

Initiative 2023-24 #275
Disclosure of Adverse Medical Incidents

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Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 25-1-804 as follows:

25-1-804 Disclosure of adverse medical incidents to patients - definitions. (1) IN ADDITION TO ANY OTHER SIMILAR RIGHTS PROVIDED IN LAW, A PATIENT OR THE PATIENT’S REPRESENTATIVE, INCLUDING A PARENT OF A MINOR CHILD, OR THE PATIENT’S LEGAL REPRESENTATIVE, HAS A RIGHT TO ACCESS, INCLUDING INSPECTION AND COPYING, UPON REQUEST, ANY MEDICAL RECORD, MEDICAL INFORMATION, OR MEDICAL COMMUNICATION MADE OR RECEIVED IN THE COURSE OF MEDICAL TREATMENT, WHETHER PRIOR OR ONGOING MEDICAL TREATMENT, OF A PATIENT BY A HEALTH-CARE INSTITUTION OR HEALTH-CARE PROFESSIONAL RELATING TO ANY ADVERSE MEDICAL INCIDENT THAT WAS A CAUSE OF INJURY TO OR DEATH OF THE PATIENT.

(2) AS USED IN THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(a) “HEALTH-CARE INSTITUTION” HAS THE SAME MEANING AS PROVIDED IN SECTION 13-64-202, AND ADDITIONALLY INCLUDES ANY FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AS DEFINED IN SECTION 25-1.3-103 AND APPLIED IN SECTION 25-3-109.

(b) “HEALTH-CARE PROFESSIONAL” HAS THE SAME MEANING AS PROVIDED IN SECTION 13-64-202, AND ADDITIONALLY INCLUDES THE TERM HEALTH-CARE PROVIDER, AS USED IN THIS ARTICLE.

(c) “PATIENT” MEANS AN INDIVIDUAL WHO HAS SOUGHT, IS SEEKING, IS UNDERGOING, OR HAS UNDERGONE CARE OR TREATMENT IN A HEALTH-CARE INSTITUTION OR FROM A HEALTH-CARE PROFESSIONAL.

(d) “ADVERSE MEDICAL INCIDENT” MEANS MEDICAL NEGLIGENCE, BREACH OF THE PROFESSIONAL STANDARD OF CARE, INTENTIONAL MISCONDUCT, AND ANY OTHER ACT, NEGLIGENCE, OR DEFAULT OF A HEALTH-CARE INSTITUTION OR HEALTH-CARE PROFESSIONAL OCCURRING IN THE COURSE OF DELIVERING MEDICAL TREATMENT THAT WAS A CAUSE OF INJURY TO OR DEATH OF THE PATIENT, INCLUDING THOSE INCIDENTS THAT ARE REQUIRED BY STATE OR FEDERAL LAW TO BE REPORTED TO ANY GOVERNMENTAL AGENCY OR BODY, AND INCIDENTS THAT ARE REPORTED TO OR REVIEWED BY ANY HEALTH-CARE INSTITUTION OR HEALTH-CARE PROFESSIONAL THROUGH A PEER REVIEW, RISK MANAGEMENT, QUALITY ASSURANCE, QUALITY MANAGEMENT, CREDENTIALING, OR SIMILAR COMMITTEE, GROUPS, OR INDIVIDUALS THAT REVIEW ADVERSE MEDICAL INCIDENTS, OCCURRENCES, “NEAR MISSES”, OR OTHER INCIDENTS RELATED TO INJURIES TO PATIENTS IN THE COURSE OF RECEIVING MEDICAL TREATMENT, INCLUDING SUCH INFORMATION OR DOCUMENTS REPORTED TO OR REVIEWED BY ANY REPRESENTATIVE OF ANY SUCH COMMITTEES, EVEN IF NOT FORMALLY CONVENED, INCLUDING THOSE COMMITTEES ADDRESSED IN SECTIONS 12-30-204, AND 12-30-205.

(e) “MEDICAL RECORD” HAS THE SAME MEANING AS PROVIDED IN SECTION 18-4-412(2)(a), AND ADDITIONALLY INCLUDES ANY MEDICAL RECORDS AND DRAFT RECORDS PERTAINING TO ANY TREATMENT BY ANY LICENSED HEALTH-CARE PROFESSIONAL, INCLUDING, BUT NOT LIMITED TO, CHIROPRACTORS, MASSAGE THERAPISTS, PHYSICAL THERAPISTS, DENTAL ASSISTANTS, DENTAL HYGIENISTS, NURSES, AND PHYSICIAN ASSISTANTS/ASSOCIATES. MEDICAL RECORD DOES NOT INCLUDE DOCUMENTS OR STATEMENTS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR ATTORNEY WORK PRODUCT DOCTRINE; DOCUMENTS, STATEMENTS, OR COMMUNICATIONS CREATED DURING OR OCCURRING DURING AN INITIATED OPEN DISCUSSION AS DEFINED IN SECTION 25-51-103; RECOMMENDATIONS TO ADDRESS ANY ADVERSE INCIDENT MADE BY THOSE PROFESSIONAL REVIEW

COMMITTEES ESTABLISHED IN SECTIONS 12-30-204 AND 12-30-205, OR RECOMMENDATIONS TO IMPROVE A QUALITY MANAGEMENT PROGRAM TO REDUCE RISKS TO PATIENTS AS REFERENCED IN SECTIONS 25-3-109 OR 25-3.5-904.

(f) “MEDICAL INFORMATION” HAS THE SAME MEANING AS PROVIDED IN SECTION 18-4-412(2)(b), AND ADDITIONALLY INCLUDES INFORMATION ABOUT THE REQUESTING PATIENT’S ADVERSE MEDICAL INCIDENT, EVEN IF NOT PROTECTED BY THE PHYSICIAN-PATIENT PRIVILEGE, INCLUDING INFORMATION CREATED BY A PHYSICIAN, OTHER LICENSED HEALTH-CARE PROFESSIONAL, OR HEALTH-CARE INSTITUTION STAFF, MANAGEMENT, EXECUTIVE STAFF, OR CORPORATE DIRECTORS, INCLUDING, BUT NOT LIMITED TO, AUDIT TRAILS, TEXT MESSAGES, MESSAGES ON ANY MESSAGING SYSTEM, ELECTRONIC MAIL COMMUNICATIONS, OTHER ELECTRONIC COMMUNICATIONS, AND HANDWRITTEN DOCUMENTS. MEDICAL INFORMATION DOES NOT INCLUDE DOCUMENTS OR STATEMENTS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT DOCTRINE; DOCUMENTS, STATEMENTS, OR COMMUNICATIONS CREATED DURING OR OCCURRING DURING AN INITIATED OPEN DISCUSSION AS DEFINED IN SECTION 25-51-103; RECOMMENDATIONS TO ADDRESS ANY ADVERSE INCIDENT MADE BY THOSE PROFESSIONAL REVIEW COMMITTEES ESTABLISHED IN SECTIONS 12-30-204 AND 12-30-205; OR RECOMMENDATIONS TO IMPROVE A QUALITY MANAGEMENT PROGRAM TO REDUCE RISKS TO PATIENTS AS REFERENCED IN SECTIONS 25-3-109 OR 25-3.5-904.

(g) “MEDICAL COMMUNICATION” MEANS CORRESPONDENCE TO OR FROM A HEALTH-CARE PROFESSIONAL OR HEALTH-CARE INSTITUTION SENT VIA U.S. MAIL, PRIVATE COURIER, HAND-DELIVERY, FACSIMILE, ELECTRONIC MAIL, TEXT MESSAGE, MESSAGES ON ANY MESSAGING SYSTEM, OR ANY OTHER FORMAT THAT CONTAINS INFORMATION ABOUT THE REQUESTING PATIENT’S ADVERSE MEDICAL INCIDENT. MEDICAL COMMUNICATION DOES NOT INCLUDE DOCUMENTS OR STATEMENTS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT DOCTRINE; DOCUMENTS, STATEMENTS, OR COMMUNICATIONS CREATED DURING OR OCCURRING DURING AN INITIATED OPEN DISCUSSION AS DEFINED IN SECTION 25-51-103; RECOMMENDATIONS TO ADDRESS ANY ADVERSE INCIDENT MADE BY THOSE PROFESSIONAL REVIEW COMMITTEES ESTABLISHED IN SECTIONS 12-30-204 AND 12-30-205; OR RECOMMENDATIONS TO IMPROVE A QUALITY MANAGEMENT PROGRAM TO REDUCE RISKS TO PATIENTS AS REFERENCED IN SECTIONS 25-3-109 OR 25-3.5-904.

SECTION 2. Effective date. This act takes effect on the date of the proclamation of the Governor announcing the approval, by the registered electors of the state, of the proposed initiative.