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An Act

HOUSE BILL 21-1123

BY REPRESENTATIVE(S) Michaelson Jenet and Larson, Benavidez, Bernett, Bird, Carver, Exum, Froelich, Geitner, Gray, Hooton, Jackson, Jodeh, Kennedy, Lontine, McLachlan, Mullica, Pelton, Ransom, Ricks, Sirota, Sullivan, Titone, Valdez A., Van Winkle, Williams, Woodrow, Young, Garnett, Cutter, Gonzales-Gutierrez, Snyder;
also SENATOR(S) Fields and Smallwood, Danielson, Ginal, Kolker, Lee, Pettersen, Story, Winter, Garcia.

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

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

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

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.

(X) THE DISCLOSURE IS MADE PURSUANT TO SECTION 26-3.1-111 (12) TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS DEFINED IN SECTION 12-20-102 (14), WITHIN SUCH A HEALTH OVERSIGHT AGENCY; AND

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

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

26-3.1-103. Evaluations - investigations - training - rules.
(1.3) (a) Pursuant to state department rule, 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:

(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; ~~and~~

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

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

(1.4) UPON REQUEST OF THE COUNTY DEPARTMENT, ANY PERSON WHO HOLDS A HEALTH-CARE PROVIDER OR HEALTH-CARE OCCUPATION LICENSE ISSUED BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES AND, AS A RESULT OF THE

INVESTIGATION, IS SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT WHILE PERFORMING THE PERSON'S PROFESSIONAL DUTIES SHALL PROVIDE THE PERSON'S PROFESSIONAL LICENSE NUMBER TO THE COUNTY DEPARTMENT.

SECTION 3. In Colorado Revised Statutes, 26-3.1-108, **amend** (2)(f) and (2)(g); and **add** (2)(h) 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) must address the following:

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

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

(h) THE PROCESS TO SHARE INFORMATION ABOUT AN APPEAL, INCLUDING THE APPEAL OUTCOME WITH A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS DEFINED IN SECTION 12-20-102 (14), WITHIN SUCH A HEALTH OVERSIGHT AGENCY, IF THE HEALTH OVERSIGHT AGENCY OR ITS REGULATOR REQUESTS INFORMATION ABOUT AN APPEAL FOR THE PURPOSE OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO SECTION 12-20-401. APPEAL INFORMATION SHARED PURSUANT TO THIS SUBSECTION (2)(h) IS CONFIDENTIAL AND MUST BE USED ONLY FOR THE REGULATORY INVESTIGATION.

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

26-3.1-111. Access to CAPS - employment checks - conservatorship and guardianship checks - confidentiality - fees - rules - legislative declaration - definitions - repeal. (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 OR FROM PERSONS APPOINTED TO BE A CONSERVATOR OR GUARDIAN OF AN AT-RISK ADULT are vulnerable to mistreatment, including abuse, neglect, and exploitation. It is the intent of the general assembly to minimize the potential for employment of, OR APPOINTMENT AS CONSERVATORS OR GUARDIANS, 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 AND THE COURTS to request a CAPS check by the state department to determine if a person who will provide direct care to an at-risk adult OR WHO MAY BE APPOINTED AS A CONSERVATOR OR GUARDIAN FOR 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).

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

(b) **Conservatorship and guardianship CAPS checks.** BEGINNING JANUARY 1, 2022, THE STATE DEPARTMENT SHALL PROVIDE THE COURTS THE RESULTS OF A CAPS CHECK, UPON THE COURT'S REQUEST AND USING FORMS APPROVED BY THE STATE DEPARTMENT, TO DETERMINE IF A PERSON WHO MAY BE APPOINTED AS A CONSERVATOR OR GUARDIAN OF AN AT-RISK ADULT IS SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT. THIS SUBSECTION (3)(b) DOES NOT APPLY TO OFFICE OF PUBLIC GUARDIANSHIP EMPLOYEES REQUIRED TO UNDERGO A CAPS CHECK PURSUANT TO SECTIONS 13-94-105 (6) AND 26-3.1-111 (7)(j), OR ADULT PROTECTIVE SERVICES EMPLOYEES REQUIRED TO UNDERGO A CAPS CHECK PURSUANT TO SECTION 26-3.1-107 (2).

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

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

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

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

(g) THE PROCESS FOR THE STATE DEPARTMENT TO NOTIFY A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY WHEN A PROFESSIONAL REGULATED BY A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY, AS THOSE TERMS ARE DEFINED IN SECTION 12-20-102 (13) AND (14), IS SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT PURSUANT TO SUBSECTION (12) OF THIS SECTION; AND

(h) THE INFORMATION THAT WILL BE MADE AVAILABLE TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR, AS DEFINED IN SECTION 12-20-102 (14), WITHIN SUCH A HEALTH OVERSIGHT AGENCY, FOR THE PURPOSE OF CONDUCTING A REGULATORY INVESTIGATION PURSUANT TO SECTION 12-20-401.

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

(A) To a state agency or its contractor, upon the request of the agency or contractor, for purposes of an employer inspection or survey OR FOR PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED BY A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501 PURSUANT TO SECTION 12-20-401; or

~~(e.3) Any person who requests a CAPS check for a person who is not an employee or volunteer, 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; A PERSON commits a class 1 misdemeanor and shall be punished~~ PUNISHABLE pursuant to section 18-1.3-501 IF THE PERSON REQUESTS A CAPS CHECK FOR A PERSON WHO IS NOT:

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

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

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

(e.7) An employee who knowingly provides inaccurate information to ~~his or her~~ THE EMPLOYEE'S 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, OR 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 and shall be punished pursuant to section 18-1.3-501.

(8.5) (a) ON AND AFTER 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 USING FORMS APPROVED BY THE STATE DEPARTMENT TO DETERMINE IF THE PERSON IS SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT. THE COURT SHALL REQUIRE THE PETITIONER FOR CONSERVATORSHIP OR GUARDIANSHIP TO COMPLETE THE STATE-DEPARTMENT-APPROVED WRITTEN AUTHORIZATION PRIOR TO REQUESTING A CAPS CHECK. THE COURT SHALL PAY A FEE ESTABLISHED BY THE STATE DEPARTMENT FOR EACH CAPS CHECK AND MAY REQUIRE THE PETITIONER FOR CONSERVATORSHIP OR GUARDIANSHIP TO PAY THE COURT THE REQUIRED FEE FOR THE CAPS CHECK.

(b) WITHIN SEVEN CALENDAR DAYS AFTER THE DATE OF THE COURT'S

REQUEST, IF THE PERSON WHO MAY BE APPOINTED AS A CONSERVATOR OR GUARDIAN 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, WHICH INFORMATION MUST INCLUDE, AT A MINIMUM, THE DATE OF THE SUBSTANTIATED FINDING, THE TYPE AND SEVERITY OF THE MISTREATMENT, AND THE COUNTY THAT INVESTIGATED THE REPORT OF MISTREATMENT.

(c) THE STATE DEPARTMENT SHALL DISCLOSE TO THE COURT THAT THE PERSON SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT HAS THE RIGHT TO INITIATE AN APPEAL OF THE SUBSTANTIATED FINDING WITHIN THE TIME FRAME SET FORTH IN STATE DEPARTMENT RULES. IF THE APPEAL IS ACTIVE AT THE TIME THE STATE DEPARTMENT NOTIFIES THE COURT OF THE RESULTS OF THE CAPS CHECK, THE STATE DEPARTMENT SHALL INFORM THE COURT THAT SUCH APPEAL IS ACTIVE. THE STATE DEPARTMENT SHALL NOT PROVIDE THE COURT THE INFORMATION SPECIFIED IN SUBSECTION (8.5)(b) OF THIS SECTION IF THE FINDING ABOUT THE PERSON WAS EXPUNGED THROUGH A SUCCESSFUL APPEAL.

(d) THE COURT SHALL HAVE THE DISCRETION TO CONSIDER THE RESULTS OF THE CAPS CHECK AND DETERMINE THE WEIGHT OF THE INFORMATION AND ITS PROBATIVE VALUE.

(e) NOTHING IN THIS SUBSECTION (8.5) DELAYS OR PRECLUDES THE COURT'S APPOINTMENT OF AN EMERGENCY GUARDIAN OR CONSERVATOR OF AN AT-RISK ADULT PURSUANT TO SECTION 15-14-312 OR 15-14-412, REGARDLESS OF THE TIMING OF THE STATE DEPARTMENT'S NOTIFICATION OF THE CAPS CHECK RESULTS.

(9) Except for the costs incurred for the development and initial implementation of the program, direct and indirect costs incurred for the administrative appeals process for persons appealing claims of mistreatment of at-risk adults and the direct and indirect costs of conducting employer-requested OR COURT-REQUESTED CAPS checks pursuant to this section are funded through a fee assessed on an employer OR THE COURT for each CAPS check. The state department shall establish and collect the fee pursuant to parameters set forth in rule established by the state board. At a minimum, the state board's rules must include a provision requiring the state department to provide notice of the fee to interested persons and the maximum fee amount that the state department shall not exceed without the

express approval of the state board. The fee established must not exceed direct and indirect costs incurred for the administrative appeals process for persons appealing claims of mistreatment of at-risk adults and the direct and indirect costs of conducting employer-requested OR COURT-REQUESTED CAPS checks pursuant to this section. Fees collected for CAPS checks shall be transferred to the state treasurer and credited to the records and reports fund created in section 19-1-307 (2.5).

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

(11) **Notification to court.** THE STATE DEPARTMENT SHALL PROVIDE NOTIFICATION TO THE COURT WITHIN SEVEN CALENDAR DAYS AFTER A SUBSTANTIATED FINDING OF MISTREATMENT BY A PERSON APPOINTED AS A CONSERVATOR OR GUARDIAN FOR AN AT-RISK ADULT IS SUBSEQUENTLY ENTERED INTO CAPS. THE STATE DEPARTMENT SHALL PROVIDE THE COURT WITH INFORMATION CONCERNING THE MISTREATMENT, WHICH INFORMATION MUST INCLUDE, AT A MINIMUM, THE DATE OF THE SUBSTANTIATED FINDING, THE TYPE AND SEVERITY OF THE MISTREATMENT, AND THE COUNTY THAT INVESTIGATED THE REPORT OF MISTREATMENT. THE STATE DEPARTMENT SHALL DISCLOSE TO THE COURT THE TIME FRAME BY WHICH AN APPEAL MAY BE INITIATED BY THE PERSON SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT.

(12) **Notification to DORA.** (a) THE STATE DEPARTMENT SHALL PROVIDE NOTIFICATION TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY WITHIN TEN CALENDAR DAYS AFTER A SUBSTANTIATED FINDING OF MISTREATMENT BY A PROFESSIONAL REGULATED BY A REGULATOR, AS THOSE TERMS ARE DEFINED IN SECTION 12-20-102 (13) AND (14). THE NOTIFICATION MUST PROVIDE A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY WITH INFORMATION CONCERNING THE MISTREATMENT BY THE PROFESSIONAL, WHICH INFORMATION MUST INCLUDE, AT A MINIMUM, THE PROFESSIONAL LICENSE NUMBER OF THE PERSON SUBSTANTIATED IN A CASE OF MISTREATMENT, THE DATE OF THE SUBSTANTIATED FINDING, THE NAME OF THE MISTREATED AT-RISK ADULT, THE TYPE AND SEVERITY OF THE MISTREATMENT, THE

LOCATION OR RESIDENCE OF THE MISTREATED AT-RISK ADULT, THE LOCATION WHERE THE MISTREATMENT OCCURRED, AND THE COUNTY THAT INVESTIGATED THE REPORT OF MISTREATMENT. THE STATE DEPARTMENT SHALL DISCLOSE TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES, OR A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY, THAT THE PERSON SUBSTANTIATED IN A CASE OF MISTREATMENT OF AN AT-RISK ADULT HAS THE RIGHT TO INITIATE AN APPEAL OF THE SUBSTANTIATED FINDING WITHIN THE TIME FRAME SET FORTH IN STATE DEPARTMENT RULES.

(b) ANY INFORMATION THE STATE DEPARTMENT PROVIDES TO A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY PURSUANT TO SUBSECTION (12)(a) OF THIS SECTION IS CONFIDENTIAL, NOT SUBJECT TO PART 2 OF ARTICLE 72 OF TITLE 24, AND MUST BE USED FOR PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO SECTION 12-20-401. IF THE INFORMATION IS ADMITTED AS EVIDENCE DURING A DISCIPLINARY HEARING HELD PURSUANT TO SECTION 12-20-403 OR USED AS THE BASIS OF PUBLIC DISCIPLINE, THE INFORMATION MUST BE DE-IDENTIFIED TO PROTECT THE PRIVACY OF THE AT-RISK ADULT. A HEALTH OVERSIGHT AGENCY, AS DEFINED IN 42 CFR 164.501, WITHIN THE DEPARTMENT OF REGULATORY AGENCIES OR A REGULATOR WITHIN SUCH A HEALTH OVERSIGHT AGENCY SHALL HAVE THE DISCRETION TO CONSIDER THE RESULTS OF THE CAPS CHECK AND DETERMINE THE WEIGHT OF THE INFORMATION AND ITS PROBATIVE VALUE.

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

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

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

12-20-401. Procedures for complaints concerning licensees, certificate holders, and registrants - executive director authority - rules. (7) INFORMATION ABOUT A SUBSTANTIATED FINDING OF MISTREATMENT OF AN AT-RISK ADULT OR THE APPEAL OF A FINDING THAT THE DEPARTMENT OF HUMAN SERVICES SHARES WITH THE DEPARTMENT OR

A REGULATOR FOR THE PURPOSES OF A REGULATORY INVESTIGATION CONDUCTED PURSUANT TO THIS SECTION IS CONFIDENTIAL AND MUST BE DE-IDENTIFIED TO PROTECT THE PRIVACY OF THE AT-RISK ADULT.

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

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

SECTION 7. 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; 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 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO