

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0896.01 Conrad Imel x2313

SENATE BILL 18-174

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SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

(None),

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Senate Committees

Local Government

House Committees

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A BILL FOR AN ACT

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

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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.

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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.