



KNOW YOUR RIGHTS: CIVIL LIABILITY LIMITATIONS APPLICABLE TO SERVICE PROVIDERS FOR THE INTELLECTUALLY AND DEVELOPMENTALLY DISABLED

When service providers assist persons with intellectual and developmental disabilities to ensure they experience community integration, participation, and self-direction acceptable to the general public, sometimes despite trying to do everything right, things can and do go wrong. The hope is that when something does go wrong it is resolved among the parties, but what happens when providers find themselves being threatened by a lawsuit? When faced with unsavory accusations and potential for litigation, a provider's understanding of their rights under the Civil Liability Statute for Intellectual and Developmental Service Providers, C.R.S. § 13-21-117.5 ("the Statute") can make all the difference.

It is important for providers for such persons to know their rights and the scope of existent protections to shield them from exposure to civil liability. Colorado has repeatedly emphasized the high value it places on the rights of persons with intellectual and developmental disabilities so they may receive services and support to enable them to live in integrated community settings and to participate fully in community life. But effectuating the goal of community integration and autonomy for those with intellectual and developmental disabilities carries the increased risk that providers will be exposed to liability. Colorado's legislature, recognizing this exposure could make the provision of essential services prohibitively expensive and wanting to mitigate the risk of liability to the extent reasonably possible, enacted the Statute, which recently received some important amendments.

The Statute broadly defined "provider" to include any community-centered board, service agency, host home, or family provider, and the directors, officers, and employees of these entities, who provide services or support to persons with developmental disabilities. The Statute also limits a provider's exposure to liability by imposing specific requirements and limitations on actions against a provider, four of which are notable.

First, before suit can be brought, the person claiming to have suffered an injury or grievance is required to engage in administrative exhaustion of all applicable dispute resolution procedures with the Department of Human Services, Case Management Agency, or Community-Centered Board within

one year after the discovery of the injury or grievance, and failure to comply bars an action from being brought against the provider. Notably, nothing in the Statute prohibits providers from developing their own internal dispute resolution procedures, so long as they are in compliance with the Department of Human Services regulations.

Second, after suit is filed, the provider can dispute the claim at any point, suspending the discovery process (except for limited purposes), and the plaintiff must demonstrate liability by a preponderance of evidence on written motion. The Statute thus affords the prospect of early dismissal of a frivolous claim to alleviate the cost of defending against it.

Third, a provider is generally not liable for damages arising from a failure to warn or protect against violent, disorderly, or harassing behavior of a person with a developmental disability or the failure to predict or prevent such behavior, absent specific circumstances involving a specific state or federal statute or the provider's knowledge of such behavior as communicated by the person with the developmental disability.

Fourth, the Colorado Consumer Protection Act, which normally exposes persons who engage in an alleged deceptive trade practice to the unsavory prospect of treble damages and attorney fees, does not apply to providers for persons with intellectual and developmental disabilities.

Civil liability for providers for the intellectually or developmentally disabled can be complicated; however, a provider's understanding of the potential scope of that liability can go a long way towards preventing litigation and protecting them should the need arise.

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