

CHAPTER 13

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 23-040

BY SENATOR(S) Fields, Bridges, Buckner, Cutter, Exum, Ginal, Gonzales, Kolker, Moreno, Priola, Rodriguez, Winter F., Zenzinger;

also REPRESENTATIVE(S) Young, Bacon, Bockenfeld, Boesenecker, Brown, deGruy Kennedy, Duran, English, Hamrick, Jodeh, Kipp, Lieder, Lindsay, Mabrey, Marshall, Michaelson Jenet, Parenti, Ricks, Story, Weinberg, Willford, Woodrow.

AN ACT

CONCERNING A REQUIREMENT THAT STAFFING AGENCIES PERFORM A CAPS CHECK WHEN PROVIDING EMPLOYEES WHO WILL WORK WITH AT-RISK ADULTS.

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

SECTION 1. In Colorado Revised Statutes, 26-3.1-111, **amend** (6)(a)(I), (6)(d)(I)(B), (7)(i), and (7)(j); and **add** (2)(c), (6)(a)(V), and (7)(k) as follows:

26-3.1-111. Access to CAPS - employment checks - conservatorship and guardianship checks - confidentiality - fees - rules - legislative declaration - definitions. (2) As used in this section, unless the context otherwise requires:

(c) "STAFFING AGENCY" MEANS AN INDIVIDUAL OR ORGANIZATION, INCLUDING ANY PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY LIMITED PARTNERSHIP, ASSOCIATION, TRUST, JOINT STOCK COMPANY, INSURANCE COMPANY, OR CORPORATION, WHETHER DOMESTIC OR FOREIGN, ENGAGED IN THE BUSINESS OF PROVIDING AND ASSIGNING WORKERS TO PLACEMENTS WITH EMPLOYERS DESCRIBED IN SUBSECTION (7) OF THIS SECTION. "STAFFING AGENCY" INCLUDES, BUT IS NOT LIMITED TO, SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES DEFINED IN SECTION 8-4-125 (1)(e).

(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; EXCEPT WHEN THE EMPLOYER IS HIRING OR CONTRACTING WITH AN EMPLOYEE PROVIDED BY A STAFFING AGENCY, IF THE

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

STAFFING AGENCY COMPLETED A CAPS CHECK AND PROVIDED THE RESULTS TO THE EMPLOYER PURSUANT TO SUBSECTION (6)(a)(V) OF THIS SECTION. 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 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 initiate the hiring process at the time of receiving the check but wants to hire the person at a subsequent time that is more than thirty days from receipt of the prior CAPS check results, the employer shall request a new CAPS check prior to hiring the person pursuant to state department rules.

(V) A STAFFING AGENCY SHALL REQUEST A CAPS CHECK FOR AN EMPLOYEE IT IS PLACING WITH AN EMPLOYER DESCRIBED IN SUBSECTION (7) OF THIS SECTION. THE STAFFING AGENCY SHALL PROVIDE THE EMPLOYER WITH THE RESULTS OF THE CAPS CHECK AND ANY SUBSEQUENT NOTIFICATIONS OF SUBSTANTIATED FINDINGS, AS DESCRIBED IN SUBSECTION (10) OF THIS SECTION, AGAINST THE EMPLOYEE, WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THE INFORMATION, FOR THE DURATION OF THE EMPLOYEE'S PLACEMENT WITH THE EMPLOYER.

(d)(I) Except as provided in subsection (6)(d)(II) of this section, an employer, or a person or entity conducting employee screening on behalf of the employer, is deemed to have violated subsection (6)(e) of this section if the employer, or a person or entity conducting employee screening on behalf of the employer:

(B) Releases information obtained pursuant to the CAPS check OR A SUBSEQUENT NOTIFICATION to any person OR ENTITY other than a person OR ENTITY directly involved in the employer's hiring process, EXCEPT AS REQUIRED BY SUBSECTION (6)(a)(V) OF THIS SECTION.

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

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

(j) The office of public guardianship pursuant to section 13-94-105 (6); AND

(k) STAFFING AGENCIES WHEN THEY ARE PLACING EMPLOYEES WITH AN EMPLOYER AS DESCRIBED IN SUBSECTIONS (7)(a) TO (7)(j) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 26-3.1-102, **amend** (7)(b)(VII) as follows:

26-3.1-102. Reporting requirements. (7) (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:

(VII) The disclosure is made to the at-risk adult who is the subject of the report, or if the at-risk adult is otherwise incompetent at the time of the request, to the guardian or guardian ad litem for the at-risk adult who is the subject of the report. The information disclosed pursuant to this subsection (7)(b)(VII) must not be disclosed until after the investigation is complete and must not include any identifying information related to the reporting party or any other appropriate persons. If the guardian is the substantiated perpetrator in a case of mistreatment of an at-risk adult, the disclosure must not be made without authorization by ~~the~~ A court for good cause UNLESS THE DISCLOSURE IS BEING MADE FOR THE PURPOSES OF THE GUARDIAN'S APPEAL PROCESS DESCRIBED IN SUBSECTION (7)(b)(V) OF THIS SECTION. If the court authorizes the release of information to a substantiated perpetrator, any protected or confidential information pursuant to federal or state law must not be disclosed.

SECTION 3. Effective date. This act takes effect January 1, 2024.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: March 10, 2023