

**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. 19-0350.01 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,

Senate Committees

Judiciary
Appropriations

House Committees

State, Veterans, & Military Affairs
Appropriations

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.**

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/>.)

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

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
May 1, 2019

SENATE
Amended 3rd Reading
April 30, 2019

SENATE
2nd Reading Unamended
April 27, 2019

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.