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SENATE BILL 18-174

BY SENATOR(S) Gardner, Court, Crowder, Donovan, Fields, Garcia, Jahn, Jones, Kefalas, Kerr, Lambert, Martinez Humenik, Merrifield, Moreno, Priola, Tate, Todd, Williams A., Zenzinger, Grantham;
also REPRESENTATIVE(S) Sias, Exum, Ginal, Gray, Hansen, Herod, Hooton, Jackson, Kraft-Tharp, Michaelson Jenet, Pabon, Rosenthal, Salazar, Valdez.

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

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

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

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

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

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

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

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

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

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

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

(4) **Duty of care.** The performance of a service or an act of assistance for the benefit of a person with a developmental disability or adoption or enforcement of a policy, procedure, guideline, or practice for the protection of any such person's health or safety by a provider ~~shall~~ DOES not create any duty of care with respect to a third person, nor ~~shall~~ DOES it create a duty for any provider to perform or sustain such a service or an act of assistance nor to adopt or enforce such a policy, procedure, guideline, or practice; however, nothing in this section shall be construed to relieve a provider of a duty of care expressly imposed by federal or state law, ~~or~~ department rule, OR DEPARTMENT OF HEALTH CARE POLICY AND FINANCING RULE, nor shall anything in this section be deemed to create any duty of care.

(5) No action in tort under this section may be maintained on behalf of, for, or by a person with a developmental disability or by a family member of a person with a developmental disability against a provider unless that person claiming to have suffered an injury or grievance or that person's guardian or representative has filed for dispute resolution or other applicable intervention, if any, by the department, DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, CASE MANAGEMENT AGENCY, or community-centered board pursuant to ~~department~~ rules promulgated under ARTICLE 10 OF TITLE 25.5 OR article 10.5 of title 27 ~~C.R.S.~~, within one year after the date of the discovery of the injury or grievance, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury or grievance. Compliance with the provisions of this subsection (5), documented by a letter from the department OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING certifying that any and all such interventions and dispute resolution procedures, with either the department, DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, CASE MANAGEMENT AGENCY, or ~~the~~ community-centered board, applicable to the matter at hand have been exhausted, or by submission of evidence that such an intervention or dispute resolution request has been filed and no action has been taken by the department OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING within ninety days, ~~shall be~~ IS a jurisdictional prerequisite to any action brought under the provisions of this section, and failure of compliance ~~shall forever bar~~ BARS any such action and ~~shall~~ MUST result in a dismissal of any claim with prejudice. Certification by the department OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING that all applicable interventions and dispute resolution procedures have been exhausted shall not result in ~~the~~ SUCH department becoming a party to the tort claim action.

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

(8) If a person with a developmental disability residing in a

residential program operated by the department OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING is referred by ~~the~~ SUCH department for community placement, the provider ~~shall not be~~ IS NOT subject to civil liability for accepting that person for community placement.

(9) Claims predicated on an alleged deceptive trade practice pursuant to article 1 of title 6 ~~C.R.S.~~, shall not apply to providers engaged in the provision of services pursuant TO ARTICLE 10 OF TITLE 25.5 OR article 10.5 of title 27. ~~C.R.S.~~

(10) Community-centered boards, CASE MANAGEMENT AGENCIES, and service agencies shall have the authority to ~~remove~~ MOVE a person with a developmental disability from any residential setting that they operate or for which they contract, directly or indirectly, if the community-centered board, CASE MANAGEMENT AGENCY, or service agency believes that the person with a developmental disability may be at risk of abuse, neglect, mistreatment, exploitation, or other harm in such setting. IF A PERSON IS MOVED FOR ONE OF THE AFOREMENTIONED REASONS, THE PERSON-CENTERED PLANNING REQUIRED BY THIS SUBSECTION (10) MUST OCCUR AS SOON AS POSSIBLE FOLLOWING THE MOVE. In the absence of willful and wanton acts or omissions, community-centered boards, CASE MANAGEMENT AGENCIES, and service agencies ~~shall~~ have no civil liability for exercising such authority or for termination of any related contracts if such risk is substantiated by investigation pursuant to the rules of the department OR THE RULES OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO