the
22 scope of its health facility licensing authority or as the agent of CMS;

23 (IV) CMS, in connection with the survey and certification processes for federal
24 health care program participation by an authorized entity; and

25 (V) The joint commission or other entity granted deeming authority by CMS, in
26 connection with a survey or review for accreditation.

27 (b) The medical board, nursing board, and Colorado department of public health and
28 environment shall not make further disclosures of any records disclosed by an authorized
29 entity or its professional review committee under this section.

30 ~~(12)~~ (13) The records of an authorized entity or its professional review committee
31 or governing board may be shared by and among authorized entities and their professional
32 review committees and governing boards concerning the competence, professional conduct
33 of, or the quality and appropriateness of patient care provided by, a health care provider who
34 seeks to subject himself or herself to, or is currently subject to, the authority of the
35 authorized entity.

36 ~~(13)~~ (14) Responding to a subpoena or disclosing or sharing of otherwise privileged
37 records and information pursuant to subsection ~~(10), (11), or (12)~~ (11), (12), OR (13) of this
38 section does not constitute a waiver of the privilege specified in ~~paragraph (a) of subsection~~
39 ~~(10)~~ SUBSECTION (11)(a) of this section or a violation of the confidentiality requirements of
40 subsection ~~(15)~~ (16) of this section. Records provided to any governmental agency,

1 including the department of public health and environment, the committee on
2 anticompetitive conduct, the medical board, and the nursing board pursuant to subsection
3 ~~(10)~~ *(11)* or ~~(11)~~ *(12)* of this section are not public records subject to the "Colorado Open
4 Records Act", part 2 of article 72 of title 24. ~~C.R.S.~~ A person providing the records to an
5 authorized entity or its professional review committee or governing board, the department
6 of public health and environment, the committee on anticompetitive conduct, the medical
7 board, the nursing board, CMS, the joint commission, or other governmental agency is
8 entitled to the same immunity from liability as provided under section ~~12-36.5-105~~
9 **12-30-207** for the disclosure of the records.

10 ~~(14)~~ (15) Investigations, examinations, hearings, meetings, and other proceedings
11 of a professional review committee or governing board conducted pursuant to this part ~~2~~
12 are exempt from any law requiring that proceedings be conducted publicly or that the
13 records, including any minutes, be open to public inspection.

14 ~~(15)~~ (16) Except as otherwise provided in subsection ~~(10)~~, ~~(11)~~, or ~~(12)~~ *(11)*, *(12)*
15 OR *(13)* of this section, all proceedings, recommendations, records, and reports involving
16 professional review committees or governing boards are confidential.

17 ~~(16)~~ (17) A professional review committee or governing board that is constituted and
18 conducts its reviews and activities in accordance with this part ~~2~~ is not an unlawful
19 conspiracy in violation of section 6-4-104 or 6-4-105. ~~C.R.S.~~

20 **12-30-205. [Formerly 12-36.5-104.4] Hospital professional review committees.**

21 (1) The quality and appropriateness of patient care rendered by persons licensed under
22 article 36 ~~240~~ of this title *12*, licensed under article 38 ~~255~~ of this title *12* and granted
23 authority as advanced practice nurses, and other licensed health care professionals so
24 influence the total quality of patient care that a review of care provided in a hospital is
25 ineffective without concomitantly reviewing the overall competence, professional conduct
26 of, or the quality and appropriateness of care rendered by, such persons.

27 (2) (a) (I) Whenever a professional review committee created pursuant to section
28 ~~12-36.5-104~~ **12-30-204** reasonably believes that the quality or appropriateness of care
29 provided by other licensed health care professionals may have adversely affected the
30 outcome of patient care, the professional review committee shall:

31 (A) Refer the matter to a **hospital committee QUALITY MANAGEMENT PROGRAM**
32 created pursuant to section 25-3-109; ~~C.R.S.~~; or <{*Section 25-3-109 doesn't specifically use*
33 *the term "hospital committee" and the term does not appear anywhere else in statute. We*
34 *suggest updating this provision to refer to a hospital "quality management program"*
35 *consistent with section 25-3-109.*}>

36 (B) Consult with a representative of the other licensed health care professional's
37 profession.

38 (II) A professional review committee established pursuant to this ~~article~~ PART 2 may
39 meet and act in collaboration with a **committee HOSPITAL QUALITY MANAGEMENT PROGRAM**
40 established pursuant to section 25-3-109. ~~C.R.S.~~

1 (b) All matters considered in collaboration with or referred to a committee pursuant
2 to this subsection (2) and all records and proceedings related thereto shall remain
3 confidential, and the committee members, governing board, witnesses, and complainants
4 ~~shall be~~ ARE subject to the immunities and privileges as set forth in this ~~article~~ PART 2.

5 (3) Nothing in this section ~~shall be~~ IS deemed to extend the authority or jurisdiction
6 of the medical board to any individual not otherwise subject to the jurisdiction of the board.

7 **12-30-206. [Formerly 12-36.5-104.6] Governing boards to register with division**
8 **- annual reports - aggregation and publication of data - definition - rules.** (1) As used
9 in this section, "adversely affecting" has the same meaning as set forth in 45 CFR 60.3;
10 except that it does not include a precautionary suspension or any professional review action
11 affecting, FOR A PERIOD OF THIRTY OR FEWER DAYS, a person licensed under article ~~36 240~~
12 of this title **12**, or licensed under article ~~38 255~~ of this title **12** and granted authority as an
13 advanced practice nurse. ~~for a period of thirty days or less.~~

14 (2) Each governing board that establishes or uses one or more professional review
15 committees to review the practice of persons licensed under article ~~36 240~~ of this title **12** or
16 licensed under article ~~38 255~~ of this title **12** and granted authority as advanced practice
17 nurses shall:

18 (a) Register with the division in a form satisfactory to the division on or before July
19 1, 2013, if the governing board has one or more existing professional review committees,
20 or, if the governing board first establishes a professional review committee on or after July
21 1, 2013, within thirty days after approving the written bylaws, policies, or procedures for the
22 professional review committee;

23 (b) In addition to any other state or federal reporting requirements:

24 (I) Report annually to the medical board, in a form satisfactory to the medical board,
25 the number of final professional review actions in each of the following categories relating
26 to individuals licensed under article ~~36 240~~ of this title **12**:

27 (A) Adversely affecting the individual;

28 (B) In which an authorized entity accepted the individual's surrender of clinical
29 privileges, membership, or affiliation while the individual was under investigation;

30 (C) In which an authorized entity accepted the individual's surrender of clinical
31 privileges, membership, or affiliation in return for not conducting an investigation; and

32 (D) In which the professional review committee made recommendations regarding
33 the individual following a hearing pursuant to section ~~12-36.5-104(7)(d)~~: **12-30-204 (8)(d)**;

34 (II) Report annually to the nursing board, in a form satisfactory to the nursing board,
35 the number of final professional review actions in each of the following categories relating
36 to individuals licensed under article ~~38 255~~ of this title **12** and granted authority as advanced
37 practice nurses:

38 (A) Adversely affecting the individual;

39 (B) In which an authorized entity accepted the individual's surrender of clinical
40 privileges, membership, or affiliation while the individual was under investigation;

1 (C) In which an authorized entity accepted the individual's surrender of clinical
2 privileges, membership, or affiliation in return for not conducting an investigation; and

3 (D) In which the professional review committee made recommendations regarding
4 the individual following a hearing pursuant to section ~~12-36.5-104(7)(d)~~. **12-30-204(8)(d)**;

5 (c) (I) Report to the division, in a de-identified manner, on its professional review
6 activities during the immediately preceding calendar year in a form satisfactory to the
7 division. These reports must include aggregate data, which is limited to the following:

8 (A) The number of investigations completed during the year;

9 (B) The number of investigations that resulted in no action;

10 (C) The number of investigations that resulted in written involuntary requirements
11 for improvement sent to the subject of the investigation by the authorized entity; and

12 (D) The number of investigations that resulted in written agreements for
13 improvement between the subject of the investigation and the authorized entity.

14 (II) (A) The medical board and the nursing board shall forward the reports received
15 pursuant to ~~sub-paragraphs (I) and (H)~~ SUBSECTIONS (2)(b)(I) AND (2)(b)(II) OF THIS
16 SECTION, respectively, of ~~paragraph (b) of this subsection (2)~~ to the division in a
17 de-identified manner.

18 (B) The division shall not publish any information identifying the governing board
19 or authorized entity making a report under ~~paragraph (b) of this subsection (2) or this~~
20 ~~paragraph (c)~~ SUBSECTION (2)(b) OF THIS SECTION OR THIS SUBSECTION (2)(c), and ~~such~~ THE
21 reports and information are not public records under the "Colorado Open Records Act", part
22 2 of article 72 of title 24. ~~C.R.S.~~

23 (III) Reports submitted pursuant to this ~~paragraph (c)~~ SUBSECTION (2)(c) must
24 include only investigations in which no final action adversely affecting the subject of the
25 investigation was taken or recommended.

26 (3) (a) The division shall publish the data provided pursuant to ~~paragraphs (b) and~~
27 ~~(c) of subsection (2)~~ SUBSECTIONS (2)(b) AND (2)(c) of this section in aggregate form and
28 without individually identifiable information concerning the governing board, the authorized
29 entity, or any person WHO WAS SUBJECT TO REVIEW AND IS licensed under article ~~36~~ **240** of
30 this title **12** or licensed under article ~~38~~ **255** of this title **12** and granted authority as an
31 advanced practice nurse. ~~who was subject to review.~~

32 (b) The division shall maintain and shall publish online, through its website, a
33 current list of all governing boards that are registered in accordance with this section and
34 that otherwise are in compliance with this ~~article~~ PART 2.

35 (4) The division shall adopt rules to implement this section and may collect a
36 reasonable registration fee to recover its direct and indirect costs of administering the
37 registration and publication systems required by this section.

38 (5) For purposes of this section, an investigation occurs when the authorized entity
39 or its professional review committee notifies the subject of the investigation in writing that
40 an investigation has commenced.

1 (6) The medical board and the nursing board shall not initiate an investigation or
2 issue a subpoena based solely on the data reported pursuant to ~~paragraph (c) of subsection~~
3 ~~(2) (c)~~ of this section.

4 (7) (a) A governing board that fails to register with the division pursuant to
5 ~~paragraph (a) of subsection (2) (a)~~ of this section is not entitled to any immunity afforded
6 under this ~~article~~ PART 2 until the date that the governing board so registers. A governing
7 board's failure to register does not affect any immunity, confidentiality, or privilege afforded
8 to an individual participating in professional review activities.

9 (b) A governing board's failure to report as required by this section does not affect
10 any immunity, confidentiality, or privilege afforded to the governing board under this ~~article~~
11 PART 2.

12 **12-30-207. [Formerly 12-36.5-105] Immunity from liability.** (1) A member of a
13 professional review committee, a governing board or any committee or third party
14 designated by the governing board under section ~~12-36.5-104 (8)(b)~~ **12-30-204 (9)(b)** and
15 any person serving on the staff of that committee, board, panel, or third party, a witness or
16 consultant before a professional review committee, and any person who files a complaint or
17 otherwise participates in the professional review process, is immune from suit and liability
18 for damages in any civil or criminal action, including antitrust actions, brought by a person
19 licensed under article ~~36~~ **240** of this title **12** or licensed under article ~~38~~ **255** of this title **12**
20 who is the subject of the review by ~~such~~ THE professional review committee unless, in
21 connection with the professional review process, the person provided false information and
22 knew that the information was false.

23 (2) The governing board and the authorized entity that has established a professional
24 review committee pursuant to section ~~12-36.5-104~~ **12-30-204** is immune from suit and
25 liability for damages in any civil or criminal action, including antitrust actions, brought by
26 a person licensed under article ~~36~~ **240** of this title **12** or licensed under article ~~38~~ **255** of this
27 title **12** who is the subject of the review by such professional review committee if the
28 professional review action was taken within the scope of the professional review process and
29 was taken:

30 (a) In the objectively reasonable belief that the action was in the furtherance of
31 quality health care;

32 (b) After an objectively reasonable effort to obtain the facts of the matter;

33 (c) In the objectively reasonable belief that the action taken was warranted by the
34 facts; and

35 (d) In accordance with procedures that, under the circumstances, were fair to the
36 person licensed under article ~~36~~ **240** of this title **12** or licensed under article ~~38~~ **255** of this
37 title **12** and granted authority as an advanced practice nurse.

38 **12-30-208. Conformance with federal law and regulation - legislative**
39 **declaration - rules - limitations on liability - definition.** (1) [Formerly 12-36.5-201] The
40 general assembly hereby finds, determines, and declares that the enactment of this ~~part 2~~

1 SECTION is necessary in order for the state to comply with the provisions of the federal
2 "Health Care Quality Improvement Act of 1986", as amended, 42 U.S.C. SECS. 11101
3 THROUGH 11152 . It is the intent of the general assembly that the provisions of this ~~part 2~~
4 SECTION are to be interpreted as being complementary to the OTHER provisions of ~~part 1~~ of
5 IN this ~~article~~ PART 2. The provisions of this ~~part 2~~ SECTION are intended to be responsive
6 to specific requirements of the federal "Health Care Quality Improvement Act of 1986", as
7 amended. If the provisions of this ~~part 2~~ SECTION conflict with the OTHER provisions of ~~part~~
8 ~~1~~ of this ~~article~~ PART 2, other than with respect to the specific requirements of the federal
9 "Health Care Quality Improvement Act of 1986", as amended, the OTHER provisions of ~~part~~
10 ~~1~~ of this ~~article~~ shall PART 2 prevail.

11 (2) [Formerly 12-36.5-202] The medical board and nursing board may promulgate
12 rules to comply with the reporting requirements of the federal "Health Care Quality
13 Improvement Act of 1986", as amended, ~~42 U.S.C. secs. 11101 through 11152~~, and may
14 participate in the federal data bank.

15 (3) [Formerly 12-36.5-203] ~~(1)~~ (a) The following persons are immune from suit and
16 not liable for damages in any civil action with respect to their participation in, assistance to,
17 or reporting of information to a professional review committee in connection with a
18 professional review action in this state, and such persons are not liable for damages in a civil
19 action with respect to their participation in, assistance to, or reporting of information to a
20 professional review committee that meets the standards of and is in conformity with the
21 federal "Health Care Quality Improvement Act of 1986", as amended: ~~42 U.S.C. secs. 11101~~
22 ~~through 11152~~:

23 (a) (I) An authorized entity, professional review committee, or governing board;

24 (b) (II) Any person acting as a member of or staff to the authorized entity,
25 professional review committee, or governing board;

26 (c) (III) A witness, consultant, or other person who provided information to the
27 authorized entity, professional review committee, or governing board; and

28 (d) (IV) Any person who participates with or assists the professional review
29 committee or governing board with respect to the professional review activities.

30 ~~(2)~~ (a) (b) (I) Notwithstanding subsection ~~(1)~~ (3)(a) of this section, nothing in this
31 ~~article~~ SECTION relieves an authorized entity that is a health care facility licensed or certified
32 pursuant to part 1 of article 3 of title 25 ~~C.R.S.~~; or certified pursuant to section 25-1.5-103
33 ~~C.R.S.~~; (1)(a)(II) of liability to an injured person or wrongful death claimant for the facility's
34 independent negligence in the credentialing or privileging process for a person licensed
35 under article ~~36~~ 240 of this title 12 or licensed under article ~~38~~ 255 of this title 12 and
36 granted authority as an advanced practice nurse who provided health care services for the
37 injured or deceased person at the facility. For purposes of this ~~section~~ SUBSECTION (3), the
38 facility's participation in the credentialing process or the privileging process does not
39 constitute the corporate practice of medicine.

40 (b) (II) Nothing in this ~~section~~ SUBSECTION (3) affects the confidentiality or privilege

1 of any records subject to section ~~12-36.5-104(10)~~ **12-30-204(11)** or of information obtained
2 and maintained in accordance with a quality management program as described in section
3 25-3-109. ~~C.R.S.~~ The exceptions to confidentiality or privilege as set forth in sections
4 25-3-109 (4), C.R.S., and ~~12-36.5-104(10)~~ **12-30-204(11)** apply.

5 (e) (III) This subsection ~~(2)~~ **(3)(b)**, as amended, applies to actions filed on or after
6 July 1, 2012.

7 ~~(3)~~ (c) For the purposes of this section SUBSECTION (3), unless the context otherwise
8 requires,

9 (a) "professional review action" means an action or recommendation of a
10 professional review committee that is taken or made in the conduct of professional review
11 activity and that is based on the quality and appropriateness of patient care provided by, or
12 the competence or professional conduct of, an individual person licensed under article 36
13 **240** of this title **12** or licensed under article ~~38~~ **255** of this title **12** and granted authority as
14 an advanced practice nurse, which action affects or may affect adversely the person's clinical
15 privileges of or membership in an authorized entity. "Professional review action" includes
16 a formal decision by the professional review committee not to take an action or make a
17 recommendation as provided in this ~~paragraph (a)~~ SUBSECTION (3)(c) and also includes
18 professional review activities relating to a professional review action. An action is not based
19 upon the competence or professional conduct of a person if the action is primarily based on:

20 (I) The person's association or lack of association with a professional society or
21 association;

22 (II) The person's fees or ~~his or her~~ advertising or engaging in other competitive acts
23 intended to solicit or retain business;

24 (III) The person's association with, supervision of, delegation of authority to, support
25 for, training of, or participation in a private group practice with a member or members of a
26 particular class of health care practitioners or professionals;

27 (IV) The person's participation in prepaid group health plans, salaried employment,
28 or any other manner of delivering health services whether on a fee-for-service basis or other
29 basis;

30 (V) Any other matter that does not relate to the quality and appropriateness of patient
31 care provided by, or the competence or professional conduct of, a person licensed under
32 article 36 **240** of this title **12** or licensed under article ~~38~~ **255** of this title **12** and granted
33 authority as an advanced practice nurse.

34 ~~(b) (Deleted by amendment, L. 2012.)~~

35 **12-30-209. [Formerly 12-36.5-107] Repeal of part.** This ~~article~~ PART 2 is repealed,
36 effective September 1, 2019. Prior to such ITS repeal, the ~~department of regulatory agencies~~
37 ~~shall review~~ the functions of professional review committees ~~and the committee on~~
38 ~~anticompetitive conduct~~ ARE SCHEDULED FOR REVIEW in accordance with section 24-34-104.
39 ~~C.R.S.~~

