

CHAPTER 153

PROFESSIONS AND OCCUPATIONS

SENATE BILL 20-102

BY SENATOR(S) Ginal and Cooke, Bridges, Gardner, Gonzales, Hansen, Lundeen, Tate, Todd, Winter, Woodward;
also REPRESENTATIVE(S) Caraveo and Titone, Soper, Buentello, Cutter, Duran, Geitner, Gray, Hooton, Kipp, Landgraf, Liston,
Michaelson Jenet, Mullica, Sirota, Young.

AN ACT**CONCERNING REQUIRED DISCLOSURES TO PATIENTS REGARDING FORMAL ACTIONS BASED ON SEXUAL MISCONDUCT.**

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

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

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

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

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

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

(a) FINAL CONVICTION OF OR ACCEPTANCE OF A GUILTY PLEA BY A COURT FOR A SEX OFFENSE, AS DEFINED IN SECTION 16-11.7-102 (3); OR

(b) FINAL AGENCY ACTION BY A REGULATOR THAT RESULTS IN PROBATIONARY STATUS OR OTHER LIMITATION ON THE PROVIDER'S ABILITY TO PRACTICE THE PROVIDER'S HEALTH CARE PROFESSION WHEN THE FINAL AGENCY ACTION IS BASED IN WHOLE OR IN PART ON ANY OF THE FOLLOWING:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

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

(I) THE TYPE, SCOPE, AND DURATION OF THE AGENCY ACTION IMPOSED, INCLUDING WHETHER:

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

(B) THE AGENCY ACTION RESULTED FROM AN ADJUDICATION DECISION;

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

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

(II) THE NATURE OF THE OFFENSE OR CONDUCT, INCLUDING THE GROUNDS FOR PROBATION OR PRACTICE LIMITATIONS SPECIFIED IN THE FINAL AGENCY ACTION;

(III) THE DATE THE FINAL AGENCY ACTION WAS ISSUED;

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

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

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

(I) THE DATE THAT THE FINAL JUDGEMENT OF CONVICTION OR ACCEPTANCE OF A

GUILTY PLEA WAS ENTERED;

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

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

(A) THE PROVIDER ENTERED A GUILTY PLEA OR WAS CONVICTED PURSUANT TO A CRIMINAL ADJUDICATION; AND

(B) THE PROVIDER WAS PLACED ON PROBATION AND, IF SO, THE DURATION AND TERMS OF THE PROBATION AND THE DATE THE PROBATION ENDS; AND

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

(d) BEFORE TREATING A PATIENT AFTER A FINAL CONVICTION, GUILTY PLEA, OR FINAL AGENCY ACTION DESCRIBED IN SUBSECTION (2) OF THIS SECTION HAS BEEN IMPOSED OR ACCEPTED BY A COURT, AS APPLICABLE, THE PROVIDER SHALL OBTAIN THE PATIENT'S AGREEMENT TO TREATMENT AND ACKNOWLEDGMENT OF RECEIPT OF THE DISCLOSURE IN A FORM PRESCRIBED BY THE REGULATOR BY RULE AND SIGNED BY THE PROVIDER AND THE PATIENT. THE PATIENT'S ACKNOWLEDGMENT OF RECEIPT OF THE DISCLOSURE DOES NOT WAIVE ANY FUTURE CLAIMS AGAINST THE PROVIDER.

(e) IF A PROVIDER IS PLACED ON PROBATION AS PART OF A FINAL CONVICTION OR ACCEPTANCE OF A GUILTY PLEA BY A COURT FOR A SEX OFFENSE, AS DEFINED IN SECTION 16-11.7-102 (3), OR ON PROBATIONARY STATUS OR OTHER LIMITATION ON THE PROVIDER'S ABILITY TO PRACTICE PURSUANT TO A FINAL AGENCY ACTION DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE REQUIREMENT TO DISCLOSE THE CONVICTION, GUILTY PLEA, OR AGENCY ACTION ENDS WHEN THE PROVIDER HAS SATISFIED THE REQUIREMENTS OF THE PROBATION OR OTHER LIMITATION AND IS NO LONGER ON PROBATION OR OTHERWISE SUBJECT TO A LIMITATION ON THE ABILITY TO PRACTICE THE PROVIDER'S PROFESSION.

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

(I) THE PATIENT IS UNCONSCIOUS OR OTHERWISE UNABLE TO COMPREHEND THE DISCLOSURE AND SIGN AN ACKNOWLEDGMENT OF RECEIPT OF THE DISCLOSURE PURSUANT TO SUBSECTION (3)(d) OF THIS SECTION AND A GUARDIAN OF THE PATIENT IS UNAVAILABLE TO COMPREHEND THE DISCLOSURE AND SIGN THE ACKNOWLEDGMENT;

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

(III) THE PROVIDER WHO WILL BE TREATING THE PATIENT DURING THE VISIT IS NOT

KNOWN TO THE PATIENT UNTIL IMMEDIATELY PRIOR TO THE START OF THE VISIT.

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

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

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

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

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

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to convictions and final agency actions entered, issued, or taken on or after the effective date of this act.

Approved: June 29, 2020