

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0217.01 Shelby Ross x4510

HOUSE BILL 21-1123

HOUSE SPONSORSHIP

Michaelson Jenet and Larson,

SENATE SPONSORSHIP

Fields and Smallwood,

House Committees

Public & Behavioral Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A CAPS CHECK FOR SUBSTANTIATED CASES OF**
102 **MISTREATMENT OF AN AT-RISK ADULT.**

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/>.)

Legislative Audit Committee. The bill authorizes the department of human services (state department) to disclose the results of a CAPS check without a court order to:

- The department of regulatory agencies (DORA) for the purpose of a regulatory investigation; or
- The court if an individual is petitioning the court for

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.

conservatorship or guardianship of an at-risk adult.

The bill requires an employer and an employee to provide, upon request of the county department of human or social services and for the purposes of an investigation into an allegation of mistreatment, access to the professional license number issued by DORA for the employee who, as a result of the investigation, is substantiated in a case of mistreatment of an at-risk adult.

Current law requires the state department to 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. The bill requires the state department to promulgate rules to address the process to share information on the outcome of an appeal with DORA if DORA requests information for the purpose of a regulatory investigation. Appeal information is confidential and used only for the regulatory investigation.

Beginning January 1, 2022, prior to appointing a person as a conservator or guardian of an at-risk adult, the court that receives a filing of a petition for conservatorship or guardianship shall request a CAPS check by the state department, and the state department shall provide the results of a CAPS check to the court, to determine if the person is substantiated in a case of mistreatment of an at-risk adult.

The bill requires the state department to promulgate rules that address:

- The process for the state department to notify DORA when a professional regulated by DORA is substantiated in a case of mistreatment of an at-risk adult; and
- The information that will be made available to DORA for the purpose of conducting a regulatory investigation.

A person who may be appointed as a conservator or guardian of an at-risk adult who knowingly provides inaccurate information to the court for a CAPS check commits a class 1 misdemeanor.

Beginning January 1, 2022, prior to appointing a person as a conservator or guardian of an at-risk adult, the court shall request a CAPS check by the state department to determine if the person is substantiated in a case of mistreatment of an at-risk adult. Within 7 calendar days after the date of the court's request, if the person has been substantiated in a case of mistreatment of an at-risk adult, the state department shall provide the court with information concerning the mistreatment, unless the finding was expunged through a successful appeal to the state department.

The bill requires the state department to notify DORA within 10 calendar days after a substantiated finding of mistreatment by a professional regulated by DORA. Any information provided to DORA is confidential.

The bill requires a licensee, certificate holder, or registrant substantiated in a case of mistreatment of an at-risk adult to provide the

person's professional license number to county adult protective services.

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

2 **SECTION 1.** In Colorado Revised Statutes, 26-3.1-102, **add**
3 (7)(b)(X) and (7)(b)(XI) as follows:

4 **26-3.1-102. Reporting requirements.** (7) (b) Disclosure of a
5 report of the mistreatment or self-neglect of an at-risk adult and
6 information relating to an investigation of such a report and subsequent
7 cases resulting from the report is permitted only when authorized by a
8 court for good cause. A court order is not required, and such disclosure
9 is not prohibited when:

10 (X) THE DISCLOSURE IS MADE TO THE DEPARTMENT OF
11 REGULATORY AGENCIES OR A REGULATOR, AS DEFINED IN SECTION
12 12-20-102 (14) AND PURSUANT TO SECTION 26-3.1-111 (12); AND

13 (XI) THE DISCLOSURE IS MADE TO THE COURT PURSUANT TO
14 SECTION 26-3.1-111 (3)(b) AND (8.5)(b).

15 **SECTION 2.** In Colorado Revised Statutes, 26-3.1-103, **amend**
16 (1.3)(a)(III) and (1.3)(a)(IV); and **add** (1.3)(a)(V) and (1.4) as follows:

17 **26-3.1-103. Evaluations - investigations - training - rules.**
18 (1.3) (a) Pursuant to state department rule, each employer as defined by
19 section 26-3.1-111 (7) shall provide, upon request of the county
20 department, access to conduct an investigation into an allegation of
21 mistreatment. Access must include the ability to request interviews with
22 relevant persons and to obtain documents and other evidence and have
23 access to:

24 (III) Clients or residents who are the subject of the investigation
25 into mistreatment of an at-risk adult and clients or residents who are

1 relevant to an investigation into an allegation of mistreatment of an at-risk
2 adult; ~~and~~

3 (IV) Individual patient, resident, client, or consumer records,
4 including disclosure of health records or incident and investigative
5 reports, care and behavioral plans, staff schedules and time sheets, and
6 photos and other technological evidence; AND

7 (V) THE PROFESSIONAL LICENSE NUMBER ISSUED BY THE DIVISION
8 OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY
9 AGENCIES FOR A CURRENT OR FORMER EMPLOYEE WHO, AS A RESULT OF
10 THE INVESTIGATION, IS SUBSTANTIATED IN A CASE OF MISTREATMENT OF
11 AN AT-RISK ADULT DURING THE EMPLOYEE'S PROFESSIONAL DUTIES.

12 (1.4) UPON REQUEST OF THE COUNTY DEPARTMENT, ANY PERSON
13 WHO HOLDS A PROFESSIONAL LICENSE ISSUED BY THE DIVISION OF
14 PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY
15 AGENCIES AND, AS A RESULT OF THE INVESTIGATION, IS SUBSTANTIATED
16 IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT WHILE PERFORMING
17 THE PERSON'S PROFESSIONAL DUTIES SHALL PROVIDE THE PERSON'S
18 PROFESSIONAL LICENSE NUMBER TO THE COUNTY DEPARTMENT.

19 **SECTION 3.** In Colorado Revised Statutes, 26-3.1-108, **amend**
20 (2)(f) and (2)(g); and **add** (2)(h) as follows:

21 **26-3.1-108. Notice of report - appeals - rules.** (2) In addition to
22 rules promulgated pursuant to subsection (1) of this section, the state
23 department shall promulgate rules to establish a process at the state level
24 by which a person who is substantiated in a case of mistreatment of an
25 at-risk adult may appeal the finding to the state department. At a
26 minimum, the rules promulgated pursuant to this subsection (2) must
27 address the following:

1 (f) The legal standards involved in the appellate process and a
2 designation of the party who bears the burden of establishing that each
3 standard is met; ~~and~~

4 (g) The confidentiality requirements of the appeals process; AND

5 (h) THE PROCESS TO SHARE INFORMATION ABOUT AN APPEAL,
6 INCLUDING THE APPEAL OUTCOME, RELATED SETTLEMENT TERMS, AND
7 INFORMATION CONSIDERED PART OF THE APPEAL THAT IS NOT PART OF THE
8 ADULT PROTECTIVE SERVICES CASE RECORD FOR THE FINDING APPEALED,
9 WITH THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS
10 DEFINED IN SECTION 12-20-102 (14), IF THE DEPARTMENT OF REGULATORY
11 AGENCIES OR REGULATOR REQUESTS INFORMATION ABOUT AN APPEAL FOR
12 THE PURPOSE OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT
13 TO SECTION 12-20-401. APPEAL INFORMATION SHARED PURSUANT TO THIS
14 SUBSECTION (2)(h) IS CONFIDENTIAL AND MUST BE USED ONLY FOR THE
15 REGULATORY INVESTIGATION.

16 **SECTION 4.** In Colorado Revised Statutes, 26-3.1-111, **amend**
17 (1), (3), (5)(c), (5)(d), (5)(e), (6)(d)(II)(A), (6)(e.3), (6)(e.7), (9), and (10);
18 and **add** (5)(g), (5)(h), (8.5), (11), and (12) as follows:

19 **26-3.1-111. Access to CAPS - employment checks -**
20 **conservatorship and guardianship checks - confidentiality - fees -**
21 **rules - legislative declaration - definitions - repeal.** (1) The general
22 assembly finds and declares that individuals receiving care and services
23 from persons employed in programs or facilities described in subsection
24 (7) of this section OR FROM PERSONS APPOINTED TO BE A CONSERVATOR
25 OR GUARDIAN OF AN AT-RISK ADULT are vulnerable to mistreatment,
26 including abuse, neglect, and exploitation. It is the intent of the general
27 assembly to minimize the potential for employment of, OR APPOINTMENT

1 AS CONSERVATORS OR GUARDIANS, persons with a history of mistreatment
2 of at-risk adults in positions that would allow those persons unsupervised
3 access to these adults. As a result, the general assembly finds it necessary
4 to strengthen protections for vulnerable adults by requiring certain
5 employers AND THE COURTS to request a CAPS check by the state
6 department to determine if a person who will provide direct care to an
7 at-risk adult OR WHO MAY BE APPOINTED AS A CONSERVATOR OR
8 GUARDIAN FOR AN AT-RISK ADULT has been substantiated in a case of
9 mistreatment of an at-risk adult. The general assembly also finds that it
10 is necessary to require that certain employers cooperate with, and provide
11 access to, county departments during county investigations of
12 mistreatment of at-risk adults pursuant to section 26-3.1-103 (1.3).

13 (3) (a) **Employer CAPS checks.** The state department shall
14 establish and implement a state-level program for employers to obtain a
15 CAPS check to determine if a person who will provide direct care to an
16 at-risk adult is substantiated in a case of mistreatment of an at-risk adult.
17 The state department's program ~~shall~~ MUST be operational for an
18 employer CAPS check on and after January 1, 2019.

19 (b) **Conservatorship and guardianship CAPS checks.**
20 BEGINNING JANUARY 1, 2022, THE STATE DEPARTMENT SHALL PROVIDE
21 THE COURTS THE RESULTS OF A CAPS CHECK, UPON THE COURT'S
22 REQUEST, TO DETERMINE IF A PERSON WHO MAY BE APPOINTED AS A
23 CONSERVATOR OR GUARDIAN OF AN AT-RISK ADULT IS SUBSTANTIATED IN
24 A CASE OF MISTREATMENT OF AN AT-RISK ADULT. THIS SUBSECTION (3)(b)
25 DOES NOT APPLY TO OFFICE OF PUBLIC GUARDIANSHIP EMPLOYEES
26 REQUIRED TO UNDERGO A CAPS CHECK PURSUANT TO SECTIONS
27 13-94-105 (6) AND 26-3.1-111 (7)(j), OR ADULT PROTECTIVE SERVICES

1 EMPLOYEES REQUIRED TO UNDERGO A CAPS CHECK PURSUANT TO
2 SECTION 26-3.1-107 (2).

3 (5) The state department shall promulgate rules for the
4 implementation of this section, which rules must include the following:

5 (c) The process for completing a CAPS check and the parameters
6 for establishing and collecting the fee charged to an employer OR THE
7 COURT for each CAPS check;

8 (d) The information in CAPS that will be made available to an
9 employer OR THE COURT requesting a CAPS check;

10 (e) The purposes for which the information in CAPS may be made
11 available; ~~and~~

12 (g) THE PROCESS FOR THE STATE DEPARTMENT TO NOTIFY THE
13 DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR WHEN A
14 PROFESSIONAL REGULATED BY A REGULATOR, AS THOSE TERMS ARE
15 DEFINED IN SECTION 12-20-102 (13) AND (14), IS SUBSTANTIATED IN A
16 CASE OF MISTREATMENT OF AN AT-RISK ADULT PURSUANT TO SUBSECTION
17 (12) OF THIS SECTION; AND

18 (h) THE INFORMATION THAT WILL BE MADE AVAILABLE TO THE
19 DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS DEFINED
20 IN SECTION 12-20-102 (14), FOR THE PURPOSE OF CONDUCTING A
21 REGULATORY INVESTIGATION PURSUANT TO SECTION 12-20-401.

22 (6) (d) (II) An employer, or a person or entity conducting
23 employee screening on behalf of the employer, has not violated
24 subsection (6)(e) of this section if the employer, or a person or entity
25 conducting employee screening on behalf of the employer, releases
26 information received through a CAPS check:

27 (A) To a state agency or its contractor, upon the request of the

1 agency or contractor, for purposes of an employer inspection or survey OR
2 FOR PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT
3 TO SECTION 12-20-401; or

4 (e.3) ~~Any person who requests a CAPS check for a person who is~~
5 ~~not an employee or volunteer, or not being considered for employment,~~
6 ~~or who is not a care provider or being considered as a care provider for~~
7 ~~a recipient of consumer directed attendant support services pursuant to~~
8 ~~article 10 of title 25.5; A PERSON commits a class 1 misdemeanor and~~
9 ~~shall be punished~~ PUNISHABLE pursuant to section 18-1.3-501 IF THE
10 PERSON REQUESTS A CAPS CHECK FOR A PERSON WHO IS NOT:

11 (I) AN EMPLOYEE OR A VOLUNTEER PROVIDING DIRECT CARE, OR
12 IS NOT BEING CONSIDERED FOR SUCH EMPLOYMENT; OR

13 (II) A CARE PROVIDER OR IS NOT BEING CONSIDERED AS A CARE
14 PROVIDER FOR A RECIPIENT OF CONSUMER-DIRECTED ATTENDANT SUPPORT
15 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5; OR

16 (III) A PERSON WHO MAY BE APPOINTED AS A CONSERVATOR OR
17 GUARDIAN OF AN AT-RISK ADULT.

18 (e.7) An employee who knowingly provides inaccurate
19 information to ~~his or her~~ THE EMPLOYEE'S employer for a CAPS check, ~~or~~
20 an employer or other person or entity conducting an employee screening
21 on behalf of the employer that knowingly provides inaccurate information
22 in the request for a CAPS check, OR A PERSON WHO MAY BE APPOINTED
23 AS A CONSERVATOR OR GUARDIAN OF AN AT-RISK ADULT WHO KNOWINGLY
24 PROVIDES INACCURATE INFORMATION TO THE COURT FOR A CAPS CHECK
25 commits a class 1 misdemeanor and shall be punished pursuant to section
26 18-1.3-501.

27 (8.5) (a) ON AND AFTER JANUARY 1, 2022, PRIOR TO APPOINTING

1 A PERSON AS A CONSERVATOR OR GUARDIAN OF AN AT-RISK ADULT, THE
2 COURT THAT RECEIVES A FILING OF A PETITION FOR CONSERVATORSHIP OR
3 GUARDIANSHIP SHALL REQUEST A CAPS CHECK BY THE STATE
4 DEPARTMENT TO DETERMINE IF THE PERSON IS SUBSTANTIATED IN A CASE
5 OF MISTREATMENT OF AN AT-RISK ADULT. THE COURT SHALL PAY A FEE
6 ESTABLISHED BY THE STATE DEPARTMENT FOR EACH CAPS CHECK AND
7 MAY REQUIRE THE PETITIONER FOR CONSERVATORSHIP OR GUARDIANSHIP
8 TO PAY THE COURT THE REQUIRED FEE FOR THE CAPS CHECK.

9 (b) WITHIN SEVEN CALENDAR DAYS AFTER THE DATE OF THE
10 COURT'S REQUEST, IF THE PERSON WHO MAY BE APPOINTED AS A
11 CONSERVATOR OR GUARDIAN HAS BEEN SUBSTANTIATED IN A CASE OF
12 MISTREATMENT OF AN AT-RISK ADULT, THE STATE DEPARTMENT SHALL
13 PROVIDE THE COURT WITH INFORMATION CONCERNING THE
14 MISTREATMENT, WHICH INFORMATION MUST INCLUDE, AT A MINIMUM, THE
15 DATE OF THE SUBSTANTIATED FINDING, THE TYPE AND SEVERITY OF THE
16 MISTREATMENT, AND THE COUNTY THAT INVESTIGATED THE REPORT OF
17 MISTREATMENT. THE STATE DEPARTMENT SHALL NOT PROVIDE THE COURT
18 THE INFORMATION SPECIFIED IN THIS SUBSECTION (8.5)(b) IF THE FINDING
19 ABOUT THE PERSON WAS EXPUNGED THROUGH A SUCCESSFUL APPEAL TO
20 THE STATE DEPARTMENT.

21 (9) Except for the costs incurred for the development and initial
22 implementation of the program, direct and indirect costs incurred for the
23 administrative appeals process for persons appealing claims of
24 mistreatment of at-risk adults and the direct and indirect costs of
25 conducting employer-requested OR COURT-REQUESTED CAPS checks
26 pursuant to this section are funded through a fee assessed on an employer
27 OR THE COURT for each CAPS check. The state department shall establish

1 and collect the fee pursuant to parameters set forth in rule established by
2 the state board. At a minimum, the state board's rules must include a
3 provision requiring the state department to provide notice of the fee to
4 interested persons and the maximum fee amount that the state department
5 shall not exceed without the express approval of the state board. The fee
6 established must not exceed direct and indirect costs incurred for the
7 administrative appeals process for persons appealing claims of
8 mistreatment of at-risk adults and the direct and indirect costs of
9 conducting employer-requested OR COURT-REQUESTED CAPS checks
10 pursuant to this section. Fees collected for CAPS checks shall be
11 transferred to the state treasurer and credited to the records and reports
12 fund created in section 19-1-307 (2.5).

13 (10) **Notification to employer.** The state department shall provide
14 notification to the employer if a substantiated finding of mistreatment by
15 an employee is subsequently entered into CAPS.

16 (11) **Notification to court.** THE STATE DEPARTMENT SHALL
17 PROVIDE NOTIFICATION TO THE COURT WITHIN SEVEN CALENDAR DAYS
18 AFTER A SUBSTANTIATED FINDING OF MISTREATMENT BY A PERSON
19 APPOINTED AS A CONSERVATOR OR GUARDIAN FOR AN AT-RISK ADULT IS
20 SUBSEQUENTLY ENTERED INTO CAPS.

21 (12) **Notification to DORA.** (a) THE STATE DEPARTMENT SHALL
22 PROVIDE NOTIFICATION TO THE DEPARTMENT OF REGULATORY AGENCIES
23 OR A REGULATOR WITHIN TEN CALENDAR DAYS AFTER A SUBSTANTIATED
24 FINDING OF MISTREATMENT BY A PROFESSIONAL REGULATED BY A
25 REGULATOR, AS THOSE TERMS ARE DEFINED IN SECTION 12-20-102 (13)
26 AND (14). THE NOTIFICATION MUST PROVIDE THE DEPARTMENT OF
27 REGULATORY AGENCIES OR A REGULATOR WITH INFORMATION

1 CONCERNING THE MISTREATMENT BY THE PROFESSIONAL, WHICH
2 INFORMATION MUST INCLUDE, AT A MINIMUM, THE PROFESSIONAL LICENSE
3 NUMBER OF THE PERSON SUBSTANTIATED IN A CASE OF MISTREATMENT,
4 THE DATE OF THE SUBSTANTIATED FINDING, THE NAME OF THE
5 MISTREATED AT-RISK ADULT, THE TYPE AND SEVERITY OF THE
6 MISTREATMENT, THE LOCATION OR RESIDENCE OF THE MISTREATED
7 AT-RISK ADULT, THE LOCATION WHERE THE MISTREATMENT OCCURRED,
8 AND THE COUNTY THAT INVESTIGATED THE REPORT OF MISTREATMENT.

9 (b) ANY INFORMATION THE STATE DEPARTMENT PROVIDES TO THE
10 DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR PURSUANT TO
11 SUBSECTION (12)(a) OF THIS SECTION IS CONFIDENTIAL, NOT SUBJECT TO
12 PART 2 OF ARTICLE 72 OF TITLE 24, AND MUST BE USED FOR PURPOSES OF
13 A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO SECTION
14 12-20-401. IF THE INFORMATION IS ADMITTED AS EVIDENCE DURING A
15 DISCIPLINARY HEARING HELD PURSUANT TO SECTION 12-20-403 OR USED
16 AS THE BASIS OF PUBLIC DISCIPLINE, THE INFORMATION MUST BE
17 DE-IDENTIFIED TO PROTECT THE PRIVACY OF THE AT-RISK ADULT.

18 (c) (I) THE NOTIFICATION PROCESS DESCRIBED IN THIS SUBSECTION
19 (12) MUST BE OPERATIONAL NO LATER THAN JANUARY 1, 2022.

20 (II) THIS SUBSECTION (12)(c) IS REPEALED, EFFECTIVE JANUARY 1,
21 2022.

22 **SECTION 5.** In Colorado Revised Statutes, 12-20-401, **add** (7)
23 as follows:

24 **12-20-401. Procedures for complaints concerning licensees,**
25 **certificate holders, and registrants - executive director authority -**
26 **rules.** (7) INFORMATION ABOUT A SUBSTANTIATED FINDING OF
27 MISTREATMENT OF AN AT-RISK ADULT OR THE APPEAL OF A FINDING THAT

1 THE DEPARTMENT OF HUMAN SERVICES SHARES WITH THE DEPARTMENT OR
2 A REGULATOR FOR THE PURPOSES OF A REGULATORY INVESTIGATION
3 CONDUCTED PURSUANT TO THIS SECTION IS CONFIDENTIAL AND MUST BE
4 DE-IDENTIFIED TO PROTECT THE PRIVACY OF THE AT-RISK ADULT.

5 **SECTION 6.** In Colorado Revised Statutes, 12-20-404, **add** (7)
6 as follows:

7 **12-20-404. Disciplinary actions - regulator powers -**
8 **disposition of fines - mistreatment of at-risk adult. (7) Mistreatment**
9 **of at-risk adult.** A LICENSEE, CERTIFICATE HOLDER, OR REGISTRANT
10 SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT
11 WHILE PERFORMING PROFESSIONAL DUTIES SHALL PROVIDE THE
12 LICENSEE'S, CERTIFICATE HOLDER'S, OR REGISTRANT'S PROFESSIONAL
13 LICENSE NUMBER TO COUNTY ADULT PROTECTIVE SERVICES, UPON
14 REQUEST.

15 **SECTION 7. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly; except
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V
19 of the state constitution against this act or an item, section, or part of this
20 act within such period, then the act, item, section, or part will not take
21 effect unless approved by the people at the general election to be held in
22 November 2022 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.