

**Second 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. 20-0151.02 Christy Chase x2008

SENATE BILL 20-102

SENATE SPONSORSHIP

Ginal and Cooke,

HOUSE SPONSORSHIP

Caraveo, Soper

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING REQUIRED DISCLOSURES TO PATIENTS REGARDING**
102 **FORMAL ACTIONS BASED ON SEXUAL MISCONDUCT.**

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 requires certain health care providers to disclose to patients if the provider has been convicted of a sex offense or has been subject to final disciplinary action resulting in probation or a limitation on practice when the discipline is based in whole or in part on the provider's sexual misconduct. The bill specifies the form, manner, and content of the disclosures and requires the provider to obtain the patient's signed

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
February 10, 2020

agreement to treatment and acknowledgment of receipt of the disclosure before rendering services to the patient. Failure to comply with the requirements of the bill constitutes unprofessional conduct or grounds for discipline under the practice act that regulates the provider's profession.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 12-30-115 as
3 follows:

4 **12-30-115. Required disclosure to patients - conviction of or**
5 **discipline based on sexual misconduct - signed agreement to**
6 **treatment - exceptions - violation grounds for discipline - rules -**
7 **definitions.** (1) AS USED IN THIS SECTION:

8 (a) "PATIENT" MEANS A PERSON WHO IS SEEKING OR RECEIVING
9 HEALTH CARE SERVICES FROM A PROVIDER. THE TERM INCLUDES THE
10 PARENT, LEGAL GUARDIAN, OR CUSTODIAN OF A PATIENT WHO IS A MINOR
11 UNDER EIGHTEEN YEARS OF AGE OR A PATIENT WHO LACKS THE LEGAL
12 CAPACITY TO CONSENT.

13 (b) "PROVIDER" MEANS A LICENSEE, CERTIFICATE HOLDER, OR
14 REGISTRANT WHO IS SUBJECT TO THE REQUIREMENTS OF SECTION
15 12-30-102.

16 (2) ON OR AFTER JANUARY 1, 2021, A PROVIDER SHALL DISCLOSE
17 TO PATIENTS ANY:

18 (a) FINAL CONVICTION OF OR PLEA ARRANGEMENT FOR A SEX
19 OFFENSE, AS DEFINED IN SECTION 16-11.7-102 (3); OR

20 (b) FINAL DISCIPLINARY ACTION BY A REGULATOR THAT RESULTS
21 IN PROBATIONARY STATUS OR OTHER LIMITATION ON THE PROVIDER'S
22 ABILITY TO PRACTICE THE PROVIDER'S HEALTH CARE PROFESSION WHEN
23 THE FINAL DISCIPLINARY ACTION IS BASED IN WHOLE OR IN PART ON ANY

1 OF THE FOLLOWING:

2 (I) A CONVICTION OF OR PLEA ARRANGEMENT FOR A SEX OFFENSE,
3 AS DEFINED IN SECTION 16-11.7-102 (3), OR A FINDING THAT THE
4 PROVIDER COMMITTED A SEX OFFENSE AS DEFINED IN SAID SECTION; OR

5 (II) A FINDING THAT THE PROVIDER ENGAGED IN UNPROFESSIONAL
6 CONDUCT OR OTHER CONDUCT THAT IS GROUNDS FOR DISCIPLINE UNDER
7 THE PART OR ARTICLE OF THIS TITLE 12 THAT REGULATES THE PROVIDER'S
8 HEALTH CARE PROFESSION, WHERE THE FAILURE OR CONDUCT IS RELATED
9 TO, INCLUDES, OR INVOLVES SEXUAL MISCONDUCT THAT RESULTS IN HARM
10 TO A PATIENT OR PRESENTS A SIGNIFICANT RISK OF PUBLIC HARM TO
11 PATIENTS.

12 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION,
13 A PROVIDER SHALL PROVIDE THE DISCLOSURE SPECIFIED IN SUBSECTION (2)
14 OF THIS SECTION TO THE PATIENT IN WRITING, IN THE FORM AND MANNER
15 SPECIFIED BY THE REGULATOR BY RULE, BEFORE PROVIDING PROFESSIONAL
16 SERVICES TO THE PATIENT.

17 (b) FOR A DISCLOSURE OF FINAL DISCIPLINARY ACTION, THE
18 PROVIDER SHALL INCLUDE THE FOLLOWING INFORMATION, AT A MINIMUM,
19 IN THE WRITTEN DISCLOSURE:

20 (I) THE TYPE, SCOPE, AND DURATION OF THE DISCIPLINARY ACTION
21 IMPOSED, INCLUDING WHETHER:

22 (A) THE REGULATOR AND PROVIDER ENTERED INTO A
23 STIPULATION;

24 (B) THE DISCIPLINARY ACTION RESULTED FROM AN ADJUDICATION
25 DECISION;

26 (C) THE PROVIDER WAS PLACED ON PROBATION AND, IF SO, THE
27 DURATION AND TERMS OF THE PROBATION; AND

1 (D) THE REGULATOR IMPOSED ANY LIMITATIONS ON THE
2 PROVIDER'S PRACTICE AND, IF SO, A DESCRIPTION OF THE SPECIFIC
3 LIMITATIONS AND THE DURATION OF THE LIMITATIONS;

4 (II) THE NATURE OF THE OFFENSE OR CONDUCT, INCLUDING THE
5 CAUSES AND GROUNDS FOR PROBATION OR PRACTICE LIMITATIONS
6 SPECIFIED IN THE FINAL DISCIPLINARY ORDER;

7 (III) THE DATE THE FINAL DISCIPLINARY ORDER WAS ISSUED;

8 (IV) THE DATE THE PROBATION STATUS OR PRACTICE LIMITATION
9 ENDS; AND

10 (V) THE CONTACT INFORMATION FOR THE REGULATOR THAT
11 IMPOSED THE DISCIPLINARY ACTION ON THE PROVIDER FOR THE PATIENT
12 TO OBTAIN ADDITIONAL INFORMATION, INCLUDING INFORMATION ON HOW
13 TO FILE A COMPLAINT.

14 (c) FOR A DISCLOSURE OF A FINAL CONVICTION OF OR PLEA
15 ARRANGEMENT FOR A SEX OFFENSE, AS DEFINED IN SECTION 16-11.7-102
16 (3), THE PROVIDER SHALL INCLUDE THE FOLLOWING INFORMATION, AT A
17 MINIMUM, IN THE WRITTEN DISCLOSURE:

18 (I) THE DATE THAT THE FINAL JUDGEMENT OF CONVICTION OR
19 ACCEPTANCE OF A PLEA ARRANGEMENT WAS ENTERED;

20 (II) THE NATURE OF THE OFFENSE OR CONDUCT THAT LED TO THE
21 FINAL CONVICTION OR PLEA ARRANGEMENT;

22 (III) THE TYPE, SCOPE, AND DURATION OF THE SENTENCE OR OTHER
23 PENALTY IMPOSED AS A RESULT OF THE FINAL CONVICTION OR PLEA
24 ARRANGEMENT, INCLUDING WHETHER:

25 (A) THE PROVIDER ENTERED INTO A PLEA ARRANGEMENT OR WAS
26 CONVICTED PURSUANT TO A CRIMINAL ADJUDICATION; AND

27 (B) THE PROVIDER WAS PLACED ON PROBATION AND, IF SO, THE

1 DURATION AND TERMS OF THE PROBATION AND THE DATE THE PROBATION
2 ENDS; AND

3 (IV) THE JURISDICTION THAT IMPOSED THE FINAL CONVICTION OR
4 ISSUED AN ORDER APPROVING THE PLEA ARRANGEMENT.

5 (d) BEFORE TREATING A PATIENT AFTER A FINAL CONVICTION, PLEA
6 ARRANGEMENT, OR FINAL DISCIPLINARY ACTION DESCRIBED IN
7 SUBSECTION (2) OF THIS SECTION HAS BEEN IMPOSED, THE PROVIDER
8 SHALL OBTAIN THE PATIENT'S AGREEMENT TO TREATMENT AND
9 ACKNOWLEDGMENT OF RECEIPT OF THE DISCLOSURE IN A FORM
10 PRESCRIBED BY THE DIRECTOR BY RULE AND SIGNED BY THE PROVIDER
11 AND THE PATIENT. THE PATIENT'S ACKNOWLEDGMENT OF RECEIPT OF THE
12 DISCLOSURE DOES NOT WAIVE ANY FUTURE CLAIMS AGAINST THE
13 PROVIDER.

14 (e) IF A PROVIDER IS PLACED ON PROBATION AS PART OF A FINAL
15 CONVICTION OR PLEA ARRANGEMENT FOR A SEX OFFENSE, AS DEFINED IN
16 SECTION 16-11.7-102 (3), OR ON PROBATIONARY STATUS OR OTHER
17 LIMITATION ON THE PROVIDER'S ABILITY TO PRACTICE PURSUANT TO A
18 FINAL DISCIPLINARY ACTION DESCRIBED IN SUBSECTION (2) OF THIS
19 SECTION, THE REQUIREMENT TO DISCLOSE THE CONVICTION, PLEA
20 ARRANGEMENT, OR DISCIPLINARY ACTION ENDS WHEN THE PROVIDER HAS
21 SATISFIED THE REQUIREMENTS OF THE PROBATION OR OTHER LIMITATION
22 AND IS NO LONGER ON PROBATION OR OTHERWISE SUBJECT TO A
23 LIMITATION ON THE ABILITY TO PRACTICE THE PROVIDER'S PROFESSION.

24 (4) (a) A PROVIDER NEED NOT MAKE THE DISCLOSURE REQUIRED
25 BY THIS SECTION BEFORE PROVIDING PROFESSIONAL SERVICES TO A
26 PATIENT IF ANY OF THE FOLLOWING APPLIES:

27 (I) THE PATIENT IS UNCONSCIOUS OR OTHERWISE UNABLE TO

1 COMPREHEND THE DISCLOSURE AND SIGN AN ACKNOWLEDGMENT OF
2 RECEIPT OF THE DISCLOSURE PURSUANT TO SUBSECTION (3)(d) OF THIS
3 SECTION AND A GUARDIAN OF THE PATIENT IS UNAVAILABLE TO
4 COMPREHEND THE DISCLOSURE AND SIGN THE ACKNOWLEDGMENT;

5 (II) THE VISIT OCCURS IN AN EMERGENCY ROOM OR FREESTANDING
6 EMERGENCY DEPARTMENT OR THE VISIT IS UNSCHEDULED, INCLUDING
7 CONSULTATIONS IN INPATIENT FACILITIES; OR

8 (III) THE PROVIDER WHO WILL BE TREATING THE PATIENT DURING
9 THE VISIT IS NOT KNOWN TO THE PATIENT UNTIL IMMEDIATELY PRIOR TO
10 THE START OF THE VISIT.

11 (b) A PROVIDER WHO DOES NOT HAVE A DIRECT TREATMENT
12 RELATIONSHIP OR HAVE DIRECT CONTACT WITH THE PATIENT IS NOT
13 REQUIRED TO MAKE THE DISCLOSURE REQUIRED BY THIS SECTION.

14 (5) (a) FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS
15 SECTION:

16 (I) CONSTITUTES UNPROFESSIONAL CONDUCT OR GROUNDS FOR
17 DISCIPLINE, AS APPLICABLE, UNDER THE ARTICLE OR PART OF THIS TITLE 12
18 THAT REGULATES THE PROVIDER'S HEALTH CARE PROFESSION; AND

19 (II) DOES NOT CREATE A PRIVATE RIGHT OF ACTION.

20 (b) NOTHING IN THIS SECTION PREVENTS THE DISCOVERY OF
21 RECORDS, REPORTS, OR OTHER INFORMATION, OR THE ADMISSIBILITY OF
22 EVIDENCE, RELATED TO A PROVIDER'S FAILURE TO COMPLY WITH THE
23 REQUIREMENTS OF THIS SECTION IN ANY CIVIL, CRIMINAL, OR
24 ADMINISTRATIVE PROCEEDING.

25 **SECTION 2. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

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