

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0896.01 Conrad Imel x2313

SENATE BILL 18-174

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

(None),

Senate Committees

Local Government

House Committees

A BILL FOR AN ACT

101 CONCERNING LIABILITY OF ENTITIES THAT PROVIDE SERVICES TO
102 PERSONS WITH DEVELOPMENTAL DISABILITIES IN RESIDENTIAL
103 SETTINGS.

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 defines "case management agency" and adds a case management agency to the definition of "provider" that provides services and supports to persons with developmental disabilities. The bill requires providers and service agencies to operate pursuant to department of health care policy and financing rules.

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.

Under existing law, a person with a developmental disability cannot maintain a liability action against a provider unless the person claiming the injury has filed for dispute resolution by the department of human services or a community-centered board. The bill adds the department of health care policy and financing and case management agencies to the list of entities to which a person may file for dispute resolution.

The bill identifies a person with a developmental disability who is served in a residential setting as a tenant of the provider and allows property rights to accrue for such a tenant.

Under existing law, a provider that accepts a referral for community placement from the department of human services is not subject to liability for accepting the person for community placement. The bill removes liability when accepting a referral from the department of health care policy and financing.

Except in emergencies, the bill requires person-centered planning to occur prior to removing a person with a developmental disability from a residential setting when the person may be at risk of abuse, neglect, mistreatment, exploitation, or other harm. In an emergency, such person-centered planning must occur as soon as possible following removal. The bill authorizes case management agencies to remove a person with a developmental disability from a residential setting and subjects those agencies to the same standards of liability as other entities authorized to remove such persons from residential settings.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-21-117.5, **amend**
3 (2)(a), (2)(d), (2)(f), (2)(g), (4), (5), (7), (8), (9), and (10); and **add**
4 (2)(a.5) as follows:

5 **13-21-117.5. Civil liability - intellectual and developmental**
6 **disability service providers - definitions. (2) Definitions.** As used in
7 this section, unless the context otherwise requires:

8 (a) ~~"Community-centered board" means a private corporation,~~
9 ~~for-profit or not-for-profit, which, when designated pursuant to section~~
10 ~~25.5-10-209, C.R.S., provides case management to persons with~~
11 ~~intellectual and developmental disabilities, is authorized to determine~~

1 ~~eligibility of such persons within a specified geographical area, serves as~~
2 ~~the single point of entry for persons to receive services and supports~~
3 ~~under article 10 of title 25.5, C.R.S., and provides authorized services and~~
4 ~~supports to such persons either directly or by purchasing such services~~
5 ~~and supports from service agencies~~ "CASE MANAGEMENT AGENCY" HAS
6 THE SAME MEANING AS SET FORTH IN SECTION 25.5-10-202 (1.9).

7 (a.5) "COMMUNITY-CENTERED BOARD" HAS THE SAME MEANING
8 AS SET FORTH IN SECTION 25.5-10-202 (4).

9 (d) ~~"Family provider" means a member of a family of a person~~
10 ~~with a developmental disability who provides services to persons with~~
11 ~~developmental disabilities as a contractor under programs of the~~
12 ~~department~~ CAREGIVER" HAS THE SAME MEANING AS SET FORTH IN
13 SECTION 25.5-10-202 (17).

14 (f) "Provider" means any community-centered board, CASE
15 MANAGEMENT AGENCY, service agency, host home, family ~~provider~~
16 CAREGIVER, and the directors, officers, and employees of these entities,
17 who provide services or supports to persons with developmental
18 disabilities pursuant to ARTICLE 10 OF TITLE 25.5 OR article 10.5 of title
19 27. C.R.S.

20 (g) "Service agency" means a privately operated
21 program-approved service agency designated pursuant to the rules of the
22 department OR THE RULES OF THE DEPARTMENT OF HEALTH CARE POLICY
23 AND FINANCING.

24 (4) **Duty of care.** The performance of a service or an act of
25 assistance for the benefit of a person with a developmental disability or
26 adoption or enforcement of a policy, procedure, guideline, or practice for
27 the protection of any such person's health or safety by a provider shall

1 DOES not create any duty of care with respect to a third person, nor shall
2 DOES it create a duty for any provider to perform or sustain such a service
3 or an act of assistance nor to adopt or enforce such a policy, procedure,
4 guideline, or practice; however, nothing in this section shall be construed
5 to relieve a provider of a duty of care expressly imposed by federal or
6 state law, ~~or~~ department rule, OR DEPARTMENT OF HEALTH CARE POLICY
7 AND FINANCING RULE, nor shall anything in this section be deemed to
8 create any duty of care.

9 (5) No action in tort under this section may be maintained on
10 behalf of, for, or by a person with a developmental disability or by a
11 family member of a person with a developmental disability against a
12 provider unless that person claiming to have suffered an injury or
13 grievance or that person's guardian or representative has filed for dispute
14 resolution or other applicable intervention, if any, by the department,
15 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, CASE
16 MANAGEMENT AGENCY, or community-centered board pursuant to
17 ~~department~~ rules promulgated under ARTICLE 10 OF TITLE 25.5 OR article
18 10.5 of title 27 ~~C.R.S.~~, within one year after the date of the discovery of
19 the injury or grievance, regardless of whether the person then knew all of
20 the elements of a claim or of a cause of action for such injury or
21 grievance. Compliance with the provisions of this subsection (5),
22 documented by a letter from the department OR THE DEPARTMENT OF
23 HEALTH CARE POLICY AND FINANCING certifying that any and all such
24 interventions and dispute resolution procedures, with either the
25 department, DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, CASE
26 MANAGEMENT AGENCY, or ~~the~~ community-centered board, applicable to
27 the matter at hand have been exhausted, or by submission of evidence that

1 such an intervention or dispute resolution request has been filed and no
2 action has been taken by the department OR THE DEPARTMENT OF HEALTH
3 CARE POLICY AND FINANCING within ninety days, ~~shall be~~ IS a
4 jurisdictional prerequisite to any action brought under the provisions of
5 this section, and failure of compliance ~~shall forever bar~~ BARS any such
6 action and ~~shall~~ MUST result in a dismissal of any claim with prejudice.
7 Certification by the department OR THE DEPARTMENT OF HEALTH CARE
8 POLICY AND FINANCING that all applicable interventions and dispute
9 resolution procedures have been exhausted shall not result in ~~the~~ SUCH
10 department becoming a party to the tort claim action.

11 (7) ~~In any civil action brought against a provider, a person with a~~
12 ~~developmental disability who is served in a residential setting owned or~~
13 ~~leased by a provider shall not be considered a tenant of the provider and~~
14 ~~statutes regarding landlord-tenant relationships shall not apply.~~ The owner
15 of a property leased by a provider for the purpose of providing services
16 pursuant to ARTICLE 10 OF TITLE 25.5 OR article 10.5 of title 27 ~~C.R.S.~~;
17 ~~shall not be~~ IS NOT responsible for the provision or monitoring of such
18 services. ~~No real property rights shall accrue to a person with a~~
19 ~~developmental disability by virtue of placement in a residential setting.~~

20 (8) If a person with a developmental disability residing in a
21 residential program operated by the department OR THE DEPARTMENT OF
22 HEALTH CARE POLICY AND FINANCING is referred by ~~the~~ SUCH department
23 for community placement, the provider ~~shall not be~~ IS NOT subject to civil
24 liability for accepting that person for community placement.

25 (9) Claims predicated on an alleged deceptive trade practice
26 pursuant to article 1 of title 6 ~~C.R.S.~~, shall not apply to providers engaged
27 in the provision of services pursuant TO ARTICLE 10 OF TITLE 25.5 OR

1 article 10.5 of title 27. ~~C.R.S.~~

2 (10) Community-centered boards, CASE MANAGEMENT AGENCIES,
3 and service agencies shall have the authority to remove a person with a
4 developmental disability from any residential setting that they operate or
5 for which they contract, directly or indirectly, if the community-centered
6 board, CASE MANAGEMENT AGENCY, or service agency believes that the
7 person with a developmental disability may be at risk of abuse, neglect,
8 mistreatment, exploitation, or other harm in such setting. EXCEPT IN THE
9 CASE OF AN EMERGENCY, PERSON-CENTERED PLANNING MUST OCCUR
10 PRIOR TO SUCH REMOVALS. IN THE CASE OF AN EMERGENCY, THE
11 PERSON-CENTERED PLANNING REQUIRED BY THIS SUBSECTION (10) MUST
12 OCCUR AS SOON AS POSSIBLE FOLLOWING REMOVAL. In the absence of
13 willful and wanton acts or omissions, community-centered boards, CASE
14 MANAGEMENT AGENCIES, and service agencies shall have no civil liability
15 for exercising such authority or for termination of any related contracts
16 if such risk is substantiated by investigation pursuant to the rules of the
17 department OR THE RULES OF THE DEPARTMENT OF HEALTH CARE POLICY
18 AND FINANCING.

19 **SECTION 2. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.