

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

REVISED

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

LLS NO. 19-0976.01 Yelana Love x2295

SENATE BILL 19-201

SENATE SPONSORSHIP

Pettersen and Tate, Bridges, Court, Gardner, Ginal, Lee, Moreno, Woodward

HOUSE SPONSORSHIP

Tipper and McKean,

Senate Committees
Judiciary

House Committees
Judiciary

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.*

HOUSE
2nd Reading Unamended
April 16, 2019

SENATE
Amended 3rd Reading
March 28, 2019

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) (a) "OPEN DISCUSSION" MEANS ALL COMMUNICATIONS THAT
2 ARE MADE UNDER SECTION 25-51-103 AND INCLUDES MEMORANDA, WORK
3 PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT:

4 (I) ARE PREPARED FOR, OR SUBMITTED IN THE COURSE OF OR IN
5 CONNECTION WITH, COMMUNICATIONS UNDER SECTION 25-51-103; AND

6 (II) ARE NOT MATERIALS DESCRIBED IN SUBSECTION (4)(b) OF THIS
7 SECTION.

8 (b) "OPEN DISCUSSION" DOES NOT INCLUDE COMMUNICATIONS,
9 MEMORANDA, WORK PRODUCT, DOCUMENTS, OR OTHER MATERIALS THAT
10 ARE OTHERWISE SUBJECT TO DISCOVERY AND THAT WERE NOT PREPARED
11 SPECIFICALLY FOR USE IN AN OPEN DISCUSSION UNDER SECTION 25-51-103
12 AS SPECIFIED IN SECTION 25-51-105 (2).

13 (5) "PATIENT" MEANS A PERSON WHO RECEIVES HEALTH CARE
14 FROM A HEALTH CARE PROVIDER, OR THE PERSON'S LEGAL
15 REPRESENTATIVE IF THE PERSON IS AN UNEMANCIPATED MINOR UNDER THE
16 AGE OF EIGHTEEN, DECEASED, OR INCAPACITATED. IF THE PATIENT IS
17 DECEASED, "PATIENT" INCLUDES THE PARTIES RECOGNIZED UNDER
18 SECTION 13-21-201.

19 (6) "PUBLIC EMPLOYEE" HAS THE SAME MEANING AS IN SECTION
20 24-10-103 (4).

21 (7) "PUBLIC ENTITY" HAS THE SAME MEANING AS IN SECTION
22 24-10-103 (5).

23 **25-51-103. Engaging in an open discussion.** (1) IF AN ADVERSE
24 HEALTH CARE INCIDENT OCCURS, A HEALTH CARE PROVIDER INVOLVED IN
25 THE ADVERSE HEALTH CARE INCIDENT, OR THE HEALTH CARE PROVIDER
26 JOINTLY WITH THE HEALTH FACILITY INVOLVED IN THE ADVERSE HEALTH
27 CARE INCIDENT, MAY PROVIDE THE PATIENT WITH WRITTEN NOTICE OF THE

1 DESIRE OF THE HEALTH CARE PROVIDER, OR OF THE HEALTH CARE
2 PROVIDER JOINTLY WITH THE HEALTH FACILITY, TO ENTER INTO AN OPEN
3 DISCUSSION UNDER THIS ARTICLE 51.

4 (2) A HEALTH CARE PROVIDER OR HEALTH FACILITY THAT CHOOSES
5 TO PROVIDE THE NOTICE SPECIFIED IN SUBSECTION (1) OF THIS SECTION
6 SHALL SEND THE NOTICE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE
7 DATE ON WHICH THE HEALTH CARE PROVIDER KNEW, OR THROUGH THE USE
8 OF DILIGENCE SHOULD HAVE KNOWN, OF THE ADVERSE HEALTH CARE
9 INCIDENT. THE NOTICE MUST INCLUDE:

10 (a) AN EXPLANATION OF THE PATIENT'S RIGHT TO RECEIVE A COPY
11 OF THE MEDICAL RECORDS RELATED TO THE ADVERSE HEALTH CARE
12 INCIDENT AND OF THE PATIENT'S RIGHT TO AUTHORIZE THE RELEASE OF
13 THE PATIENT'S MEDICAL RECORDS RELATED TO THE ADVERSE HEALTH
14 CARE INCIDENT TO ANY THIRD PARTY;

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

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

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

27 (e) NOTICE THAT IF THE PATIENT CHOOSES TO ENGAGE IN AN OPEN

1 DISCUSSION WITH THE HEALTH CARE PROVIDER OR HEALTH FACILITY, ALL
2 COMMUNICATIONS MADE IN THE COURSE OF THE DISCUSSION UNDER THIS
3 ARTICLE 51, INCLUDING COMMUNICATIONS REGARDING THE INITIATION OF
4 AN OPEN DISCUSSION, ARE:

5 (I) PRIVILEGED AND CONFIDENTIAL;

6 (II) NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS OF
7 LEGAL COMPULSION FOR RELEASE; AND

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

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

15 (3) (a) IF THE PATIENT AGREES IN WRITING TO ENGAGE IN AN OPEN
16 DISCUSSION UNDER THIS ARTICLE 51, THE PATIENT, HEALTH CARE
17 PROVIDER, OR HEALTH FACILITY ENGAGED IN THE OPEN DISCUSSION MAY
18 INCLUDE ADDITIONAL PARTIES IN THE OPEN DISCUSSION.

19 (b) THE HEALTH CARE PROVIDER, OR THE HEALTH CARE PROVIDER
20 JOINTLY WITH THE HEALTH FACILITY, INVOLVED IN THE ADVERSE HEALTH
21 CARE INCIDENT SHALL ADVISE ALL ADDITIONAL PARTIES IN WRITING OF
22 THE NATURE OF COMMUNICATIONS MADE IN ACCORDANCE WITH THIS
23 ARTICLE 51 AS SPECIFIED IN SECTION 25-51-105.

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

26 (d) THE ADVISEMENT PROVIDED IN ACCORDANCE WITH THIS
27 SUBSECTION (3) MUST INDICATE THAT COMMUNICATIONS, MEMORANDA,

1 WORK PRODUCT, DOCUMENTS, AND OTHER MATERIALS THAT ARE
2 OTHERWISE SUBJECT TO DISCOVERY AND NOT PREPARED SPECIFICALLY FOR
3 USE IN AN OPEN DISCUSSION UNDER THIS SECTION ARE NOT CONFIDENTIAL.

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

6 (a) INVESTIGATE HOW THE ADVERSE HEALTH CARE INCIDENT
7 OCCURRED AND GATHER INFORMATION REGARDING THE MEDICAL CARE OR
8 TREATMENT PROVIDED;

9 (b) DISCLOSE THE RESULTS OF THE INVESTIGATION TO THE
10 PATIENT;

11 (c) OPENLY COMMUNICATE TO THE PATIENT THE STEPS THE
12 HEALTH CARE PROVIDER OR HEALTH FACILITY WILL TAKE TO PREVENT
13 FUTURE OCCURRENCES OF THE ADVERSE HEALTH CARE INCIDENT;

14 (d) DETERMINE EITHER OF THE FOLLOWING:

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

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

19 (5) IF A HEALTH CARE PROVIDER OR HEALTH FACILITY DETERMINES
20 THAT NO OFFER OF COMPENSATION IS WARRANTED, THE HEALTH CARE
21 PROVIDER OR HEALTH FACILITY SHALL ORALLY COMMUNICATE THAT
22 DECISION WITH THE PATIENT. IF A HEALTH CARE PROVIDER OR HEALTH
23 FACILITY DETERMINES THAT AN OFFER OF COMPENSATION IS WARRANTED,
24 THE HEALTH CARE PROVIDER OR HEALTH FACILITY SHALL PROVIDE THE
25 PATIENT WITH A WRITTEN OFFER OF COMPENSATION.

26 (6) IF A HEALTH CARE PROVIDER OR HEALTH FACILITY MAKES AN
27 OFFER OF COMPENSATION UNDER SUBSECTION (5) OF THIS SECTION AND

1 THE PATIENT IS NOT REPRESENTED BY LEGAL COUNSEL, THE HEALTH CARE
2 PROVIDER OR HEALTH FACILITY SHALL:

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

5 (b) PROVIDE NOTICE THAT THE PATIENT MAY BE LEGALLY
6 REQUIRED TO REPAY MEDICAL AND OTHER EXPENSES THAT WERE PAID BY
7 A THIRD PARTY, INCLUDING PRIVATE HEALTH INSURANCE, MEDICARE, OR
8 MEDICAID.

9 (7) EXCEPT FOR AN OFFER OF COMPENSATION UNDER SUBSECTION
10 (5) OF THIS SECTION, OPEN DISCUSSIONS BETWEEN THE HEALTH CARE
11 PROVIDER OR HEALTH FACILITY AND THE PATIENT ABOUT THE
12 COMPENSATION OFFERED UNDER SUBSECTION (5) OF THIS SECTION SHALL
13 NOT BE IN WRITING.

14 **25-51-104. Payment and financial resolution.** (1) IF A PATIENT
15 ACCEPTS AN OFFER OF COMPENSATION MADE PURSUANT TO SECTION
16 25-51-103 (5) AND RECEIVES THE COMPENSATION, THE PAYMENT OF
17 COMPENSATION TO THE PATIENT IS NOT A PAYMENT RESULTING FROM:

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

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

22 (c) A MALPRACTICE CLAIM SETTLED OR IN WHICH JUDGMENT IS
23 RENDERED AGAINST A PROFESSIONAL FOR PURPOSES OF REPORTING BY
24 MALPRACTICE INSURANCE COMPANIES UNDER SECTION 10-1-120,
25 10-1-121, 10-1-124, 10-1-125, OR 10-1-125.5;

26 (d) A FINAL JUDGMENT AGAINST, SETTLEMENT ENTERED INTO BY,
27 OR ARBITRATION AWARD PAID ON BEHALF OF AN APPLICANT FOR

1 MALPRACTICE UNDER SECTION 24-34-110 (4)(h); OR
2 (e) A JUDGMENT, ADMINISTRATIVE ACTION, SETTLEMENT, OR
3 ARBITRATION AWARD INVOLVING MALPRACTICE UNDER SECTION
4 12-29.5-104 (5)(a), 12-29.9-104 (5), 12-32-108.3 (2)(b)(III), 12-33-117
5 (1)(j), 12-35-129 (1)(q) OR (1)(r), 12-35.5-111 (1)(i), 12-36-118
6 (4)(b)(III), 12-37.3-114.5, 12-38-116.5 (3)(b)(II), 12-40-118 (1)(r) OR
7 (1)(y), 12-40-127, 12-41-115 (1)(o), 12-41-120 (1)(a), 12-41-210 (1)(k),
8 12-41-215 (1)(a), 12-42.5-109 (1), OR 12-43-224 (8).

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

15 **25-51-105. Confidentiality of open discussions and offers of**
16 **compensation.** (1) OPEN DISCUSSION COMMUNICATIONS AND OFFERS OF
17 COMPENSATION MADE UNDER SECTION 25-51-103 AND IN SUBSTANTIAL
18 COMPLIANCE WITH THIS ARTICLE 51:

- 19 (a) DO NOT CONSTITUTE AN ADMISSION OF LIABILITY;
- 20 (b) ARE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE
21 DISCLOSED;
- 22 (c) ARE NOT ADMISSIBLE AS EVIDENCE IN ANY SUBSEQUENT
23 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING ARISING
24 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT;
- 25 (d) ARE NOT SUBJECT TO DISCOVERY, SUBPOENA, OR OTHER MEANS
26 OF LEGAL COMPULSION FOR RELEASE; AND
- 27 (e) SHALL NOT BE DISCLOSED BY ANY PARTY IN ANY SUBSEQUENT

1 JUDICIAL, ADMINISTRATIVE, OR ARBITRATION PROCEEDING ARISING
2 DIRECTLY OUT OF THE ADVERSE HEALTH CARE INCIDENT.

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

7 (3) THE LIMITATION ON DISCLOSURE IMPOSED BY THIS SECTION
8 INCLUDES DISCLOSURE DURING ANY DISCOVERY CONDUCTED AS PART OF
9 A SUBSEQUENT ADJUDICATORY PROCEEDING ARISING DIRECTLY OUT OF
10 THE ADVERSE HEALTH CARE INCIDENT, AND A COURT OR OTHER
11 ADJUDICATORY BODY SHALL NOT COMPEL ANY PERSON WHO ENGAGES IN
12 AN OPEN DISCUSSION UNDER THIS ARTICLE 51 TO DISCLOSE CONFIDENTIAL
13 COMMUNICATIONS OR AGREEMENTS MADE UNDER SECTION 25-51-103.

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

16 **25-51-106. Patient safety research and education.** (1) A
17 HEALTH CARE PROVIDER OR HEALTH FACILITY THAT PARTICIPATES IN OPEN
18 DISCUSSIONS UNDER THIS ARTICLE 51 MAY PROVIDE DE-IDENTIFIED
19 INFORMATION ABOUT AN ADVERSE HEALTH CARE INCIDENT TO ANY
20 PATIENT-SAFETY-CENTERED NONPROFIT ORGANIZATION FOR USE IN
21 PATIENT SAFETY RESEARCH AND EDUCATION.

22 (2) DISCLOSURE OF DE-IDENTIFIED INFORMATION UNDER
23 SUBSECTION (1) OF THIS SECTION:

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

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

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

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