

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-0481.01 Christy Chase x2008

HOUSE BILL 14-1323

HOUSE SPONSORSHIP

Primavera,

SENATE SPONSORSHIP

Lundberg and Kefalas,

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING RESTRICTIONS ON THE ABILITY OF A GOVERNMENT**
102 **ENTITY TO ACCESS AN INDIVIDUAL'S PERSONAL MEDICAL**
103 **INFORMATION.**

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>.)

The bill prohibits the state or a local government from accessing an individual's personal medical information or medical record without the individual's consent. If a state or local government employee authorizes its government employer to access his or her personal medical

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.

information or medical record in connection with an employment-related request, occurrence, or claim, such as a request for a workplace accommodation or for family medical leave, the consent applies for the duration of the request, occurrence, or claim. Additionally, if a state or local government department or agency is providing health care services to a person, the person's consent to access his or her personal medical information or record applies throughout the time during which the services are provided.

The bill recognizes exceptions to the prohibition when the access is required for a state or local government department or agency to fulfill its obligations imposed by law. Additionally, the bill does not preclude a state or local government department or agency from accessing an invoice, receipt, or other documentation of a sale of a prescription drug or other item exempt from sales tax as long as:

- ! Personal medical information or a medical record is not contained in the documentation; and
- ! Any information that identifies or could be used to identify an individual patient or that indicates a patient's diagnosis or treatment plan is redacted from the documentation.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article
3 72 of title 24 as follows:

4 **PART 6**

5 **LIMITS ON GOVERNMENT ACCESS TO**
6 **PERSONAL MEDICAL INFORMATION**

7 **24-72-601. Definitions.** AS USED IN THIS PART 6, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

10 (2) "MEDICAL INFORMATION" MEANS ANY INFORMATION
11 CONTAINED IN THE MEDICAL RECORD OR ANY INFORMATION PERTAINING
12 TO THE MEDICAL, MENTAL HEALTH, OR HEALTH CARE SERVICES
13 PERFORMED AT THE DIRECTION OF A PHYSICIAN OR OTHER LICENSED
14 HEALTH CARE PROVIDER THAT IS PROTECTED BY THE PHYSICIAN-PATIENT

1 PRIVILEGE ESTABLISHED BY SECTION 13-90-107 (1) (d), C.R.S.

2 (3) (a) "MEDICAL RECORD" MEANS THE WRITTEN OR GRAPHIC
3 DOCUMENTATION, SOUND RECORDING, OR COMPUTER RECORD PERTAINING
4 TO MEDICAL, MENTAL HEALTH, AND HEALTH CARE SERVICES, INCLUDING
5 MEDICAL MARIJUANA SERVICES, PERFORMED AT THE DIRECTION OF A
6 PHYSICIAN OR OTHER LICENSED HEALTH CARE PROVIDER ON BEHALF OF A
7 PATIENT BY A PHYSICIAN, DENTIST, NURSE, SERVICE PROVIDER,
8 EMERGENCY MEDICAL SERVICE PROVIDER, MENTAL HEALTH
9 PROFESSIONAL, PREHOSPITAL PROVIDER, OR OTHER HEALTH CARE
10 PERSONNEL.

11 (b) "MEDICAL RECORD" INCLUDES DIAGNOSTIC DOCUMENTATION
12 SUCH AS X RAYS, ELECTROCARDIOGRAMS, ELECTROENCEPHALOGRAMS,
13 AND OTHER TEST RESULTS AND DATA ENTERED INTO THE PRESCRIPTION
14 DRUG MONITORING PROGRAM UNDER SECTION 12-42.5-403, C.R.S.

15 (4) "PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD"
16 MEANS AN INDIVIDUAL'S MEDICAL INFORMATION OR A MEDICAL RECORD:

17 (a) THAT IDENTIFIES THE INDIVIDUAL; OR

18 (b) WITH RESPECT TO WHICH THERE IS A REASONABLE BASIS TO
19 BELIEVE THE INFORMATION CAN BE USED TO IDENTIFY THE INDIVIDUAL.

20 **24-72-602. Access to personal medical information prohibited**

21 - **exceptions.** (1) THE DEPARTMENT SHALL NEITHER ACCESS NOR
22 DISTRIBUTE AN INDIVIDUAL'S PERSONAL MEDICAL INFORMATION OR
23 MEDICAL RECORD WITHOUT THE INDIVIDUAL'S CONSENT CONCURRENT
24 WITH A REQUEST FOR ACCESS.

25 (2) WHEN THE DEPARTMENT REQUESTS ACCESS TO THE PERSONAL
26 MEDICAL INFORMATION OR MEDICAL RECORD OF AN EMPLOYEE OF THE
27 DEPARTMENT IN CONNECTION WITH ONE OF THE FOLLOWING

1 EMPLOYMENT-RELATED REQUESTS, OCCURRENCES, OR CLAIMS, THE
2 EMPLOYEE'S CONSENT APPLIES THROUGHOUT THE DURATION OF THE
3 EMPLOYMENT-RELATED REQUEST, OCCURRENCE, OR CLAIM FOR WHICH
4 THE ACCESS TO THE EMPLOYEE'S PERSONAL MEDICAL INFORMATION OR
5 MEDICAL RECORD IS REQUESTED:

6 (a) FAMILY MEDICAL LEAVE;

7 (b) A REQUEST FOR A WORKPLACE ACCOMMODATION UNDER THE
8 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
9 12101 ET SEQ., AS AMENDED;

10 (c) A REQUEST FOR SHORT- OR LONG-TERM DISABILITY BENEFITS;

11 (d) DETERMINING FITNESS TO RETURN TO WORK AFTER A LENGTHY
12 ABSENCE;

13 (e) PHYSICIAN VERIFICATION OF AN ABSENCE EXCEEDING THREE
14 DAYS;

15 (f) A REQUEST BY A JOB APPLICANT FOR AN ACCOMMODATION
16 THROUGH THE APPLICATION PROCESS;

17 (g) A WORKERS' COMPENSATION CLAIM; OR

18 (h) DISABILITY RETIREMENT.

19 (3) THIS SECTION DOES NOT:

20 (a) PROHIBIT THE DEPARTMENT FROM ACCESSING AN INVOICE, A
21 SALES RECEIPT, OR OTHER DOCUMENTATION OF A SALE NECESSARY TO
22 SUBSTANTIATE AN EXEMPTION FROM STATE SALES TAX UNDER SECTION
23 39-26-717, C.R.S., AS LONG AS:

24 (I) NO PERSONAL MEDICAL INFORMATION OR MEDICAL RECORD IS
25 CONTAINED IN THE DOCUMENTATION; AND

26 (II) ANY INFORMATION IN THE DOCUMENTATION THAT IDENTIFIES
27 OR COULD BE USED TO IDENTIFY AN INDIVIDUAL PATIENT OR THAT

1 INDICATES A PATIENT DIAGNOSIS OR TREATMENT PLAN HAS BEEN
2 REDACTED FROM THE DOCUMENTATION; OR

3 (b) OVERRIDE THE AUTHORITY OF THE DEPARTMENT TO OBTAIN
4 AND USE A WRITTEN MEDICAL OPINION IN ACCORDANCE WITH SECTION
5 42-2-112, C.R.S.

6 **24-72-603. Government access to personal medical**
7 **information task force - creation - membership - duties - report -**
8 **repeal.** (1) THERE IS HEREBY CREATED THE GOVERNMENT ACCESS TO
9 PERSONAL MEDICAL INFORMATION TASK FORCE. THE TASK FORCE SHALL
10 REVIEW, ANALYZE, AND MAKE RECOMMENDATIONS REGARDING THE
11 ABILITY OF STATE AND LOCAL GOVERNMENT DEPARTMENTS AND AGENCIES
12 TO ACCESS, USE, AND DISTRIBUTE PERSONAL MEDICAL INFORMATION AND
13 MEDICAL RECORDS.

14 (2) (a) THE GOVERNOR SHALL APPOINT TO THE TASK FORCE
15 REPRESENTATIVES FROM EACH STATE DEPARTMENT AND UNIVERSITY THAT
16 ACCESSES, USES, OR DISTRIBUTES PERSONAL MEDICAL INFORMATION AND
17 MEDICAL RECORDS. THE GOVERNOR MAY APPOINT A REPRESENTATIVE
18 FROM THE GOVERNOR'S OFFICE TO SERVE ON THE TASK FORCE.

19 (b) THE GOVERNOR SHALL REQUEST PARTICIPATION ON THE TASK
20 FORCE FROM REPRESENTATIVES OF QUASI-GOVERNMENTAL ENTITIES THAT
21 ACCESS, USE, OR DISTRIBUTE PERSONAL MEDICAL INFORMATION OR
22 MEDICAL RECORDS AND FROM STATEWIDE ORGANIZATIONS REPRESENTING:
23 COUNTY GOVERNMENTS; MUNICIPAL GOVERNMENTS; HEALTH CARE
24 PROVIDERS; HEALTH PLANS; MENTAL HEALTH CARE CONSUMERS;
25 CONSUMER ADVOCACY GROUPS; CONSUMERS WITH CHRONIC ILLNESSES
26 SUCH AS DIABETES AND HIV/AIDS; CONSUMERS WITH CANCER; AND
27 PATIENT PRIVACY RIGHTS.

1 (c) THE GOVERNOR SHALL ALSO INVITE THE STATE AUDITOR OR HIS
2 OR HER DESIGNEE TO PARTICIPATE ON THE TASK FORCE.

3 (3) (a) THE TASK FORCE SHALL SELECT A CHAIR AND VICE-CHAIR
4 FROM AMONG ITS MEMBERSHIP.

5 (b) MEMBERS OF THE TASK FORCE SERVE WITHOUT COMPENSATION
6 AND ARE NOT ENTITLED TO REIMBURSEMENT FOR THEIR EXPENSES
7 INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

8 (c) THE TASK FORCE SHALL HOLD ITS FIRST MEETING NO LATER
9 THAN JULY 15, 2014, AND SHALL HOLD AT LEAST ONE BUT NOT MORE
10 THAN THREE ADDITIONAL MEETINGS ON OR BEFORE NOVEMBER 1, 2014.

11 (4) THE TASK FORCE SHALL EXAMINE AT LEAST THE FOLLOWING
12 TOPICS:

13 (a) WHY AND TO WHAT EXTENT STATE AND LOCAL GOVERNMENT
14 DEPARTMENTS OR AGENCIES HAVE ACCESS TO AND THE ABILITY TO USE OR
15 DISTRIBUTE AN INDIVIDUALS' PERSONAL MEDICAL INFORMATION OR
16 MEDICAL RECORD WITH AND WITHOUT THE INDIVIDUAL'S CONSENT,
17 INCLUDING:

18 (I) THE EXTENT OF GOVERNMENT ACCESS TO THE PERSONAL
19 MEDICAL INFORMATION OR MEDICAL RECORD OF AN EMPLOYEE OF A STATE
20 OR LOCAL GOVERNMENT DEPARTMENT OR AGENCY IN CONNECTION WITH
21 AN EMPLOYMENT-RELATED REQUEST, OCCURRENCE, OR CLAIM; WHETHER
22 THE EMPLOYEE'S CONSENT IS REQUIRED; AND THE DURATION OF THE
23 EMPLOYEE'S CONSENT;

24 (II) THE EXTENT OF GOVERNMENT ACCESS TO THE PERSONAL
25 MEDICAL INFORMATION OR MEDICAL RECORD OF AN INDIVIDUAL
26 RECEIVING HEALTH CARE SERVICES FROM THE STATE OR LOCAL
27 GOVERNMENT, WHETHER THE INDIVIDUAL'S CONSENT IS REQUIRED, AND

1 THE DURATION OF THE INDIVIDUAL'S CONSENT;

2 (III) THE SPECIFIC STATE OR FEDERAL LAWS, RULES, OR
3 REGULATIONS AUTHORIZING A STATE OR LOCAL GOVERNMENT
4 DEPARTMENT OR AGENCY TO ACCESS AN INDIVIDUAL'S PERSONAL MEDICAL
5 INFORMATION OR MEDICAL RECORD WITHOUT THE INDIVIDUAL'S CONSENT
6 AND THE CIRCUMSTANCES UNDER WHICH ACCESS TO PERSONAL MEDICAL
7 INFORMATION OR MEDICAL RECORDS WITHOUT CONSENT IS NECESSARY
8 FOR A GOVERNMENT DEPARTMENT OR AGENCY TO FULFILL ITS STATUTORY
9 OR OTHER OBLIGATIONS;

10 (b) WHETHER GOVERNMENT ACCESS, USE, OR DISTRIBUTION OF AN
11 INDIVIDUAL'S PERSONAL MEDICAL INFORMATION SHOULD BE RESTRICTED
12 TO PROTECT PATIENT PRIVACY AND ENSURE COMPLIANCE WITH HIPAA;
13 AND

14 (c) ANY OTHER MATTERS RELATED TO GOVERNMENT ACCESS TO
15 AND USE OR DISTRIBUTION OF AN INDIVIDUAL'S PERSONAL MEDICAL
16 INFORMATION AND MEDICAL RECORDS, THE CIRCUMSTANCES WHEN
17 ACCESS IS ALLOWED WITHOUT THE INDIVIDUAL'S CONSENT AND WHEN
18 CONSENT IS REQUIRED, PUBLIC AWARENESS OF GOVERNMENT ACCESS AND
19 USE OF PERSONAL MEDICAL INFORMATION AND MEDICAL RECORDS, THE
20 PROTECTION OF PATIENT PRIVACY, AND RECOMMENDATIONS TO
21 IMPLEMENT ANY CHANGES TO CURRENT LAW, ADMINISTRATIVE RULES, OR
22 GOVERNMENT PRACTICES NECESSARY TO PROTECT PATIENT PRIVACY AND
23 ENSURE HIPAA COMPLIANCE.

24 (5) BY NOVEMBER 1, 2014, THE TASK FORCE SHALL SUBMIT A
25 REPORT TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON PUBLIC
26 HEALTH CARE AND HUMAN SERVICES AND THE SENATE COMMITTEE ON
27 HEALTH AND HUMAN SERVICES, OR THEIR SUCCESSOR COMMITTEES,

1 DETAILING ITS ANALYSIS, FINDINGS, AND RECOMMENDATIONS. THE TASK
2 FORCE SHALL PRESENT ITS REPORT TO THE COMMITTEES DURING THE
3 COMMITTEES' HEARINGS HELD UNDER THE "STATE MEASUREMENT FOR
4 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
5 GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2, C.R.S., BETWEEN
6 NOVEMBER 1, 2014, AND THE START OF THE FIRST REGULAR SESSION OF
7 THE SEVENTIETH GENERAL ASSEMBLY.

8 (6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

9 **SECTION 2. No appropriation.** The general assembly has
10 determined that this act can be implemented within existing
11 appropriations, and therefore no separate appropriation of state moneys
12 is necessary to carry out the purposes of this act.

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