

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 10-0353.03 Michael Dohr

SENATE BILL 10-109

SENATE SPONSORSHIP

Romer and Spence, Boyd, Bacon, Hodge, Hudak, Johnston, Tapia, Tochtrop

HOUSE SPONSORSHIP

Massey and McCann, Rice, Frangas, McFadyen

Senate Committees
Health and Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP**
102 **FOR ABORTION PATIENTS.**

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://www.leg.state.co.us/billsummaries>.)

Under the bill, the department of public health and environment (department) will promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe abortion, and sanctions for physicians who violate the bill.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

A physician who certifies that a patient can use abortion shall certify certain information to the department and maintain a separate record-keeping system for his or her abortion patients. A physician who certifies that a patient can use abortion shall not receive remuneration from or offer it to any other provider of abortion.

The bill creates an abortion review board (board) that will consider requests by nonveteran patients under 21 years of age who want to be registered abortion patients. For a patient who is under 21 years of age to become a registered abortion patient, a majority of the board must determine that the patient has a pregnancy and could benefit from the use of abortion.

The bill adds the abortion program to the list of statutes that involve medical records.

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

2 **SECTION 1.** 25-1.5-106, Colorado Revised Statutes, is amended
3 to read:

4 **25-1.5-106. Abortion program – powers and duties**

5 **of department – medical review board – repeal. (1) Definitions.** IN

6 ADDITION TO THE DEFINITIONS SET FORTH IN SECTION 14 (1) OF ARTICLE
7 XVIII OF THE STATE CONSTITUTION, AS USED IN THIS SECTION, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (a) “BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP” MEANS:

10 (I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR
11 COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS
12 COMPLETED A FULL ASSESSMENT OF THE PATIENT’S MEDICAL HISTORY AND
13 CURRENT MEDICAL CONDITION, INCLUDING A PERSONAL PHYSICAL
14 EXAMINATION;

15 (II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH
16 RESPECT TO THE PATIENT’S PREGNANCY BEFORE
17 THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

18 (III) THE PHYSICIAN PROVIDES FOLLOW-UP CARE AND TREATMENT

1 TO THE PATIENT, INCLUDING BUT NOT LIMITED TO PATIENT EXAMINATIONS,
2 TO DETERMINE THE EFFICACY OF THE USE OF ABORTION AS A
3 TREATMENT OF THE PATIENT’S PREGNANCY.

4 (a) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF
5 THE DEPARTMENT.

6 (c) “IN GOOD STANDING”, WITH RESPECT TO A PHYSICIAN’S
7 LICENSE, MEANS:

8 (I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF
9 OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

10 (II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO
11 PRACTICE MEDICINE IN COLORADO; AND

12 (III) THE PHYSICIAN HAS NOT HAD HIS OR HER UNITED STATES
13 DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT ADMINISTRATION
14 CONTROLLED SUBSTANCES REGISTRATION SUSPENDED OR REVOKED AT
15 ANY TIME.

16 (d) “ABORTION PROGRAM” MEANS THE PROGRAM
17 ESTABLISHED BY THIS SECTION.

18 (e) “REGISTRY IDENTIFICATION CARD” MEANS THE
19 NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD
20 ISSUED BY THE DEPARTMENT TO PATIENTS AND ABORTION PROVIDERS
21 PURSUANT TO THIS SECTION.

22 ~~(1)~~ (2) **Rulemaking.** The department shall, pursuant to section 14
23 of article XVIII of the state constitution, promulgate rules of
24 administration concerning the implementation of the abortion
25 program ~~established by such section and~~ that specifically govern the
26 following:

1 (a) The establishment and maintenance of a confidential registry
2 of patients who have applied for and are entitled to receive a registry
3 identification card, WHICH CARD SHALL INCLUDE THE IDENTITY OF THE
4 PHYSICIAN MAKING THE CERTIFICATION OF A PREGNANCY.
5 THE CONFIDENTIAL RESISTRY OF PATIENTS MAY BE USED TO
6 DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO THE
7 COLORADO BOARD OF MEDICAL EXAMINERS, AS AUTHORIZED IN
8 PARAGRAPH (h) OF THIS SUBSECTION (2).

9 (b) The development by the department of an application form and
10 THE PROCESS FOR making ~~such~~ THE form available to residents of this
11 state seeking to be listed on the confidential registry of patients who are
12 entitled to receive a registry identification card;

13 (c) The verification by the department of medical information
14 concerning patients who have applied for a ~~confidential~~ registry
15 IDENTIFICATION card;

16 (d) THE DEVELOPMENT BY THE DEPARTMENT OF A FORM THAT
17 CONSTITUTES “WRITTEN DOCUMENTATION” AS DEFINED AND USED IN THIS
18 SECTION, WHICH FORM
19 A PHYSICIAN SHALL USE WHEN MAKING AN ABORTION
20 RECOMMENDATION FOR A PATIENT;

21 ~~(d)~~ (e) The CONDITIONS FOR issuance, and THE form, of
22 ~~confidential~~ THE registry identification cards ISSUED TO PATIENTS,
23 INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING THAT THE
24 DEPARTMENT ISSUES A REGISTRY IDENTIFICATION CARD TO A PATIENT
25 ONLY IF HE OR SHE HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP
26 WITH A PHYSICIAN IN GOOD STANDING AND LICENSED TO PRACTICE
27 MEDICINE IN THE STATE OF COLORADO;

1 ~~(e)~~ (f) Communication with law enforcement officials about
2 ~~confidential~~ registry identification cards that have been suspended ~~where~~
3 WHEN a patient is no longer diagnosed as having a pregnancy;
4 and

5 ~~(f)~~ (g) The manner in which the department may consider adding
6 other reproductive conditions to the list;

7

8 AND

9 (h) SANCTIONS FOR PHYSICIANS WHO VIOLATE
10 THIS SECTION, OR THE RULES
11 PROMULGATED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS SECTION,
12 WHICH SANCTIONS SHALL INCLUDE THE REVOCATION OR SUSPENSION OF
13 A PHYSICIAN’S PRIVILEGE TO MAKE ABORTION
14 RECOMMENDATIONS; EXCEPT THAT A LICENSURE ACTION MAY NOT BE
15 TAKEN AGAINST A PHYSICIAN FOR LAWFULLY RECOMMENDING ABORTION
16 .

17 (3) **Physicians.** A PHYSICIAN WHO CERTIFIES A PREGNANCY
18 FOR AN APPLICANT TO THE ABORTION
19 PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

20 (a) THE PHYSICIAN SHALL CERTIFY TO THE DEPARTMENT THAT A
21 PATIENT HAS A PREGNANCY AND THAT THE PATIENT
22 MAY BENEFIT FROM THE USE OF ABORTION ONLY IF THE
23 PHYSICIAN HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH THE
24 PATIENT APPLYING FOR THE ABORTION PROGRAM.

25 (b) THE PHYSICIAN SHALL MAINTAIN A SEPARATE RECORD-KEEPING
26 SYSTEM FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED
27 ABORTION, AND, PURSUANT TO AN INVESTIGATION

1 INITIATED PURSUANT TO SECTION 12-36-118, C.R.S., THE PHYSICIAN
2 SHALL PRODUCE SUCH MEDICAL RECORDS TO THE COLORADO STATE
3 BOARD OF MEDICAL EXAMINERS AFTER REDACTING ANY PATIENT OR
4 PRIMARY CAREGIVER IDENTIFYING INFORMATION.

5 (c) A PHYSICIAN SHALL NOT:

6 (I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY
7 REMUNERATION FROM A DISTRIBUTOR, OR ANY
8 OTHER PROVIDER OF ABORTION;

9 (II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A
10 PATIENT WHO USES OR AGREES TO USE A PARTICULAR
11 DISTRIBUTOR, OR OTHER PROVIDER OF ABORTION
12 TO PROCURE ABORTION;

13 (III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A
14 PREGNANCY AT A LOCATION WHERE ABORTION
15 IS SOLD OR DISTRIBUTED; OR

16 (IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT
17 PROVIDES OR DISTRIBUTES ABORTION IF THE PHYSICIAN
18 CERTIFIES THE PREGNANCY OF A PATIENT FOR
19 PARTICIPATION IN THE ABORTION PROGRAM.

20 (4) **Abortion review board.** (a) THERE IS HEREBY
21 CREATED IN THE DEPARTMENT THE ABORTION REVIEW BOARD
22 REFERRED TO IN THIS SECTION AS THE “BOARD”.

23 (b) THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS
24 DUTIES AND FUNCTIONS UNDER THE DEPARTMENT AS IF THE SAME WERE
25 TRANSFERRED TO THE DEPARTMENT BY A **TYPE 2** TRANSFER AS DEFINED
26 IN THE “ADMINISTRATIVE ORGANIZATION ACT OF 1968”, ARTICLE 1 OF
27 TITLE 24, C.R.S.

1 (c) THE BOARD SHALL CONSIST OF SEVEN MEMBERS, FOUR OF
2 WHOM SHALL BE ABORTION PROVIDERS AND THREE OF WHOM
3 SHALL BE PHYSICIANS WHO MAKE ABORTION
4 RECOMMENDATIONS FOR PATIENTS. THE GOVERNOR SHALL APPOINT THE
5 MEMBERS OF THE BOARD.

6 (d) EACH MEMBER OF THE BOARD SHALL SERVE AT THE PLEASURE
7 OF THE GOVERNOR. EACH MEMBER OF THE BOARD SHALL SERVE A
8 FOUR-YEAR TERM; EXCEPT THAT THE PRIMARY CAREGIVER MEMBERS
9 INITIALLY APPOINTED SHALL SERVE TWO-YEAR TERMS AND THE PHYSICIAN
10 MEMBERS INITIALLY APPOINTED SHALL SERVE ONE-YEAR TERMS.

11 (e) THE BOARD SHALL REVIEW REQUESTS BY PATIENTS UNDER
12 TWENTY-ONE YEARS OF AGE WHO ARE NOT VETERANS OF MILITARY
13 SERVICE AND WHO ARE SEEKING TO BE PLACED ON THE STATE'S
14 CONFIDENTIAL REGISTRY FOR THE USE OF ABORTION. THE
15 BOARD SHALL CONDUCT THE REVIEW WITHIN THIRTY DAYS AFTER RECEIPT
16 OF THE REQUEST. A MAJORITY OF THE BOARD SHALL AGREE THAT A
17 PATIENT SUFFERS FROM A PREGNANCY AND THAT
18 THE PATIENT MIGHT BENEFIT FROM ABORTION
19 BEFORE THE PATIENT MAY BE PLACED ON THE STATE'S CONFIDENTIAL
20 REGISTRY FOR THE USE OF ABORTION.

21 (f) (I) THIS SUBSECTION (4) IS REPEALED, EFFECTIVE JULY 1, 2020.

22 (II) PRIOR TO SAID REPEAL, THE BOARD SHALL BE REVIEWED AS
23 PROVIDED FOR IN SECTION 2-3-1203, C.R.S.

24 ~~(2)~~ (5) **Fees.** The department may collect fees from patients who,
25 pursuant to section 14 of article XVIII of the state constitution, apply to
26 the abortion program ~~established by such section~~ for a
27 ~~marijuana~~ registry identification CARD for the purpose of offsetting the

1 department's direct and indirect costs of administering the program. The
2 amounts of ~~such~~ THE fees shall be set by rule of the ~~state board of health~~
3 EXECUTIVE DIRECTOR. All fees collected by the department through the
4 abortion program shall be transferred to the state treasurer who
5 shall credit the same to the abortion program cash fund, which
6 fund is hereby created.

7 ~~(3)~~ (6) **Cash fund.** (a) The abortion program cash fund
8 shall be subject to annual appropriation by the general assembly to the
9 department for the purpose of establishing, operating, and maintaining the
10 abortion program. ~~Established by section 14 of article XVIII of~~
11 ~~the state constitution.~~ All moneys credited to the abortion
12 program cash fund and all interest derived from the deposit of such
13 moneys that are not expended during the fiscal year shall be retained in
14 the fund for future use and shall not be credited or transferred to the
15 general fund or any other fund.

16 (b) Notwithstanding any provision of paragraph (a) of this
17 subsection ~~(3)~~ (6) to the contrary, on April 20, 2009, the state treasurer
18 shall deduct two hundred fifty-eight thousand seven hundred thirty-five
19 dollars from the abortion program cash fund and transfer such
20 sum to the general fund.

21 **SECTION 2.** 2-3-1203 (3), Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23 **2-3-1203. Sunset review of advisory committees.** (3) The
24 following dates are the date for which the statutory authorization for the
25 designated advisory committees is scheduled for repeal:

26 (gg) JULY 1, 2020: THE ABORTION REVIEW BOARD
27 CREATED IN SECTION 25-1.5-106 (4), C.R.S.

1 **SECTION 3.** 24-1-119, Colorado Revised Statutes, is amended
2 BY THE ADDTION OF A NEW SUBSECTION to read:

3 **24-1-119. Department of public health and environment –**
4 **creation.** (12) THE POWERS, DUTIES, AND FUNCTIONS OF THE ABORTION
5 REVIEW BOARD, CREATED IN SECTION 25-1.5-106 (4), C.R.S.,
6 ARE TRANSFERRED BY A **TYPE 2** TRANSFER TO THE DEPARTMENT OF PUBLIC
7 HEALTH AND ENVIRONMENT.

8 **SECTION 4.** 25-1-1202 (1), Colorado Revised Statutes, is
9 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10 **25-1-1202. Index of statutory sections regarding medical**
11 **record confidentiality and health information.** (1) Statutory
12 provisions concerning policies, procedures, and references to the release,
13 sharing, and use of medical records and health information include the
14 following:

15 (vv.5) SECTION 25-1.5-106, CONCERNING THE ABORTION
16 PROGRAM;

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