

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0976.01 Yelana Love x2295

SENATE BILL 19-201

SENATE SPONSORSHIP

Pettersen and Tate,

HOUSE SPONSORSHIP

Tipper and McKean,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF A PROCESS BY WHICH CERTAIN**
102 **PARTIES TO AN ADVERSE HEALTH CARE INCIDENT MAY DISCUSS**
103 **POTENTIAL OUTCOMES.**

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>.)

The bill creates the "Colorado Candor Act" (Act). The Act establishes a process for the communication between a patient and a health care provider or health facility after an adverse health care incident. The bill provides that the communications under the Act are privileged and confidential, are inadmissible as evidence in any

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.

SENATE
Amended 2nd Reading
March 27, 2019

subsequent proceedings arising directly out of the adverse health care incident, and are not subject to discovery, subpoena, or other means of legal compulsion for release.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 51 to title
3 25 as follows:

4 **ARTICLE 51**

5 **Communication and Resolution After**
6 **an Adverse Health Care Incident**

7 **25-51-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 51 IS
8 THE "COLORADO CANDOR ACT".

9 **25-51-102. Definitions.** AS USED IN THIS ARTICLE 51, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "ADVERSE HEALTH CARE INCIDENT" MEANS AN OBJECTIVE AND
12 DEFINABLE OUTCOME ARISING FROM OR RELATED TO PATIENT CARE THAT
13 RESULTS IN THE DEATH OR PHYSICAL INJURY OF A PATIENT.

14 (2) (a) "HEALTH CARE PROVIDER" MEANS ANY PERSON WHO IS
15 LICENSED, CERTIFIED, REGISTERED, OR OTHERWISE PERMITTED BY STATE
16 LAW TO ADMINISTER HEALTH CARE IN THE ORDINARY COURSE OF BUSINESS
17 OR IN THE PRACTICE OF A PROFESSION.

18 (b) "HEALTH CARE PROVIDER" INCLUDES A PROFESSIONAL SERVICE
19 CORPORATION, LIMITED LIABILITY COMPANY, OR REGISTERED LIMITED
20 LIABILITY PARTNERSHIP ORGANIZED PURSUANT TO STATE LAW FOR THE
21 PRACTICE OF A HEALTH CARE PROFESSION.

22 (3) "HEALTH FACILITY" MEANS A FACILITY LICENSED OR CERTIFIED
23 BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
24 SECTION 25-1.5-103 (1)(a).

1 (4) "OPEN DISCUSSION" MEANS ALL COMMUNICATIONS THAT ARE
2 MADE UNDER SECTION 25-51-103 AND INCLUDES ALL MEMORANDA, WORK
3 PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT ARE PREPARED FOR,
4 OR SUBMITTED IN THE COURSE OF OR IN CONNECTION WITH,
5 COMMUNICATIONS UNDER SECTION 25-51-103.

6 (5) "PATIENT" MEANS A PERSON WHO RECEIVES HEALTH CARE
7 FROM A HEALTH CARE PROVIDER, OR THE PERSON'S LEGAL
8 REPRESENTATIVE IF THE PERSON IS AN UNEMANCIPATED MINOR UNDER THE
9 AGE OF EIGHTEEN, DECEASED, OR INCAPACITATED. IF THE PATIENT IS
10 DECEASED, "PATIENT" INCLUDES THE PARTIES RECOGNIZED UNDER
11 SECTION 13-21-201.

12 (6) "PUBLIC EMPLOYEE" HAS THE SAME MEANING AS IN SECTION
13 24-10-103 (4).

14 (7) "PUBLIC ENTITY" HAS THE SAME MEANING AS IN SECTION
15 24-10-103 (5).

16 **25-51-103. Engaging in an open discussion.** (1) IF AN ADVERSE
17 HEALTH CARE INCIDENT OCCURS, A HEALTH CARE PROVIDER INVOLVED IN
18 THE ADVERSE HEALTH CARE INCIDENT, OR THE HEALTH CARE PROVIDER
19 JOINTLY WITH THE HEALTH FACILITY INVOLVED IN THE ADVERSE HEALTH
20 CARE INCIDENT, MAY PROVIDE THE PATIENT WITH WRITTEN NOTICE OF THE
21 DESIRE OF THE HEALTH CARE PROVIDER, OR OF THE HEALTH CARE
22 PROVIDER JOINTLY WITH THE HEALTH FACILITY, TO ENTER INTO AN OPEN
23 DISCUSSION UNDER THIS ARTICLE 51.

24 (2) A HEALTH CARE PROVIDER OR HEALTH FACILITY THAT CHOOSES
25 TO PROVIDE THE NOTICE SPECIFIED IN SUBSECTION (1) OF THIS SECTION
26 SHALL SEND THE NOTICE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE
27 DATE ON WHICH THE HEALTH CARE PROVIDER KNEW, OR THROUGH THE USE

1 OF DILIGENCE SHOULD HAVE KNOWN, OF THE ADVERSE HEALTH CARE
2 INCIDENT. THE NOTICE MUST INCLUDE:

3 (a) AN EXPLANATION OF THE PATIENT'S RIGHT TO RECEIVE A COPY
4 OF THE MEDICAL RECORDS RELATED TO THE ADVERSE HEALTH CARE
5 INCIDENT AND OF THE PATIENT'S RIGHT TO AUTHORIZE THE RELEASE OF
6 THE PATIENT'S MEDICAL RECORDS RELATED TO THE ADVERSE HEALTH
7 CARE INCIDENT TO ANY THIRD PARTY;

8 (b) A STATEMENT REGARDING THE PATIENT'S RIGHT TO SEEK
9 LEGAL COUNSEL AND TO HAVE LEGAL COUNSEL PRESENT THROUGHOUT
10 THE PROCESS SPECIFIED IN THIS ARTICLE 51;

11 (c) A COPY OF SECTIONS 13-80-102.5 AND 13-80-112 WITH NOTICE
12 THAT THE TIME FOR A PATIENT TO BRING A LAWSUIT IS LIMITED AND WILL
13 NOT BE EXTENDED MERELY BY ENGAGING IN AN OPEN DISCUSSION UNDER
14 THIS ARTICLE 51;

15 (d) IF THE HEALTH CARE PROVIDER OR HEALTH FACILITY IS A
16 PUBLIC ENTITY OR A PUBLIC EMPLOYEE, A COPY OF SECTION 24-10-109,
17 TOGETHER WITH THE STATEMENT THAT THE DEADLINE FOR FILING THE
18 NOTICE REQUIRED UNDER SECTION 24-10-109 WILL NOT BE EXTENDED ==
19 BY ENGAGING IN AN OPEN DISCUSSION UNDER THIS ARTICLE 51;

20 (e) NOTICE THAT IF THE PATIENT CHOOSES TO ENGAGE IN AN OPEN
21 DISCUSSION WITH THE HEALTH CARE PROVIDER OR HEALTH FACILITY, ALL
22 COMMUNICATIONS MADE IN THE COURSE OF THE DISCUSSION UNDER THIS
23 ARTICLE 51, INCLUDING COMMUNICATIONS REGARDING THE INITIATION OF
24 AN OPEN DISCUSSION, ARE:

- 25 (I) PRIVILEGED AND CONFIDENTIAL;
- 26 (II) NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS OF
27 LEGAL COMPULSION FOR RELEASE; AND

1 (III) NOT ADMISSIBLE AS EVIDENCE IN A PROCEEDING ARISING
2 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT, INCLUDING A
3 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING; AND

4 (f) AN ADVISEMENT THAT COMMUNICATIONS, MEMORANDA, WORK
5 PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT ARE OTHERWISE
6 SUBJECT TO DISCOVERY AND NOT PREPARED SPECIFICALLY FOR USE IN AN
7 OPEN DISCUSSION UNDER THIS SECTION ARE NOT CONFIDENTIAL.

8 (3) (a) IF THE PATIENT AGREES IN WRITING TO ENGAGE IN AN OPEN
9 DISCUSSION UNDER THIS ARTICLE 51, THE PATIENT, HEALTH CARE
10 PROVIDER, OR HEALTH FACILITY ENGAGED IN THE OPEN DISCUSSION MAY
11 INCLUDE ADDITIONAL PARTIES IN THE OPEN DISCUSSION.

12 (b) THE HEALTH CARE PROVIDER, OR THE HEALTH CARE PROVIDER
13 JOINTLY WITH THE HEALTH FACILITY, INVOLVED IN THE ADVERSE HEALTH
14 CARE INCIDENT SHALL ADVISE ALL ADDITIONAL PARTIES IN WRITING OF
15 THE NATURE OF COMMUNICATIONS MADE IN ACCORDANCE WITH THIS
16 ARTICLE 51 AS SPECIFIED IN SECTION 25-51-105.

17 (c) ADDITIONAL PARTIES SHALL ACKNOWLEDGE THE ADVISEMENT
18 IN SUBSECTION (3)(b) OF THIS SECTION IN WRITING.

19 (d) THE ADVISEMENT PROVIDED IN ACCORDANCE WITH THIS
20 SUBSECTION (3) MUST INDICATE THAT COMMUNICATIONS, MEMORANDA,
21 WORK PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT ARE
22 OTHERWISE SUBJECT TO DISCOVERY AND NOT PREPARED SPECIFICALLY FOR
23 USE IN AN OPEN DISCUSSION UNDER THIS SECTION ARE NOT CONFIDENTIAL.

24 (4) THE HEALTH CARE PROVIDER OR HEALTH FACILITY THAT
25 AGREES TO ENGAGE IN AN OPEN DISCUSSION MAY:

26 (a) INVESTIGATE HOW THE ADVERSE HEALTH CARE INCIDENT
27 OCCURRED AND GATHER INFORMATION REGARDING THE MEDICAL CARE OR

1 TREATMENT PROVIDED;

2 (b) DISCLOSE THE RESULTS OF THE INVESTIGATION TO THE
3 PATIENT;

4 (c) OPENLY COMMUNICATE TO THE PATIENT THE STEPS THE
5 HEALTH CARE PROVIDER OR HEALTH FACILITY WILL TAKE TO PREVENT
6 FUTURE OCCURRENCES OF THE ADVERSE HEALTH CARE INCIDENT;

7 (d) DETERMINE EITHER OF THE FOLLOWING:

8 (I) THAT NO OFFER OF COMPENSATION FOR THE ADVERSE HEALTH
9 CARE INCIDENT IS WARRANTED; OR

10 (II) THAT AN OFFER OF COMPENSATION FOR THE ADVERSE HEALTH
11 CARE INCIDENT IS WARRANTED.

12 (5) IF A HEALTH CARE PROVIDER OR HEALTH FACILITY DETERMINES
13 THAT NO OFFER OF COMPENSATION IS WARRANTED, THE HEALTH CARE
14 PROVIDER OR HEALTH FACILITY SHALL ORALLY COMMUNICATE THAT
15 DECISION WITH THE PATIENT. IF A HEALTH CARE PROVIDER OR HEALTH
16 FACILITY DETERMINES THAT AN OFFER OF COMPENSATION IS WARRANTED,
17 THE HEALTH CARE PROVIDER OR HEALTH FACILITY SHALL PROVIDE THE
18 PATIENT WITH A WRITTEN OFFER OF COMPENSATION.

19 (6) IF A HEALTH CARE PROVIDER OR HEALTH FACILITY MAKES AN
20 OFFER OF COMPENSATION UNDER SUBSECTION (5) OF THIS SECTION AND
21 THE PATIENT IS NOT REPRESENTED BY LEGAL COUNSEL, THE HEALTH CARE
22 PROVIDER OR HEALTH FACILITY SHALL:

23 (a) ADVISE THE PATIENT OF THE PATIENT'S RIGHT TO SEEK LEGAL
24 COUNSEL REGARDING THE OFFER OF COMPENSATION; AND

25 (b) PROVIDE NOTICE THAT THE PATIENT MAY BE LEGALLY
26 REQUIRED TO REPAY MEDICAL AND OTHER EXPENSES THAT WERE PAID BY
27 A THIRD PARTY, INCLUDING PRIVATE HEALTH INSURANCE, MEDICARE, OR

1 MEDICAID.

2 (7) EXCEPT FOR AN OFFER OF COMPENSATION UNDER SUBSECTION
3 (5) OF THIS SECTION, OPEN DISCUSSIONS BETWEEN THE HEALTH CARE
4 PROVIDER OR HEALTH FACILITY AND THE PATIENT ABOUT THE
5 COMPENSATION OFFERED UNDER SUBSECTION (5) OF THIS SECTION SHALL
6 NOT BE IN WRITING.

7 **25-51-104. Payment and financial resolution.** (1) IF A PATIENT
8 ACCEPTS AN OFFER OF COMPENSATION MADE PURSUANT TO SECTION
9 25-51-103 (5) AND RECEIVES THE COMPENSATION, THE PAYMENT OF
10 COMPENSATION TO THE PATIENT IS NOT A PAYMENT RESULTING FROM:

11 (a) A WRITTEN CLAIM OR DEMAND FOR PAYMENT;

12 (b) A FINAL JUDGMENT, SETTLEMENT, OR ARBITRATION AWARD
13 AGAINST A HEALTH CARE PROFESSIONAL OR HEALTH CARE INSTITUTION
14 FOR MEDICAL MALPRACTICE FOR PURPOSES OF SECTION 13-64-303;

15 (c) A MALPRACTICE CLAIM SETTLED OR IN WHICH JUDGMENT IS
16 RENDERED AGAINST A PROFESSIONAL FOR PURPOSES OF REPORTING BY
17 MALPRACTICE INSURANCE COMPANIES UNDER SECTION 10-1-120,
18 10-1-121, 10-1-124, 10-1-125, OR 10-1-125.5;

19 (d) A FINAL JUDGMENT AGAINST, SETTLEMENT ENTERED INTO BY,
20 OR ARBITRATION AWARD PAID ON BEHALF OF AN APPLICANT FOR
21 MALPRACTICE UNDER SECTION 24-34-110 (4)(h); OR

22 (e) A JUDGMENT, ADMINISTRATIVE ACTION, SETTLEMENT, OR
23 ARBITRATION AWARD INVOLVING MALPRACTICE UNDER SECTION
24 12-29.5-104 (5)(a), 12-29.9-104 (5), 12-32-108.3 (2)(b)(III), 12-33-117
25 (1)(j), 12-35-129 (1)(q) OR (1)(r), 12-35.5-111 (1)(i), 12-36-118
26 (4)(b)(III), 12-37.3-114.5, 12-38-116.5 (3)(b)(II), 12-40-118 (1)(r) OR
27 (1)(y), 12-40-127, 12-41-115 (1)(o), 12-41-120 (1)(a), 12-41-210 (1)(k),

1 12-41-215 (1)(a), 12-42.5-109 (1), OR 12-43-224 (8).

2 (2) AS A CONDITION OF AN OFFER OF COMPENSATION UNDER
3 SECTION 25-51-103 (5), A HEALTH CARE PROVIDER OR HEALTH FACILITY
4 MAY REQUIRE A PATIENT TO EXECUTE ALL DOCUMENTS AND OBTAIN ANY
5 NECESSARY COURT APPROVAL TO RESOLVE AN ADVERSE HEALTH CARE
6 INCIDENT. THE PARTIES SHALL NEGOTIATE THE FORM OF THE DOCUMENTS
7 OR OBTAIN COURT APPROVAL AS NECESSARY.

8 **25-51-105. Confidentiality of open discussions and offers of**
9 **compensation.** (1) OPEN DISCUSSION COMMUNICATIONS AND OFFERS OF
10 COMPENSATION MADE UNDER SECTION 25-51-103 AND IN SUBSTANTIAL
11 COMPLIANCE WITH THIS ARTICLE 51:

12 (a) DO NOT CONSTITUTE AN ADMISSION OF LIABILITY;

13 (b) ARE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE
14 DISCLOSED;

15 (c) ARE NOT ADMISSIBLE AS EVIDENCE IN ANY SUBSEQUENT
16 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING ARISING
17 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT;

18 (d) ARE NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS
19 OF LEGAL COMPULSION FOR RELEASE; AND

20 (e) SHALL NOT BE DISCLOSED BY ANY PARTY IN ANY SUBSEQUENT
21 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING ARISING
22 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT.

23 (2) COMMUNICATIONS, MEMORANDA, WORK PRODUCT,
24 DOCUMENTS, AND OTHER MATERIALS THAT ARE OTHERWISE SUBJECT TO
25 DISCOVERY AND THAT WERE NOT PREPARED SPECIFICALLY FOR USE IN AN
26 OPEN DISCUSSION UNDER SECTION 25-51-103 ARE NOT CONFIDENTIAL.

27 (3) THE LIMITATION ON DISCLOSURE IMPOSED BY THIS SECTION

1 INCLUDES DISCLOSURE DURING ANY DISCOVERY CONDUCTED AS PART OF
2 A SUBSEQUENT ADJUDICATORY PROCEEDING ARISING DIRECTLY OUT OF
3 THE ADVERSE HEALTH CARE INCIDENT, AND A COURT OR OTHER
4 ADJUDICATORY BODY SHALL NOT COMPEL ANY PERSON WHO ENGAGES IN
5 AN OPEN DISCUSSION UNDER THIS ARTICLE 51 TO DISCLOSE CONFIDENTIAL
6 COMMUNICATIONS OR AGREEMENTS MADE UNDER SECTION 25-51-103.

7 (4) THIS SECTION DOES NOT AFFECT ANY OTHER LAW, RULE, OR
8 REQUIREMENT WITH RESPECT TO CONFIDENTIALITY.

9 **25-51-106. Patient safety research and education.** (1) A
10 HEALTH CARE PROVIDER OR HEALTH FACILITY THAT PARTICIPATES IN OPEN
11 DISCUSSIONS UNDER THIS ARTICLE 51 MAY PROVIDE DE-IDENTIFIED
12 INFORMATION ABOUT AN ADVERSE HEALTH CARE INCIDENT TO ANY
13 PATIENT-SAFETY-CENTERED NONPROFIT ORGANIZATION FOR USE IN
14 PATIENT SAFETY RESEARCH AND EDUCATION.

15 (2) DISCLOSURE OF DE-IDENTIFIED INFORMATION UNDER
16 SUBSECTION (1) OF THIS SECTION:

17 (a) DOES NOT CONSTITUTE A WAIVER OF THE PRIVILEGE SPECIFIED
18 IN SECTION 25-51-105 (1)(b); AND

19 (b) IS NOT A VIOLATION OF THE CONFIDENTIALITY REQUIREMENTS
20 OF SECTION 25-51-105 (1)(b).

21 **SECTION 2. Effective date - applicability.** This act takes effect
22 July 1, 2019, and applies to conduct occurring on or after said date.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.