Colorado CARE Act v5.7

COLORADO CARE ACT — CAREGIVER ACCOMMODATIONS AND RIGHTS ENHANCEMENT ACT

Version 5.7 — October 2026 | Phase 2 of the Colorado Care Firewall (following the FLEX Act, 2027) | Draft for sponsor conversations; not introduced legislation

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HOUSE/SENATE BILL __-___

BY REPRESENTATIVE(S) _____

ALSO SENATOR(S) _____

CONCERNING THE COLORADO CAREGIVER ACCOMMODATIONS AND RIGHTS

ENHANCEMENT ACT, AND, IN CONNECTION THEREWITH, ADDING "CAREGIVER STATUS"

AS A STANDALONE PROTECTED CLASS UNDER CADA (C.R.S. § 24-34-402);

ESTABLISHING A STANDALONE REASONABLE ACCOMMODATION FRAMEWORK

(C.R.S. § 24-34-402.5); ESTABLISHING SAFEGUARDS AGAINST CREATIVE

DISMISSAL AND CONSTRUCTIVE DISCHARGE; COORDINATING WITH HCPF;

PROVIDING GRADUATED ENFORCEMENT WITH MANDATORY ATTORNEY FEES;

AND IMPLEMENTING THROUGH THE COLORADO CIVIL RIGHTS DIVISION.

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

SECTION 1. LEGISLATIVE FINDINGS AND DECLARATIONS

The General Assembly finds and declares that:

(1) ECONOMIC IMPACT AND THE INVISIBLE SUBSIDY

(a) Family caregivers in Colorado provide an estimated $16 billion annually in unpaid care to family members with disabilities, chronic illnesses, and age-related conditions. This unpaid labor constitutes a substantial hidden subsidy that supports the state's healthcare and long-term care systems and represents a systematic cost shift from public and private healthcare systems onto individual families, disproportionately affecting women, working-class households, and multigenerational families.

(b) Caregiving-related turnover, absenteeism, and lost productivity cost Colorado employers an estimated $564 million in 2015, a figure projected to approach $1 billion by 2030. Turnover is the largest of these costs and the one that reasonable accommodations most clearly reduce.

(c) The General Assembly further finds that existing caregiver data collection instruments systematically define professional caregiving through formal credentialing and occupational classification, thereby excluding individuals whose caregiving expertise was developed through lived experience, long-term family caregiving responsibility, and community-based knowledge. This uncredentialed professional cohort — whose work is of equivalent complexity and duration to formally credentialed caregiving — constitutes a material gap in Colorado's understanding of its caregiver workforce and is a specific subject of this Act's research and policy purposes.

(2) MEDICAID AND LONG-TERM CARE COSTS

(a) Family caregiving reduces nursing facility entry, and home- and community-based care costs less than institutional care. The Colorado Department of Health Care Policy and Financing's 2023 report on transitions from institutional settings found that nursing facility care cost about $40,712 more per person per year than home-based care for members who transitioned. Retaining employed caregivers could preserve their capacity to provide care at home and delay costly institutional placements.

(b) The General Assembly finds that the effect of workplace accommodations on caregiver retention and on institutional placement has not been measured in Colorado, and that measuring it would inform the state's long-term care policy.

(c) The Colorado Civil Rights Division shall implement this Act through its existing complaint, investigation, and enforcement procedures.

(d) Colorado faces compounding fiscal pressure on its Medicaid program from both state and federal sources. Colorado Medicaid overspent its budget by about $158 million in fiscal year 2025-26, and the Office of State Planning and Budgeting projects an overspend of about $443 million in fiscal year 2026-27. Legislative Council Staff estimates that federal legislation enacted in 2025 will reduce Colorado's provider fee revenue by $575 million and federal funds by between $900 million and $2.5 billion over five years as the provider fee phases down. Retaining employed family caregivers is one means of sustaining lower-cost home-based care during this period of fiscal pressure.

(3) WORKFORCE STABILITY AND EMPLOYER INTERESTS

(a) Employer interests are directly served by caregiver retention. Research consistently demonstrates that replacing an employee costs an estimated 21 percent of annual compensation on average, and between 50 and 200 percent for highly paid positions. Caregiver accommodations that prevent turnover generate documented return on investment and protect institutional knowledge, organizational continuity, and workforce stability.

(b) The majority of reasonable caregiver accommodations — including flexible scheduling, modified start and end times, and temporary remote work arrangements — impose minimal cost on employers. The interactive process required by this Act ensures that accommodation decisions are made collaboratively and that undue hardship claims are evaluated in good faith against documented operational needs.

(4) THE ABSENCE OF LEGAL PROTECTION AND CREATIVE DISMISSAL

(a) Under current federal and state law, family caregivers have no enforceable right to workplace accommodation. The federal Americans with Disabilities Act association provision prohibits discrimination based on association with a person with a disability but does not require accommodation. The federal Family and Medical Leave Act provides unpaid leave for qualifying conditions but does not protect the ongoing workplace flexibility caregivers require. No existing Colorado statute fills this gap.

(b) The absence of legal protection has enabled a practice the General Assembly designates "creative dismissal": the systematic use of facially neutral employment actions — including revoking remote work arrangements, eliminating flexible scheduling, reassigning duties, increasing performance monitoring, or applying pretextual disciplinary standards — to coerce the resignation of employees whose caregiving responsibilities are known to the employer. Creative dismissal is functionally constructive discharge executed through accumulated administrative pressure rather than a single adverse action. Creative dismissal may be effectuated through automated decision-making technology, including algorithmic performance monitoring systems, AI-assisted scheduling tools, and automated attendance tracking systems, that generate documentation of performance deficiencies without meaningful human review.

(c) The General Assembly finds that creative dismissal disproportionately affects employees in mid-career, employees with long tenure, and employees approaching retirement eligibility. This Act is designed to interrupt the creative dismissal pattern by requiring documented engagement before accommodation changes and by establishing burden-shifting protections when employees separate within 180 days of an accommodation request or denial.

(5) THE FEDERAL PREEMPTION GAP AND STATE RESPONSIBILITY

(a) Federal legislation enacted in 2025 requires Colorado and other states to implement Medicaid community engagement and work requirements effective January 1, 2027, applicable to low-income adults ages nineteen through sixty-four who are not enrolled in long-term services and supports programs.

(b) This federal exemption does not extend to the substantial population of employed Coloradans providing care to aging family members, spouses, or multigenerational household members whose conditions — including dementia, age-related functional decline, and progressive chronic illness — may not meet the federal disability classification threshold.

(c) The General Assembly finds that Colorado has an independent state interest in establishing workplace protections for employed family caregivers that exceed the federal floor.

(d) The Colorado Department of Health Care Policy and Financing estimates that about 378,500 Colorado Medicaid members will be subject to federal community engagement requirements beginning January 1, 2027, before exemptions are applied.

(6) STRUCTURAL FIT WITH COLORADO ANTI-DISCRIMINATION

ARCHITECTURE

(a) The General Assembly finds that caregiver status meets the legislative criteria for protection under the Colorado Anti-Discrimination Act. State legislatures possess broad authority under state police powers to prohibit employment discrimination against categories defined by conduct-adjacent status, social role, association, or characteristic that is not constitutionally immutable. Caregiver status protections have been enacted in multiple jurisdictions.

(b) The General Assembly further finds that the sex stereotyping doctrine established under federal employment law provides an independent basis for caregiver status protection in Colorado.

(c) The General Assembly finds that the Colorado Civil Rights Division is the appropriate enforcement body for anti-discrimination and retaliation claims arising under this Act.

(7) THE LEAVE-ELIGIBILITY GAP AND PUBLIC SECTOR EXPOSURE

(a) The General Assembly finds that an employee may simultaneously fail to qualify for leave-based protections under the federal Family and Medical Leave Act or the Colorado Family and Medical Leave Insurance (FAMLI) program while providing caregiving responsibilities that meet the definition of caregiver status under this Act.

(b) Local government employers, including school districts, municipalities, and counties, may opt out of the state FAMLI program under section 8-13.3-522, C.R.S. Employees of opting-out local governments who self-elect individual FAMLI coverage under section 8-13.3-514, C.R.S. face multi-year premium commitments without an employer contribution, and in the absence of opt-out election, may have no job-protected leave at all.

SECTION 2. DEFINITIONS

C.R.S. § 24-34-401 is amended by the addition of the following subsections:

§ 24-34-401(2.5) — “Caregiver Status”

“Caregiver status” means the status of an individual who provides ongoing care, supervision, or support to a family member with a disability, serious health condition, chronic illness, or age-related condition that requires regular assistance with activities of daily living, medical management, or personal care. “Caregiver status” includes:

(a) Care provided to a spouse, domestic partner, child, parent, sibling, grandparent, grandchild, or other individual with whom the employee has a significant personal relationship and for whom the employee has assumed primary or co-primary caregiving responsibility;

(b) Care provided in a multigenerational household arrangement where two or more generations with caregiving needs reside together;

(c) Caregiving responsibilities that have changed in nature, frequency, or intensity due to changes in the care recipient’s condition;

(d) Caregiving responsibilities carried out by individuals whose expertise in caregiving was developed through lived experience and sustained practice rather than through formal credentialing or occupational training.

“Caregiver status” does not require formal documentation, credentialing, or prior disclosure to the employer unless such documentation is requested through the interactive process described in Section 4 of this Act.

§ 24-34-401(7.5) — “Creative Dismissal”

“Creative dismissal” means a pattern of facially neutral employment actions taken by an employer with knowledge of an employee’s caregiver status that, individually or cumulatively, create working conditions so adverse that a reasonable person in the employee’s position would feel compelled to resign.

§ 24-34-401(8.5) — “Interactive Process”

“Interactive process” means a good-faith, documented, bilateral dialogue between an employer and an employee with caregiver status for the purpose of identifying a reasonable accommodation. The interactive process shall: (i) be initiated by written acknowledgment within 5 business days of an accommodation request; (ii) include substantive communication identifying specific operational constraints; (iii) include written documentation of each option considered and reason for rejection; and (iv) produce a written final determination within 21 calendar days. Failure to comply with these requirements forecloses the undue hardship defense.

§ 24-34-401(9.5) — “Reasonable Accommodation (Caregiver)”

“Reasonable accommodation” as applied to an employee with caregiver status means any schedule-based or location-based modification or adjustment to a job structure, work schedule, or work location that enables the employee to perform the essential functions of the employee’s position while meeting ongoing caregiving responsibilities, and that does not impose a bona fide operational necessity on the employer’s operations. The “bona fide operational necessity” standard is evaluated with reference to operational disruption — not by reference to the “significant difficulty or expense” standard applicable under section 24-34-402 and not to be satisfied by administrative convenience or generalized attendance preferences. Reasonable accommodations include but are not limited to: (a) flexible start and end times; (b) compressed workweeks; (c) remote or hybrid work arrangements; (d) temporary schedule modifications; (e) shift adjustments to align with care recipient medical schedules; (f) modified break schedules; (g) leave coordinated with FAMLI or FMLA entitlements.

SECTION 3. ADDITION OF CAREGIVER STATUS AS PROTECTED CLASS

C.R.S. § 24-34-402(1)(a) is amended to add the following after existing enumerated protected classes:

“…or caregiver status as defined in section 24-34-401(2.5).”

C.R.S. § 24-34-402(1) is further amended to add the following subsection:

(h) It shall be a discriminatory or unfair employment practice for an employer to refuse to engage in the interactive process with an employee with caregiver status who has requested a reasonable accommodation, or to take any adverse employment action against an employee in whole or in part because of the employee’s caregiver status, including any action constituting creative dismissal.

SECTION 4. REASONABLE ACCOMMODATIONS FRAMEWORK (C.R.S. § 24-34-402.5)

§ 24-34-402.5(1) — Legislative Purpose

The General Assembly establishes this section as a standalone framework for reasonable workplace accommodation for employees with caregiver status. This section creates an affirmative accommodation right independent of and in addition to the anti-discrimination protections established under section 24-34-402.

§ 24-34-402.5(3) — Employer Obligation — Interactive Process

(a) Upon receiving a request for a caregiving accommodation, an employer shall initiate the interactive process by providing written acknowledgment within five (5) business days, as provided in section 24-34-401(8.5), and shall issue a written final determination within twenty-one (21) calendar days of the request.

(b) The employer shall engage in the interactive process in good faith, shall consider all caregiving accommodation options before denying a request, and shall provide the employee with a written explanation of any denial.

(c) An employer who previously granted a remote work arrangement, flexible schedule, or other caregiving accommodation may not revoke that accommodation without first engaging in the interactive process and documenting a bona fide operational necessity requiring the change.

§ 24-34-402.5(5) — Undue Hardship Defense

(a) The bona fide operational necessity standard under this section is evaluated with reference to the operational disruption caused by the specific accommodation requested, not by reference to the ‘significant difficulty or expense’ standard applicable under section 24-34-402.

(c) The bona fide operational necessity defense is not available to an employer who failed to engage in the interactive process in good faith before denying the accommodation.

§ 24-34-402.5(8) — Creative Dismissal and Burden Shifting

(a) Where a family caregiver resigns or is constructively discharged within one hundred eighty (180) days of a caregiving accommodation request, an accommodation denial, or a revocation of a previously granted accommodation, there is a rebuttable presumption that the separation constitutes creative dismissal. The employer bears the burden of demonstrating by clear and convincing evidence that the separation was voluntary and unrelated to the employee’s caregiver status.

§ 24-34-402.5(10) — Relation to Other Laws — Statutory Firewall

The rights, remedies, and obligations established under this section are independent of, cumulative with, and in addition to any rights, remedies, or obligations established under section 24-34-402 or section 24-34-402.3 of this title. Nothing in this section

shall be construed to limit, replace, or diminish any right provided under section 24-34-402 or section 24-34-402.3, nor shall an individual's coverage under this section preclude such individual from exercising any right under those sections. Compliance with this section does not relieve a person of any obligation under section 24-34-402 or section 24-34-402.3.

SECTION 5. GRADUATED ENFORCEMENT FRAMEWORK

§ 24-34-306.5(1) — Tier 1: Education and Cure (40–50% of complaints)

Upon receiving a complaint, the Colorado Civil Rights Division shall first determine whether the employer was unaware of the Act's requirements. Where a good faith lack of knowledge is demonstrated, the Division shall provide educational materials and a ninety (90) day cure period without penalty.

§ 24-34-306.5(2) — Tier 2: Corrective Action (30–40% of complaints)

Where a violation is not resolved through the Tier 1 process, the Division shall order corrective action including mandatory training, policy revision, and civil penalties of $2,500 to $7,500 payable to the Colorado Caregiver Education and Compliance Fund.

§ 24-34-306.5(3) — Tier 3: Full Enforcement (10–15% of complaints)

Where a violation is willful, repeated, or involves a finding of creative dismissal, the Division shall impose civil penalties of $15,000 to $50,000, order reinstatement with accommodations where appropriate, and refer the matter for private right of action. A prevailing employee shall be entitled to reasonable attorney fees and costs as a mandatory remedy; this award is not subject to reduction based on the damages amount recovered.

SECTION 9. COORDINATION WITH EXISTING FRAMEWORKS

(1) This Act supplements and does not replace or limit rights and remedies available under the federal Family and Medical Leave Act, the Colorado Healthy Families and Workplaces Act, the Colorado Family and Medical Leave Insurance (FAMLI) program, or any other applicable federal or state law.

(2) Where an employee's caregiving need qualifies for leave under FAMLI or the federal FMLA, the interactive process under this Act shall be coordinated with the applicable leave process.

§ 9(5) — Independence from Leave Eligibility

(a) An employer's duty to engage in the interactive process and to provide reasonable accommodations under this Act applies independently of an employee's eligibility for leave under the federal Family and Medical Leave Act or the Colorado Family and Medical Leave Insurance program.

(b) This independence applies without limitation to circumstances in which: (i) a local government employer has declined participation in FAMLI under section 8-13.3-522, C.R.S.; (ii) an employee has self-elected individual coverage under FAMLI under section 8-13.3-514, C.R.S.; or (iii) an employee does not meet the tenure or hours-worked thresholds for coverage under the federal Family and Medical Leave Act.

(c) Nothing in this subsection shall be construed to create a new leave entitlement. This subsection clarifies only that the accommodation and interactive-process rights established by this Act are not contingent on the availability, election, or applicability of leave under other statutes.

SECTION 11. APPLICABILITY AND EFFECTIVE DATE

(1) This Act applies to all employers in the State of Colorado with fifteen (15) or more employees. Employers with fewer than fifteen (15) employees are subject to education and voluntary compliance provisions but are not subject to civil penalties until July 1, 2029.

(2) This Act takes effect July 1, 2028.

SECTION 12. SAFETY CLAUSE

The General Assembly hereby finds, determines, and declares that this Act is necessary for the immediate preservation of the public peace, health, and safety.

PREPARED BY:

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LEGAL REVIEW STATUS:

Disability Justice (Jack Johnson, Aug 6, 2026): Sections 1(7) and 9(5) — no technical barriers

Livelihood Law LLC (Rachel Ellis, Aug 17, 2026): Section 9(5) — no FAMLI/FMLA preemption

DRAFT STATUS: Draft for sponsor conversations. Phase 2 of a two-phase plan; not the 2027 request.

Current Version: v5.7 — October 2026 | Effective Date if Enacted: July 1, 2028

v5.7 changes from v5.6 (Oct. 12, 2026): § 1(2)(d) provider-fee finding corrected to the Legislative Council Staff estimate over five years (v5.6 attributed it to HCPF and stated it as an annual figure); § 1(2)(c) and title no longer state that no General Fund appropriation is required; § 1(2)(a) “substantially” removed.