

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 19-0350.01 Yelana Love x2295

**SENATE BILL 19-234**

**SENATE SPONSORSHIP**

**Rodriguez and Foote**, Bridges, Cooke, Crowder, Fields, Garcia, Gardner, Ginal, Hisey, Holbert, Pettersen, Priola, Rankin, Scott, Story, Todd, Woodward, Zenzinger

**HOUSE SPONSORSHIP**

**Weissman**, Becker, Buckner, Catlin, Garnett, Gray, Humphrey, Kennedy, Michaelson Jenet, Sirota

---

**Senate Committees**

Judiciary  
Appropriations

**House Committees**

State, Veterans, & Military Affairs  
Appropriations

HOUSE  
3rd Reading Unamended  
May 2, 2019

---

**A BILL FOR AN ACT**

101      **CONCERNING THE CONTINUATION OF THE FUNCTIONS OF**  
102              **PROFESSIONAL REVIEW COMMITTEES, AND, IN CONNECTION**  
103              **THEREWITH, IMPLEMENTING THE RECOMMENDATIONS**  
104              **CONTAINED IN THE 2018 SUNSET REPORT BY THE DEPARTMENT**  
105              **OF REGULATORY AGENCIES.**

---

HOUSE  
2nd Reading Unamended  
May 1, 2019

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

SENATE  
Amended 3rd Reading  
April 30, 2019

**Sunset Process - Senate Judiciary Committee.** The bill implements the recommendations of the department of regulatory

SENATE  
2nd Reading Unamended  
April 27, 2019

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

agencies' sunset review and report on the functions of professional review committees as follows:

- ! Continues the functions of professional review committees for 11 years, until September 1, 2030 (**sections 1 and 2** of the bill);
- ! Makes technical amendments repealing references to the committee on anticompetitive conduct since it no longer exists and changing the term "utilization and quality control peer review organization" to "quality improvement organization" to be consistent with federal law (**sections 3 and 4**);
- ! Clarifies that governing boards reporting data, and the data reported, to the division of professions and occupations in the department of regulatory agencies (division) or a regulatory board may be known to staff of the division (**section 5**);
- ! Requires governing boards to annually update their information with the division (**section 5**); and
- ! Requires the division to promulgate rules to determine the information a governing board is required to report and to establish a process to remove governing boards from the registry (**section 5**).

The bill also makes conforming amendments necessary to harmonize the bill with the title 12 recodification bill, House Bill 19-1172 (**sections 6 and 7**).

---

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

2           **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**  
3 (17)(a)(VII); and **add** (31)(a)(II) as follows:

4           **24-34-104. General assembly review of regulatory agencies**  
5 **and functions for repeal, continuation, or reestablishment - legislative**  
6 **declaration - repeal.** (17) (a) The following agencies, functions, or both,  
7 are scheduled for repeal on September 1, 2019:

8           (VII) ~~The functions of professional review committees specified~~  
9 ~~in article 36.5 of title 12, C.R.S.;~~

10           (31) (a) The following agencies, functions, or both, are scheduled  
11 for repeal on September 1, 2030:

1 (II) THE FUNCTIONS OF PROFESSIONAL REVIEW COMMITTEES  
2 SPECIFIED IN ARTICLE 36.5 OF TITLE 12.

3 **SECTION 2.** In Colorado Revised Statutes, **amend** 12-36.5-107  
4 as follows:

5 **12-36.5-107. Repeal of article.** This ~~article~~ ARTICLE 36.5 is  
6 repealed, effective ~~September 1, 2019. Prior to such~~ SEPTEMBER 1, 2030.  
7 BEFORE THE repeal, ~~the department of regulatory agencies shall review~~  
8 the functions of professional review committees ~~and the committee on~~  
9 ~~anticompetitive conduct~~ ARE SCHEDULED FOR REVIEW in accordance with  
10 section 24-34-104. ~~C.R.S.~~

11 **SECTION 3.** In Colorado Revised Statutes, 12-36.5-102, **amend**  
12 the introductory portion, (7)(a) introductory portion, (7)(a)(V), and (7)(b);  
13 and add (5.5) as follows:

14 **12-36.5-102. Definitions.** As used in this ~~article~~ ARTICLE 36.5,  
15 unless the context otherwise requires:

16 (5.5) "ORIGINAL SOURCE DOCUMENT" MEANS ANY SEPARATE  
17 WRITTEN DOCUMENT CREATED OR PREPARED IN THE ORDINARY COURSE OF  
18 BUSINESS THAT IS NOT OTHERWISE PRIVILEGED OR CONFIDENTIAL,  
19 INCLUDING ELECTRONIC RECORDS AND ELECTRONIC COMMUNICATIONS,  
20 CONTAINING FACTUAL INFORMATION RELATING SOLELY TO THE  
21 INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION THAT IS NOT CREATED  
22 OR PREPARED AS PART OF THE PROFESSIONAL REVIEW ACTIVITIES OR  
23 CREATED BY OR AT THE DIRECTION OF A PROFESSIONAL REVIEW  
24 COMMITTEE.

25 (7) (a) "Records" means any and all written, electronic, or oral  
26 communications by any person arising from any activities of a  
27 professional review committee, including a governing board, established

1 by an authorized entity under this ~~article~~ ARTICLE 36.5 or by the agent or  
2 staff thereof, including any:

3 (V) Recordings or transcripts of proceedings, minutes, formal  
4 recommendations, decisions, exhibits, and other similar items or  
5 documents related to professional review activities ~~or the committee on~~  
6 ~~anticompetitive conduct~~ and typically constituting the records of  
7 administrative proceedings.

8 (b) "Records" does not include any written, electronic, or oral  
9 communications by any person that are otherwise available from a source  
10 outside the scope of professional review activities, including medical  
11 records and other health information, INCIDENT REPORTS PREPARED IN THE  
12 ORDINARY COURSE OF BUSINESS, AND RELEVANT HOSPITAL OR FACILITY  
13 POLICIES, PROCEDURES, AND PROTOCOLS, OR OTHER ORIGINAL SOURCE  
14 DOCUMENTS.

15 **SECTION 4.** In Colorado Revised Statutes, 12-36.5-104, **amend**  
16 (3) and (13); **repeal** (7)(f); and **add** (2.7) and (17) as follows:

17 **12-36.5-104. Establishment of professional review committees**  
18 **- function - rules.** (2.7) A PROFESSIONAL REVIEW COMMITTEE OF A  
19 HOSPITAL LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH  
20 AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a) IS  
21 ENCOURAGED TO APPOINT A CONSUMER TO SERVE AS A NONVOTING  
22 MEMBER OF THE PROFESSIONAL REVIEW COMMITTEE, SO LONG AS THE  
23 CONSUMER COMPLIES WITH THE HOSPITAL'S CONFLICT OF INTEREST  
24 POLICIES, ENTERS INTO A CONFIDENTIALITY AGREEMENT ACCEPTABLE TO  
25 THE HOSPITAL, AND ENTERS INTO A BUSINESS ASSOCIATE AGREEMENT IN  
26 ACCORDANCE WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND  
27 ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED.

1           ~~(3) A utilization and quality control peer review~~ IMPROVEMENT  
2 organization, as defined pursuant to 42 U.S.C. sec. 1320c-1, or any other  
3 organization performing similar review services under federal or state law  
4 is an approved professional review committee under this ~~article~~ ARTICLE  
5 36.5.

6           (7) The written bylaws, policies, or procedures of any professional  
7 review committee for persons licensed under article 36 of this title or  
8 licensed under article 38 of this title and granted authority as advanced  
9 practice nurses must provide for at least the following:

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

16           (13) Responding to a subpoena or disclosing or sharing of  
17 otherwise privileged records and information pursuant to subsection (10),  
18 (11), or (12) of this section does not constitute a waiver of the privilege  
19 specified in ~~paragraph (a) of subsection (10)~~ SUBSECTION (10)(a) of this  
20 section or a violation of the confidentiality requirements of subsection  
21 (15) of this section. Records provided to any governmental agency,  
22 including the department of public health and environment, ~~the committee~~  
23 ~~on anticompetitive conduct~~, the medical board, and the nursing board  
24 pursuant to subsection (10) or (11) of this section are not public records  
25 subject to the "Colorado Open Records Act", part 2 of article 72 of title  
26 24. C.R.S. A person providing the records to an authorized entity or its  
27 professional review committee or governing board, the department of

1 public health and environment, ~~the committee on anticompetitive~~  
2 ~~conduct~~, the medical board, the nursing board, CMS, the Joint  
3 Commission, or other governmental agency is entitled to the same  
4 immunity from liability as provided under section 12-36.5-105 for the  
5 disclosure of the records.

6 (17)(a) ORIGINAL SOURCE DOCUMENTS ARE NOT PROTECTED FROM  
7 SUBPOENA, DISCOVERY, OR USE IN ANY CIVIL ACTION MERELY BECAUSE  
8 THEY WERE CONSIDERED BY OR PRESENTED TO A PROFESSIONAL REVIEW  
9 COMMITTEE. ORIGINAL SOURCE DOCUMENTS ARE SUBJECT TO SUBPOENA  
10 OR DISCOVERY ONLY FROM THE ORIGINAL SOURCES AND ARE PROTECTED  
11 FROM SUBPOENA OR DISCOVERY FROM THE PROFESSIONAL REVIEW FILES  
12 OF A PROFESSIONAL REVIEW COMMITTEE OF AN AUTHORIZED ENTITY  
13 EXCEPT AS PROVIDED BELOW:

14 (I) UPON SUBPOENA OR REQUEST FOR DISCOVERY FOR ORIGINAL  
15 SOURCE DOCUMENTS, AN AUTHORIZED ENTITY SHALL PROVIDE A LOG OF  
16 ALL ORIGINAL SOURCE DOCUMENTS CONTAINED IN THE AUTHORIZED  
17 ENTITY'S PROFESSIONAL REVIEW FILES INCLUDING THE SOURCE AND  
18 NATURE OF EACH ORIGINAL SOURCE DOCUMENT:

19 (II) THE INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION BY  
20 SUCH PERSON, NEXT FRIEND, OR LEGAL REPRESENTATIVE MAY SUBPOENA  
21 OR SEEK DISCOVERY OF ANY ORIGINAL SOURCE DOCUMENT IDENTIFIED ON  
22 THE AUTHORIZED ENTITY'S PROFESSIONAL REVIEW COMMITTEE LOG ONLY  
23 IF THE ORIGINAL SOURCE DOCUMENT WAS NOT PRODUCED IN RESPONSE TO  
24 A PRIOR SUBPOENA OR DISCOVERY REQUEST TO THE ORIGINAL SOURCE;  
25 AND

26 (b) THIS SUBSECTION (17) DOES NOT RELIEVE ANY PARTY OF THEIR  
27 OBLIGATION UNDER THE COLORADO RULES OF CIVIL PROCEDURE.

1           **SECTION 5.** In Colorado Revised Statutes, 12-36.5-104.6,  
2       **amend** (2) introductory portion and (4); and **add** (2)(a.5) and (2)(c)(IV)  
3       as follows:

4           **12-36.5-104.6. Governing boards to register with division -**  
5       **annual reports - aggregation and publication of data - definition -**  
6       **rules.** (2) Each governing board that establishes or uses one or more  
7       professional review committees to review the practice of persons licensed  
8       under article 36 of this ~~title~~ TITLE 12 or licensed under article 38 of this  
9       ~~title~~ TITLE 12 and granted authority as advanced practice nurses shall:

10           (a.5) UPDATE THE GOVERNING BOARD'S INFORMATION, AS  
11       SPECIFIED BY THE DIVISION BY RULE IN ACCORDANCE WITH SUBSECTION  
12       (4)(a) OF THIS SECTION, WITH THE DIVISION ANNUALLY, INCLUDING  
13       WHETHER THE GOVERNING BOARD IS CURRENTLY ENGAGED IN A  
14       PROFESSIONAL REVIEW ACTIVITY OR INTENDS TO ENGAGE IN A  
15       PROFESSIONAL REVIEW ACTIVITY IN THE FUTURE;

16           (c) (IV) THE IDENTITY OF THE GOVERNING BOARD REPORTING THE  
17       DATA AND THE DATA REPORTED PURSUANT TO THIS SUBSECTION (2)(c) OR  
18       SUBSECTION (2)(b) OF THIS SECTION MAY BE KNOWN TO THE DIVISION.

19           (4) The division:

20           (a) Shall adopt rules to:

21           (I) Implement this section;

22           (II) DETERMINE THE DE-IDENTIFIED INFORMATION REGARDING  
23       INVESTIGATIONS AND OUTCOMES A GOVERNING BOARD IS REQUIRED TO  
24       REPORT; AND

25           (III) ESTABLISH A PROCESS TO REMOVE A GOVERNING BOARD  
26       FROM THE REGISTRY WHEN THE GOVERNING BOARD IS NO LONGER  
27       REQUIRED TO REGISTER WITH THE DIVISION PURSUANT TO THIS SECTION;

1 and

2 (b) May collect a reasonable registration fee to recover its direct  
3 and indirect costs of administering the registration and publication  
4 systems required by this section.

5 **SECTION 6.** In Colorado Revised Statutes, **amend as relocated**  
6 **by House Bill 19-1172 12-30-209** as follows:

7 **12-30-209. Repeal of part.** This part 2 is repealed, effective  
8 September 1, ~~2019~~ 2030. Before the repeal, the functions of professional  
9 review committees are scheduled for review in accordance with section  
10 24-34-104.

11 **SECTION 7.** In Colorado Revised Statutes, 12-30-202, amend  
12 as relocated by House Bill 19-1172 (8)(b); and add as relocated by  
13 House Bill 19-1172 (6.5) as follows:

14 **12-30-202. Definitions.** As used in this part 2, unless the context  
15 otherwise requires:

16 (6.5) "ORIGINAL SOURCE DOCUMENT" MEANS ANY SEPARATE  
17 WRITTEN DOCUMENT CREATED OR PREPARED IN THE ORDINARY COURSE OF  
18 BUSINESS THAT IS NOT OTHERWISE PRIVILEGED OR CONFIDENTIAL,  
19 INCLUDING ELECTRONIC RECORDS AND ELECTRONIC COMMUNICATIONS,  
20 CONTAINING FACTUAL INFORMATION RELATING SOLELY TO THE  
21 INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION THAT IS NOT CREATED  
22 OR PREPARED AS PART OF THE PROFESSIONAL REVIEW ACTIVITIES OR  
23 CREATED BY OR AT THE DIRECTION OF A PROFESSIONAL REVIEW  
24 COMMITTEE.

25 (8) (b) "Records" does not include any written, electronic, or oral  
26 communications by any person that are otherwise available from a source  
27 outside the scope of professional review activities, including medical



1 records and other health information, INCIDENT REPORTS PREPARED IN THE  
2 ORDINARY COURSE OF BUSINESS, AND RELEVANT HOSPITAL OR FACILITY  
3 POLICIES, PROCEDURES, AND PROTOCOLS, OR OTHER ORIGINAL SOURCE  
4 DOCUMENTS."

5 **SECTION 8.** In Colorado Revised Statutes, 12-30-204, **repeal as**  
6 **relocated by House Bill 19-1172 (8)(f); and add as relocated by House**  
7 **Bill 19-1172 (3.5) and (18) as follows:**

8 **12-30-204. Establishment of professional review committees**  
9 **- function - rules. (3.5)** A PROFESSIONAL REVIEW COMMITTEE OF A  
10 HOSPITAL LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH  
11 AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a) IS  
12 ENCOURAGED TO APPOINT A CONSUMER TO SERVE AS A NONVOTING  
13 MEMBER OF THE PROFESSIONAL REVIEW COMMITTEE, SO LONG AS THE  
14 CONSUMER COMPLIES WITH THE HOSPITAL'S CONFLICT OF INTEREST  
15 POLICIES, ENTERS INTO A CONFIDENTIALITY AGREEMENT ACCEPTABLE TO  
16 THE HOSPITAL, AND ENTERS INTO A BUSINESS ASSOCIATE AGREEMENT IN  
17 ACCORDANCE WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND  
18 ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS AMENDED.

19 (8) The written bylaws, policies, or procedures of any professional  
20 review committee for persons licensed under article 240 of this title 12 or  
21 advanced practice nurses must provide for at least the following:

22 (f) The professional review committee shall forward a copy of any  
23 recommendations made pursuant to subsection (8)(d) of this section  
24 promptly to the medical board if the subject of the investigation is  
25 licensed under article 240 of this title 12, or to the nursing board if the  
26 subject of the investigation is an advanced practice nurse.

27 (18)(a) ORIGINAL SOURCE DOCUMENTS ARE NOT PROTECTED FROM

1 SUBPOENA, DISCOVERY, OR USE IN ANY CIVIL ACTION MERELY BECAUSE  
2 THEY WERE CONSIDERED BY OR PRESENTED TO A PROFESSIONAL REVIEW  
3 COMMITTEE. ORIGINAL SOURCE DOCUMENTS ARE SUBJECT TO SUBPOENA  
4 OR DISCOVERY ONLY FROM THE ORIGINAL SOURCES AND ARE PROTECTED  
5 FROM SUBPOENA OR DISCOVERY FROM THE PROFESSIONAL REVIEW FILES  
6 OF A PROFESSIONAL REVIEW COMMITTEE OF AN AUTHORIZED ENTITY  
7 EXCEPT AS PROVIDED BELOW:

8 (I) UPON SUBPOENA OR REQUEST FOR DISCOVERY FOR ORIGINAL  
9 SOURCE DOCUMENTS, AN AUTHORIZED ENTITY SHALL PROVIDE A LOG OF  
10 ALL ORIGINAL SOURCE DOCUMENTS CONTAINED IN THE AUTHORIZED  
11 ENTITY'S PROFESSIONAL REVIEW FILES INCLUDING THE SOURCE AND  
12 NATURE OF EACH ORIGINAL SOURCE DOCUMENT;

13 (II) THE INDIVIDUAL PATIENT IN INTEREST IN A CIVIL ACTION BY  
14 SUCH PERSON, NEXT FRIEND, OR LEGAL REPRESENTATIVE MAY SUBPOENA  
15 OR SEEK DISCOVERY OF ANY ORIGINAL SOURCE DOCUMENT IDENTIFIED ON  
16 THE AUTHORIZED ENTITY'S PROFESSIONAL REVIEW COMMITTEE LOG ONLY  
17 IF THE ORIGINAL SOURCE DOCUMENT WAS NOT PRODUCED IN RESPONSE TO  
18 A PRIOR SUBPOENA OR DISCOVERY REQUEST TO THE ORIGINAL SOURCE;  
19 AND

20 (b) THIS SUBSECTION (17) DOES NOT RELIEVE ANY PARTY OF THEIR  
21 OBLIGATION UNDER THE COLORADO RULES OF CIVIL PROCEDURE.

22 **SECTION 9.** In Colorado Revised Statutes, 12-30-206, **amend**  
23 **as relocated by House Bill 19-1172 (4); and add (2)(a.5) and (2)(c)(IV)**  
24 **as follows:**

25 **12-30-206. Governing boards to register with division - annual**  
26 **reports - aggregation and publication of data - definition - rules.**

27 (2) Each governing board that establishes or uses one or more

1 professional review committees to review the practice of persons licensed  
2 under article 240 of this title 12 or of advanced practice nurses shall:

3 (a.5) UPDATE THE GOVERNING BOARD'S INFORMATION, AS  
4 SPECIFIED BY THE DIVISION BY RULE IN ACCORDANCE WITH SUBSECTION  
5 (4)(a) OF THIS SECTION, WITH THE DIVISION ANNUALLY, INCLUDING  
6 WHETHER THE GOVERNING BOARD IS CURRENTLY ENGAGED IN A  
7 PROFESSIONAL REVIEW ACTIVITY OR INTENDS TO ENGAGE IN A  
8 PROFESSIONAL REVIEW ACTIVITY IN THE FUTURE;

9 (c) (IV) THE IDENTITY OF THE GOVERNING BOARD REPORTING THE  
10 DATA AND THE DATA REPORTED PURSUANT TO THIS SUBSECTION (2)(c) OR  
11 SUBSECTION (2)(b) OF THIS SECTION MAY BE KNOWN TO THE DIVISION.

12 (4) The division:

13 (a) Shall adopt rules to:

14 (I) Implement this section;

15 (II) DETERMINE THE DE-IDENTIFIED INFORMATION REGARDING  
16 INVESTIGATIONS AND OUTCOMES A GOVERNING BOARD IS REQUIRED TO  
17 REPORT; AND

18 (III) ESTABLISH A PROCESS TO REMOVE A GOVERNING BOARD  
19 FROM THE REGISTRY WHEN THE GOVERNING BOARD IS NO LONGER  
20 REQUIRED TO REGISTER WITH THE DIVISION PURSUANT TO THIS SECTION;

21 and

22 (b) May collect a reasonable registration fee to recover its direct  
23 and indirect costs of administering the registration and publication  
24 systems required by this section.

25 **SECTION 10. Act subject to petition - effective date.**

26 (1) Except as otherwise provided in subsection (2) of this section, this act  
27 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly (August  
2 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a  
3 referendum petition is filed pursuant to section 1 (3) of article V of the  
4 state constitution against this act or an item, section, or part of this act  
5 within such period, then the act, item, section, or part will not take effect  
6 unless approved by the people at the general election to be held in  
7 November 2020 and, in such case, will take effect on the date of the  
8 official declaration of the vote thereon by the governor.

9 (2) Sections 6 through 9 of this act take effect only if House Bill  
10 19-1172 becomes law, in which case sections 6 through 9 take effect  
11 October 1, 2019.