A BILL FOR AN ACT

Concerning changes to improve the protection services for at-risk adults.

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.)

Under current law, when an employer is going to hire a person to work in a position in which the person has contact with at-risk adults, the employer must perform a check of the system that contains substantiated claims of mistreatment against an at-risk adult (CAPS check). The bill makes various clarifying changes to the adult protection statutes related to the CAPS check program.
The bill states that if an employer receives a CAPS check on a person and does not hire the person at the time of receiving the check but wants to hire the person at a subsequent time, the employer shall request a new CAPS check prior to hiring the person. The bill requires that if the employer is also an employee, the employer and employer's parent or oversight agency would get the results if the employer was a substantiated perpetrator. The bill prohibits using a CAPS check request for a person who is not going to be an employee. The bill prohibits an employee or volunteers from knowingly providing inaccurate information for a CAPS check or an employer or other person or entity conducting an employee screening on behalf of the employer from knowingly providing inaccurate information in the request for a CAPS check.

The bill requires entities that care for at-risk adults to cooperate with a county or district department of human or social services in investigations into allegations of mistreatment at the entities' facilities.

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

SECTION 1. In Colorado Revised Statutes, 26-3.1-101, amend (1)(c), (2)(a), (4) introductory portion, (4)(a), (4)(b), (6), (7)(c), (7)(d), and (9); repeal (7)(e) and (8); and add (5.5) as follows:

26-3.1-101. Definitions. As used in this article 3.1, unless the context otherwise requires:

(1) "Abuse" means any of the following acts or omissions committed against an at-risk adult:

(c) Subjection to sexual conduct or contact classified as a crime under the "Colorado Criminal Code", title 18, C.R.S. UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 16-22-102 (9).

(2) "Caretaker" means a person who:

(a) Is responsible for the care of an at-risk adult as a result of a family or legal relationship; OR

(4) "Exploitation" means an act or omission committed by a person that:

(a) Uses deception, harassment, intimidation, or undue influence
to permanently or temporarily deprive an at-risk adult of the use, benefit,
or possession of any thing of value; OR

(b) Employs the services of a third party for the profit or
advantage of the person or another person to the detriment of the at-risk
adult; OR

(5.5) "HARMFUL ACT" MEANS AN ACT BY A PERSON WITH A KNOWN
RELATIONSHIP TO THE AT-RISK ADULT WHEN SUCH ACT IS NOT DEFINED AS
ABUSE, CARETAKER NEGLECT, OR EXPLOITATION BUT POSES AN IMMINENT
RISK OF NEGATIVELY IMPACTING THE HEALTH, SAFETY, OR WELFARE OF AN
AT-RISK ADULT.

(6) "Least restrictive intervention" means acquiring or providing
services, including protective services, for the shortest duration and to the
minimum extent necessary to remedy or prevent situations of actual
mistreatment OR self-neglect. or exploitation:

(7) "Mistreatment" means:
(c) Exploitation; OR

(d) An act or omission that threatens the health, safety, or welfare
of an at-risk adult; or A HARMFUL ACT.

(e) An act or omission that exposes an at-risk adult to a situation
or condition that poses an imminent risk of bodily injury to the at-risk
adult:

(8) "Person" means one or more individuals, limited liability
companies, partnerships, associations, corporations, legal representatives,
trustees, receivers, or the state of Colorado, and all political subdivisions
and agencies thereof:

(9) "Protective services" means services provided by the state or
political subdivisions or agencies thereof in order to prevent the
mistreatment OR self-neglect OR exploitation of an at-risk adult. Such
services include, but are not limited to: Receiving and investigating
reports of mistreatment, self-neglect, or exploitation; Providing casework
and counseling services and arranging for, coordinating, delivering where
appropriate, and monitoring services, including medical care for physical
or mental health needs, protection from mistreatment AND SELF-NEGLECT,
assistance with application for public benefits, referral to community
service providers, and initiation of probate proceedings.

SECTION 2. In Colorado Revised Statutes, 26-3.1-102, amend
(1)(a), (1)(c), (3), (7)(a), (7)(b) introductory portion, and (7)(b)(I); and add (7)(b)(IX) as follows:

26-3.1-102. Reporting requirements. (1) (a) A person specified
in paragraph (b) of this subsection (1) who observes the mistreatment or self-neglect of an at-risk adult or who
has reasonable cause to believe that an at-risk adult has been mistreated
or is self-neglecting and OR is at imminent risk of mistreatment or
self-neglect is urged to report such fact to a county department not more
than twenty-four hours after making the observation or discovery.

(c) In addition to those persons urged by this subsection (1) to
report known or suspected mistreatment or self-neglect of an at-risk adult
and circumstances or conditions that might reasonably result in
mistreatment or self-neglect, any other person may report such known or
suspected mistreatment or self-neglect and circumstances or conditions
that might reasonably result in mistreatment or self-neglect of an at-risk
adult to the local law enforcement agency or the county department. Upon
receipt of such report, the receiving agency shall prepare a written report
within forty-eight TWENTY-FOUR hours.
(3) A copy of the WRITTEN report prepared by the county department in accordance with subsections (1) and (2) of this section THAT INCLUDES AN ALLEGATION OF MISTREATMENT shall MUST be forwarded within twenty-four hours AFTER RECEIPT OF THE REPORT to a local law enforcement agency. A WRITTEN report prepared by a local law enforcement agency shall MUST be forwarded within twenty-four hours AFTER RECEIPT OF THE REPORT to the county department.

(7) (a) Except as provided in paragraph (b) of this subsection (7) SUBSECTION (7)(b) OF THIS SECTION, reports of the mistreatment or self-neglect of an at-risk adult, including the name and address of any at-risk adult, member of said adult's family, or informant, or any other identifying information contained in such reports AND SUBSEQUENT CASES RESULTING FROM THE REPORTS, is confidential and is not public information.

(b) Disclosure of a report of the mistreatment or self-neglect of an at-risk adult and information relating to an investigation of such a report AND SUBSEQUENT CASES RESULTING FROM THE REPORT is permitted only when authorized by a court for good cause. A court order is not required, and such disclosure is not prohibited when:

(I) A criminal INVESTIGATION INTO AN ALLEGATION OF MISTREATMENT IS BEING CONDUCTED, WHEN A REVIEW OF DEATH BY A CORONER IS BEING CONDUCTED WHEN THE DEATH IS SUSPECTED TO BE RELATED TO MISTREATMENT, OR WHEN A CRIMINAL complaint, information, or indictment based on the report is filed AND THE REPORT AND CASE INFORMATION IS RELEVANT TO THE INVESTIGATION, DEATH REVIEW, COMPLAINT, OR INDICTMENT;

(IX) THE DISCLOSURE IS MADE TO AN EMPLOYER REQUIRED TO
REQUEST A CAPS CHECK PURSUANT TO SECTION 26-3.1-111 OR TO THE
STATE DEPARTMENT AGENCY THAT OVERSEES THE EMPLOYER WHEN THE
INFORMATION IS NECESSARY TO ENSURE THE SAFETY OF OTHER AT-RISK
ADULTS UNDER THE CARE OF THE EMPLOYER. THE INFORMATION MUST BE
THE MINIMUM INFORMATION NECESSARY TO ENSURE THE SAFETY OF
OTHER AT-RISK ADULTS UNDER THE CARE OF THE EMPLOYER OR
OVERSIGHT OF THE STATE DEPARTMENT AGENCY.

SECTION 3. In Colorado Revised Statutes, 26-3.1-103, amend
(1); and add (1.3) as follows:

(1) The agency receiving a report of mistreatment or self-neglect of an
at-risk adult shall immediately make a thorough evaluation of the reported
level of risk. The immediate concern of the evaluation is the protection
of the at-risk adult. The evaluation, at a minimum, must include a
determination of a response time frame and whether THE REPORT MEETS
THE CRITERIA FOR an investigation of the allegations is required
PURSUANT TO STATE DEPARTMENT RULE. If a county department
determines that an investigation is required, the county department is
responsible for ensuring an investigation is conducted and arranging for
the subsequent provision of protective services to be conducted by
persons trained to conduct such investigations and provide protective
services.

(1.3) (a) EACH EMPLOYER AS DEFINED BY SECTION 26-3.1-111 (7)
SHALL PROVIDE, UPON REQUEST OF THE COUNTY DEPARTMENT, ACCESS TO
CONDUCT AN INVESTIGATION INTO AN ALLEGATION OF MISTREATMENT.
ACCESS MUST INCLUDE THE ABILITY TO REQUEST INTERVIEWS WITH
RELEVANT PERSONS AND TO OBTAIN DOCUMENTS AND OTHER EVIDENCE
AND HAVE ACCESS TO:

(I) PATIENTS WHO ARE THE SUBJECT OF THE INVESTIGATION INTO MISTREATMENT OF AN AT-RISK ADULT AND PATIENTS WHO ARE RELEVANT TO AN INVESTIGATION INTO AN ALLEGATION OF MISTREATMENT OF AN AT-RISK ADULT;

(II) PERSONNEL, INCLUDING PAID EMPLOYEES, CONTRACTORS, VOLUNTEERS, AND INTERNS, INCLUDING CONTACT INFORMATION FOR FORMER PERSONNEL WHO ARE RELEVANT TO THE INVESTIGATION;

(III) CLIENTS OR RESIDENTS WHO ARE THE SUBJECT OF THE INVESTIGATION INTO MISTREATMENT OF AN AT-RISK ADULT AND CLIENTS OR RESIDENTS WHO ARE RELEVANT TO AN INVESTIGATION INTO AN ALLEGATION OF MISTREATMENT OF AN AT-RISK ADULT;

(IV) INDIVIDUAL PATIENT, RESIDENT, CLIENT, OR CONSUMER RECORDS, INCLUDING HEALTH RECORDS OR INCIDENT AND INVESTIGATIVE REPORTS, CARE AND BEHAVIORAL PLANS, STAFF SCHEDULES AND TIME SHEETS, AND PHOTOS AND OTHER TECHNOLOGICAL EVIDENCE; AND

(V) ANY OTHER INFORMATION THAT BECOMES NECESSARY AND RELEVANT FOR COUNTY DEPARTMENTS TO PERFORM THEIR DUTIES PURSUANT TO THIS SECTION.

(b) COUNTY DEPARTMENT STAFF CONDUCTING AN INVESTIGATION PURSUANT TO THIS SECTION HAVE THE RIGHT TO ENTER THE PREMISES OF ANY EMPLOYER AS DEFINED BY SECTION 26-3.1-111 (7) AS NECESSARY TO COMPLETE A THOROUGH INVESTIGATION. COUNTY DEPARTMENT STAFF SHALL IDENTIFY THEMSELVES AND THE PURPOSE OF THE INVESTIGATION TO THE PERSON IN CHARGE OF THE ENTITY AT THE TIME OF ENTRY.

(c) A PERSON WHO VIOLATES A PROVISION OF SUBSECTION (1.3)(a) OR (1.3)(b) OF THIS SECTION COMMITS A CLASS 1 MISDEMEANOR AND
SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501 AND IS LIABLE FOR DAMAGES PROXIMATELY CAUSED THEREBY.

(d) ATTORNEYS AT LAW PROVIDING LEGAL ASSISTANCE TO INDIVIDUALS PURSUANT TO A CONTRACT WITH AN AREA AGENCY ON AGING, THE STAFF OF SUCH ATTORNEYS AT LAW, AND THE LONG-TERM CARE OMBUDSMAN ARE EXEMPT FROM THE REQUIREMENTS OF THIS SECTION.

SECTION 4. In Colorado Revised Statutes, 26-3.1-108, amend (2) introductory portion and (2)(c); and repeal (3) as follows:

26-3.1-108. Notice of report - appeals - rules. (2) In addition to rules promulgated pursuant to subsection (1) of this section, the state department shall promulgate rules to establish a process at the state level by which a person who is substantiated in a case of mistreatment of an at-risk adult may appeal the finding to the state department. At a minimum, the rules promulgated pursuant to this subsection (2) shall MUST address the following:

(c) A requirement for and procedures to facilitate the expungement of and prevention of the release of any information contained in CAPS records for purposes of a CAPS check related to a person who is substantiated in a case of mistreatment of an at-risk adult that existed prior to May 31, 2017 JULY 1, 2018; except that the state department and county departments may maintain such information in CAPS to assist in future risk and safety assessments.

(3) A county department is not required to provide notice to a person of a finding of a substantiated case of mistreatment of an at-risk adult until CAPS is capable of automatically generating the notice required pursuant to state department rules.
SECTION 5. In Colorado Revised Statutes, amend 26-3.1-109 as follows:

26-3.1-109. Limitation. Nothing in this article shall be construed to mean that a person is mistreated, neglected, exploited, or self-neglecting or in need of emergency or protective services for the sole reason that he or she is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of that person's recognized church or religious denomination, nor shall anything in this article be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such a person.

SECTION 6. In Colorado Revised Statutes, 26-3.1-111, amend (1), (6)(a)(I), (7)(a), (7)(h), (7)(i), and (10); and add (6)(a)(III), (6)(a)(IV), (6)(e.3), (6)(e.7), and (7)(j) as follows:


(1) The general assembly finds and declares that individuals receiving care and services from persons employed in programs or facilities described in subsection (7) of this section are vulnerable to mistreatment, including abuse, neglect, and exploitation. It is the intent of the general assembly to minimize the potential for employment of persons with a history of mistreatment of at-risk adults in positions that would allow those persons unsupervised access to these adults. As a result, the general assembly finds it necessary to strengthen protections for vulnerable adults by requiring certain employers to request a CAPS check by the state department to determine if a person who will provide direct care to an at-risk adult has been substantiated in a case of mistreatment of an at-risk
adult. THE GENERAL ASSEMBLY ALSO FINDS THAT IT IS NECESSARY TO
REQUIRE THAT CERTAIN EMPLOYERS COOPERATE WITH, AND PROVIDE
ACCESS TO, COUNTY DEPARTMENTS DURING COUNTY INVESTIGATIONS OF
MISTREATMENT OF AT-RISK ADULTS PURSUANT TO SECTION 26-3.1-103
(1.3).

(6) (a) (I) On and after January 1, 2019, prior to hiring or
contracting with an employee who will provide direct care to an at-risk
adult, an employer described in subsection (7) of this section shall request
a CAPS check by the state department pursuant to this section to
determine if the person is substantiated in a case of mistreatment of an
at-risk adult. Within ten days after the date of the employer's request, if
the employee was substantiated in a case of mistreatment of an at-risk
adult, unless the finding was expunged through a successful appeal to the
state department, the state department shall provide the employer with
information concerning the mistreatment through electronic means, or
other means if requested by the employer, including the date OF the
mistreatment was reported SUBSTANTIATED FINDING, the type of
mistreatment reported, and the county that investigated the report of
mistreatment. IF AN EMPLOYER RECEIVES A CAPS CHECK ON A PERSON
AND DOES NOT HIRE THE PERSON AT THE TIME OF RECEIVING THE CHECK
BUT WANTS TO HIRE THE PERSON AT A SUBSEQUENT TIME THAT IS MORE
THAN TWO WEEKS FROM THE PRIOR APPLICATION OF EMPLOYMENT, THE
EMPLOYER SHALL REQUEST A NEW CAPS CHECK PRIOR TO HIRING THE
PERSON PURSUANT TO STATE DEPARTMENT RULES.

(III) IF THE EMPLOYER IS ALSO AN EMPLOYEE, THE EMPLOYER
SHALL REQUEST THE CAPS CHECK ON HIMSELF OR HERSELF. IF THE
EMPLOYEE IS DETERMINED DURING EITHER THE INITIAL CAPS CHECK OR
SUBSEQUENTLY AS PROVIDED IN SUBSECTION (10) OF THIS SECTION TO
HAVE A SUBSTANTIATED FINDING OF MISTREATMENT, BOTH THE EMPLOYER
AND THE EMPLOYER'S PARENT COMPANY OR OVERSIGHT AGENCY SHALL
RECEIVE THE CAPS CHECK RESULTS.

(IV) AN EMPLOYER DESCRIBED IN SUBSECTION (7) OF THIS SECTION
OR A PERSON MAY REQUEST A CAPS CHECK BY THE STATE DEPARTMENT
PURSUANT TO THIS SECTION ON A VOLUNTEER WHO WILL PROVIDE DIRECT
CARE TO AN AT-RISK ADULT TO DETERMINE IF THE VOLUNTEER IS
SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT. THE
VOLUNTEER SHALL PROVIDE TO THE EMPLOYER WRITTEN AUTHORIZATION
AND ANY REQUIRED IDENTIFYING INFORMATION NECESSARY TO CONDUCT
A CAPS CHECK PURSUANT TO THIS SECTION. WITHIN TEN DAYS AFTER THE
DATE OF THE EMPLOYER'S REQUEST, IF THE VOLUNTEER WAS
SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT,
UNLESS THE FINDING WAS EXPUNGED THROUGH A SUCCESSFUL APPEAL TO
THE STATE DEPARTMENT, THE STATE DEPARTMENT SHALL PROVIDE THE
EMPLOYER WITH INFORMATION CONCERNING THE MISTREATMENT
THROUGH ELECTRONIC MEANS, OR OTHER MEANS IF REQUESTED BY THE
EMPLOYER, INCLUDING THE DATE OF THE SUBSTANTIATED FINDING, THE
TYPE OF MISTREATMENT REPORTED, AND THE COUNTY THAT
INVESTIGATED THE REPORT OF MISTREATMENT. FOR PURPOSES OF THIS
SUBSECTION (6)(a)(IV), "EMPLOYER" INCLUDES A PERSON OR ENTITY
CONDUCTING VOLUNTEER SCREENING ON BEHALF OF THE EMPLOYER. THE
PROVISIONS OF SUBSECTIONS (6)(d), (6)(e), (6)(e.3), AND (6)(e.7) OF THIS
SECTION APPLY TO THIS SUBSECTION (6)(a)(IV).

(e.3) ANY PERSON WHO REQUESTS A CAPS CHECK FOR A PERSON
WHO IS NOT AN EMPLOYEE OR NOT BEING CONSIDERED FOR EMPLOYMENT
OR WHO IS NOT A CARE PROVIDER OR BEING CONSIDERED AS A CARE PROVIDER FOR A RECIPIENT OF CONSUMER DIRECTED ATTENDANT SUPPORT SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED PURSUANT TO SECTION 18-1.3-501.

(e.7) AN EMPLOYEE WHO KNOWINGLY PROVIDES INACCURATE INFORMATION TO HIS OR HER EMPLOYER FOR A CAPS CHECK, OR AN EMPLOYER OR OTHER PERSON OR ENTITY CONDUCTING AN EMPLOYEE SCREENING ON BEHALF OF THE EMPLOYER THAT KNOWINGLY PROVIDES INACCURATE INFORMATION IN THE REQUEST FOR A CAPS CHECK, COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED PURSUANT TO SECTION 18-1.3-501.

(7) The following employers shall request a CAPS check pursuant to this section:

(a) A health facility licensed pursuant to section 25-1.5-103, including those wholly owned and operated by any governmental unit, EXCEPT A HEALTH FACILITY LICENSED PURSUANT TO SECTION 25-1.5-103 THAT PROVIDES CARE PRIMARILY FOR PEDIATRIC PATIENTS OR PRIMARILY FOR BIRTHING CENTER SERVICES AND PERFORMS COMMENSURATE BACKGROUND CHECKS FOR PROSPECTIVE EMPLOYEES;

(h) A facility operated by the state department for the care and treatment of persons with intellectual and developmental disabilities pursuant to article 10.5 of title 27; and

(i) Veterans community living centers operated pursuant to article 12 of this title 26; AND

(j) THE OFFICE OF PUBLIC GUARDIANSHIP.

(10) The state department shall review the feasibility and cost of
including a feature in CAPS that would provide notification to an employer if a substantiated finding of mistreatment by an employee is subsequently entered into CAPS. If it is feasible to include a notification feature, subject to available money to implement any necessary system changes and completion of those system changes, the state department shall implement the notification feature as part of a CAPS check.

SECTION 7. In Colorado Revised Statutes, 13-14-101, amend the introductory portion and (1) introductory portion as follows:

13-14-101. Definitions. For purposes of this article, unless the context otherwise requires:

(1) "Abuse of the elderly or of an at-risk adult" means mistreatment of a person who is sixty years of age or older or who is an at-risk adult as defined in section 26-3.1-101 (1), C.R.S. section 26-3.1-101 (1.5), including but not limited to repeated acts that:

SECTION 8. In Colorado Revised Statutes, 13-94-105, add (6) as follows:


SECTION 9. In Colorado Revised Statutes, 25-3-102, amend (1)(c) as follows:
25-3-102. License - application - issuance - certificate of compliance required - rules - repeal. (1)(c) The department shall issue licenses to applicants furnishing satisfactory evidence of fitness to conduct and maintain a health facility described in section 25-3-101 in accordance with this part 1 and the rules adopted by the department. The department shall not require, as satisfactory evidence of fitness, evidence as to whether an applicant has provided self declarations, affidavits, or other attestations as to its general compliance with statutory or regulatory licensing requirements. The department shall determine an applicant's fitness solely based on the specific fitness information or documentation submitted by the applicant upon the department's request or as otherwise acquired by the department through its own review or investigation of the applicant. The department may require the applicant to attest to the accuracy of the information provided as long as the attestation does not require the applicant's affirmation of its general compliance with statutory or regulatory licensing requirements. CAPS CHECK INFORMATION PURSUANT TO SECTION 26-3.1-111 (6)(a)(III) MAY BE CONSIDERED PART OF AN APPLICANT'S EVIDENCE OF FITNESS. THE BOARD MAY PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS SUBSECTION (1)(c).

SECTION 10. In Colorado Revised Statutes, 25.5-10-202, amend (29.5)(c) and (29.5)(d); add (18.5); and repeal (29.5)(e) as follows:

25.5-10-202. Definitions. As used in this article 10, unless the context otherwise requires:

(18.5) "HARMFUL ACT" MEANS AN ACT BY A PERSON WITH A KNOWN RELATIONSHIP TO THE PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY WHEN SUCH ACT IS NOT DEFINED AS ABUSE,
CARETAKER NEGLECT, OR EXPLOITATION BUT POSES AN IMMINENT RISK OF
OR OTHERWISE NEGATIVELY IMPACTING THE HEALTH, SAFETY, OR
WELFARE OF A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL
DISABILITY.

(29.5) "Mistreated" or "mistreatment" means:

(c) Exploitation; OR

(d) An act or omission that threatens the health, safety, or welfare
of a person with an intellectual and developmental disability; or A
HARMFUL ACT.

(e) An act or omission that exposes a person with an intellectual
and developmental disability to a situation or condition that poses an
imminent risk of bodily injury to the person with an intellectual and
developmental disability.

SECTION 11. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.