

# Housing Crisis for Coloradans with Disabilities: Know Your Rights and Resources

Thurs., June 22, 2023

# Agenda

- Purpose of webinar and introductions
- Rights in housing
  - Community Housing
  - Regional Centers
  - Group Homes
  - Host Homes
    - Family Host Homes
- Resources in housing
- Legislative updates related to Housing

# Developmental Disabilities Assistance and Bill of Rights Act of 2000 – Partner Agencies

- **State Councils on Developmental Disabilities:** work to address identified needs by conducting advocacy, systems change, and capacity building efforts that promote self-determination, integration, and inclusion. [Colorado Developmental Disabilities Council](#)
- **State Protection & Advocacy Systems (P&As):** dedicated to the ongoing fight for the personal and civil rights of individuals with developmental disabilities. [Disability Law Colorado](#)
- **University Centers for Excellence in Developmental Disabilities Education, Research & Service (UCEDDs):** are affiliated with universities, allowing them to serve as liaisons between academia and the community. [JFK Partners](#)

# Speakers

- Kelly McCullough, JD, Director of Legal Services, Disability Law Colorado
- Renee Payne, JD, Community Integration Specialist, Disability Law Colorado
- Jennifer Penhale, Parent and Colorado Developmental Disabilities Council Legislative and Public Policy Committee Co-Chair
- Jack Johnson, Public Policy Liaison, Disability Law Colorado

# Rights in Community Housing-The Laws

- **Fair Housing Act (FHA)** includes federal protections for people with disabilities against discrimination in Housing.
- **Colorado Anti-Discrimination Act (CADA)** includes state protections for people with disabilities against discrimination in Housing
- **Section 504 of the Rehabilitation Act** offers additional protections for people with disabilities in government owned housing
- **The Americans with Disabilities Act (ADA)** offers some protections in areas of housing that are open to the public

# Fair Housing Act Exceptions

- Religious Organizations
- Private Clubs
- Quad or fewer *if* owner lives there (FHA)
- Single family homes
  - If no realtor, <3 homes owned & fair advertising (FHA)
- Some senior housing

# Rights in Community Housing-Prospective Renters

- Cannot discriminate on the basis of disability in renting
- Housing provider must offer reasonable accommodations to applicants in the rental process
- Newer Colorado Law (2020)-cannot discriminate on basis of source of income C.R.S. 24-34-502
- Newer Colorado Law (2019)-cannot consider rental history or credit history beyond 7 years, and cannot consider any criminal history more than 5 years old (some exceptions) C.R.S. 38

# What Constitutes Discrimination?

- Refusing to show, rent, lease or sell
- Denying availability
- Unequal terms, conditions or privileges
- Different rents or security deposits
- Different rules for eviction or non-renewal
- Harassment
- Unequal maintenance services
- Higher interest rates or predatory terms
- Discriminatory advertising
- Blockbusting, redlining, “making unavailable”
- Denying reasonable accommodations or modifications
- Retaliation

# Reasonable Accommodations

- A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- Examples:
  - Creating an exception to the first-come first-serve parking policy
  - Allowing a tenant to pay rent by mail
  - Allowing an assistance animal in a “no pets” building

## Reasonable Accommodations cont.

- Is it practical and feasible?
  - Is it an undue administrative or financial burden?
  - Is it a fundamental alteration of the program?
  - Is it a direct threat?
  - Is it related to the disability?
- 
- Housing providers cannot require people with disabilities to pay extra fees for deposits in order to have reasonable accommodation requests granted.

# Reasonable Modifications

A structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.

- Examples:
  - Widening doorways
  - Installing grab bars
  - Lowering kitchen sink
  - Adding a ramp

## Reasonable Modifications Cont.

- The FHA requires the tenant to pay
- However, landlords that receive federal funds *may* be required to pay for modifications pursuant to §504
- Tenant also would have to pay to restore the modification to how it was if it could effect the use an enjoyment of future tenant.
- Exterior modifications do not have to be restored.

# What can Housing Provider Ask?

- Whether the requesting party has a disability as defined by federal and state fair housing laws (medical professional or Disability determination)
- Whether the requesting party needs the accommodation he or she has requested. (can be “person in the know”)
- Landlord must Respond Promptly, without undue delay
- If need for accommodation is apparent-cannot ask for documentation

# Regional Centers, Group Homes, Host Homes

## Overview I

- Accessed through a Medicaid Home and Community-Based Services Developmental Disabilities (HCBS-DD) waiver
- Community Centered Boards (CCBs) administer the HCBS-DD waiver
  - CCBs are social services organizations
  - Approved by state government to determine individuals' eligibility for the waiver
  - Also currently provide case management services
- CCBs by county: <https://hcpf.colorado.gov/community-centered-boards>

# Regional Centers, Group Homes, Host Homes

## Overview II

- Level of care requirement for HCBS-DD waiver: supports or services 24 hours per day
- Specific services and supports available to the person with intellectual and developmental disabilities (I/DD) are based on their Individualized Plan (IP)
- Interdisciplinary team at the CCB or Regional Center creates IP with the person with I/DD
- IP must be reviewed at least annually

# Regional Centers – Introduction

- Facility for people with I/DD
- Operated by the Colorado Department of Human Services
- 3 Regional Centers
  - Grand Junction
  - Pueblo
  - Wheat Ridge
- Each Regional Center operates multiple group homes

# Group Homes – Introduction

- Group living arrangement for 4-8 people with I/DD
- Must be integrated into the community
- Operated by Program Approved Service Agencies (PASAs)
- PASAs contract with the CCBs to provide the services and supports in the individual's IP

# Host Homes – Introduction

- Type of shared living arrangement for people with I/DD
- People with I/DD and people without disabilities choose to live together
- Medicaid pays the people without disabilities (the hosts)
- A maximum of 3 people with I/DD can live in a single host home
- People with I/DD receive services in the community, outside of their host home

# Rights in All Settings

Regional Centers, Group Homes, & Host Homes

All people with I/DD living in these settings have the right to:

- The same legal rights as a person without I/DD
  - Exception: if rights changed by a court, such as through guardianship
- Freedom from discrimination based on their disability or their status as a recipient of HCBS-DD waiver services
- Freedom from corporal punishment, mistreatment, exploitation, neglect, abuse, and seclusion
- Freedom of religious belief, practice, and worship
- Freedom from censorship of mail and packages

# Rights in All Settings – Continued I

## Regional Centers, Group Homes, & Host Homes

All people with I/DD living in these settings have the right to:

- An Individualized Plan (IP)
- Preventative medical and dental care and treatment
- Freedom from unnecessary or excessive medication
  - Includes having prescriptions and medications reviewed at least annually
- Humane physical environment
- Support from qualified staff and a sufficient number of staff to meet their needs
- Confidentiality of their records
  - Duty of CCB to maintain this confidentiality

# Rights in All Settings – Continued II

## Regional Centers, Group Homes, & Host Homes

All people with I/DD living in these settings have the right to:

- Communicate freely and privately with whom they choose
  - Includes in-person visits and access to telephones
- Choose if they want to work and get paid for that work
- Personal property, including clothing and money
  - Person with I/DD may choose to have the service provider hold their money in a trust
- Vote and receive assistance voting, if necessary
- Form a committee to influence service providers' policies
- Notification of changes to service providers' rules

# Rights Regarding Suspension of Services

## Regional Centers, Group Homes, & Host Homes

- Services may only be temporarily suspended if the person with I/DD is a serious physical threat to themselves or others and suspending services would protect them or others.
- Services cannot be suspended if suspension would put the person at risk of homelessness.
- Even while services are suspended, the person with I/DD maintains a right to:
  - case management
  - services that will support them in regaining the suspended service

# Procedural Rights

## Regional Centers, Group Homes, & Host Homes

- Service providers must provide 15-day notification when:
  - Person with I/DD is not eligible for services
  - Person's services are terminated or temporarily suspended
  - Services in IP are reduced or denied
- Service providers must:
  - Have a grievance policy and
  - Give the policy to people with I/DD when they are admitted to these settings and when there are changes to the policy

# Host Homes – Residents' Rights

## **Host home residents have the right to:**

- Manage their own money and possessions
- Have their own bedroom, unless they choose to share with a roommate
- Have their own key to their host home
- Have a lock on their bedroom and bathroom doors
- Access to the kitchen and the common areas of the house
- Access to food at all times
- Choice of when, where, and what they want to eat

# Host Homes – Limitation on Residents' Rights

**A resident's right(s) may only be temporarily suspended if**

- **they were to harm themselves or others and**
- **the right is suspended by a qualified professional in consultation with the resident's interdisciplinary team.**

During the rights suspension process, the resident has the right to:

- Notification before their rights are suspended
- Review of the proposed suspension by the Community-Centered Board's Human Rights Committee
- Provide information to the Human Rights Committee

# Host Homes – Procedural Rights

The agency must provide:

- 15-day notification prior to any proposed changes with a resident's host home placement
- Notification of the resident's right to appeal any proposed changes through the agency's grievance procedure
- Annual notification of the agency's grievance procedure
- An opportunity for residents to participate in the agency's consumer satisfaction survey, which must occur at least every 2 years

# CDDC Stance

The Colorado Developmental Disabilities Council has been a staunch advocate for Coloradans with I/DD securing integrated housing within the community.

The Council believes that a person's home is their sanctuary where there is:

- Control over where and whom one lives;
- Control over the services one receives;
- Control over the routines of daily life

## CDDC Stance cont.

- It is the position of the CDDC that best practice in accomplishing integrated housing outcomes for people with I/DD which assures supports necessary for safety and a good life, within typical community housing settings and control over what supports are provided and who provides them.
- It is also our position that the crisis in housing for people with I/DD demands action and that public housing authorities and private community development entities work together with disability advocates to increase accessible, affordable and supportive housing.

## CDDC Stance cont.

- Finally, it is the position of the CDDC that the creation of affordable housing should not go forward with a reliance on models of housing which, by their nature, are inconsistent with the rights of people with disabilities and the promise of the Americans with Disabilities Act of 1990, its Integration Mandate and the Supreme Court's Olmstead Ruling of 1999.

# Family Caregiver Option

- There is the option for those parents or caregivers who have their loved ones living with them and either prefer to maintain having the option to live at home or do not have the choice to make in alternative housing placement within the community outside of the home. This option is for those individuals enrolled in the HCBS-DD Waiver.

## Family Caregiver Option cont.

- A Family Caregiver is paid in the same fashion as unrelated Host Home providers and it is a nontaxable income. You can choose either the Independent Contractor or Employee Model. Will depend on whether you wish to have employee benefits, or perhaps operate more independently. Each model has their advantages dependent on the needs of both the individual being cared for and their caregiver/family member. Daily rates are set by determined SIS levels and SSI monthly payments are not impacted by these rates.

# Family Caregiver Option cont.

- Host Homes, PCAs, and your own home are referred to as Individual Residential Services and Supports (IRSS).
- You can choose an approved service agency that has the Family Caregiver option (employee model or independent contractor model). A paid Family Caregiver must be able to meet any requirements of employment that is specific to the agency or as an independent contractor specific to the Community Centered Board (CCB).

# Family Caregiver Option Cont.

- The agency you choose to work with as a Family Caregiver are required to ensure that all services based on the individual's needs are delivered as stated in the Service Plan, that direct support hours are in fact provided, and that there is 24/7 emergency access supports provided.
- There will be home visits from the chosen agency and that is done in order to monitor and provide the needed direct services for the individual being cared for.

# Family Caregiver Option Cont.

In choosing which agency to work through with this program, here are some important questions to ask:

1. Does the agency have any particular requirements in addition to those defined by the DDD?
2. Does the agency operate with the employee or independent contractor model?
3. Can the agency provide all of the hours of direct service needed?
4. What are the administrative and program fees?
5. Is there a way to see the financial breakdown and budget based on the determined SIS level and Service Plan?
6. Does the agency provide day program or activity services?

# Family Caregiver Option Cont.

- You can also find out more information on the Family Caregiver program and participating agencies from your CCB
- Division for Developmental Disabilities, Colorado Cross Disability Coalition (CCDC), PAD-CO (Parents of Adults with Disabilities in CO), Parent to Parent (P2P), Disability Law Colorado Or your local and state chapter of the Arc.

# Family Caregiver Concerns

Major barriers to community living include:

- Long wait lists for underfunded affordable housing programs;
- Medicaid not allowing funds to go towards rent or other typical housing-related costs;
- Being priced out of rental markets across Colorado;
- Crisis-level lack of well-trained Direct Support Professionals

## Family Caregiver Concerns cont.

- Difficulty in placing individuals with more significant needs in homes after residential care placement. Transitions for many have been tough and at times practically impossible for others to have the ability or want to take these individuals in.

# Family Caregiver Concerns cont.

Concerns for many Family Caregivers include:

- Caregiver burnout
- Lack of community supports/resources
- No appropriate alternative placement options
- Risk of residential care/treatment facility placement
- Least restrictive settings (although always the goal) not always the most suitable/preferable or safest option for some individuals with I/DD
- Need for respite/nursing/educational/day treatment program options

# Questions about Rights

# Housing Legislation Update

# HB23-1120 Mediation Prior to Eviction

- For renters on SSI, SSDI, and TANF, after a notice of eviction is filed, they have the right the mediation prior to eviction.
- After an eviction is ordered by the court, the tenant has 30 days to leave the unit before the sheriff executes the writ.

# HB23-1186 Remote Participation in Residential Evictions

For a residential eviction action filed in county court, the bill:

- Requires the court to allow either party or any witness to choose to appear in person or remotely at any return, conference, hearing, trial, or other court proceeding;
- Authorizes a pro se defendant to file an answer electronically by e-mail, or at the court's discretion, through an e-filing system; and authorizes either party, if the party is pro se, to file a motion or other documents electronically by e-mail, or at the court's discretion, through an e-filing system;

# HB23-1186 Remote Participation in Residential Evictions cont.

- Prohibits the court from assessing an e-filing fee or service fee on a motion to waive filing fees, or from assessing an e-filing fee, service fee, or any other fee associated with the electronic filing or e-mailing of motions, answers, or documents for an indigent party; and

# HB23-1186 Remote Participation in Residential Evictions cont.

Requires the court to comply with federal and state law or regulations, including supreme court directive or policy, regarding the provision of accommodation for people with a disability or for people with limited English proficiency. If a party is appearing remotely and the party is disconnected, the bill requires the court to make all reasonable efforts to contact the party and allow reasonable time for the party to reestablish connection. If the party is unable to reestablish connection, the bill requires the court to reschedule the hearing for the first available in-person date after the date of the originally scheduled hearing, but no later than one week after the originally scheduled hearing, to the extent practicable. The bill prohibits the court from entering a default judgment if a party is unable to participate remotely due to a technological disconnection or failure.

## HB23-1186 Remote Participation in Residential Evictions cont.

The bill requires the complaint to include a designation of whether the plaintiff elects to participate in any hearing in person or remotely, and a box indicating if the eviction is for a residential or commercial tenancy. The bill requires the summons to include a statement in bold-faced type notifying the defendant that either party has a right to appear in person or remotely, include a place for the defendant to indicate whether the defendant will appear in person or remotely, and provide information for how a pro se party can electronically submit documents related to the case.

# HB23-1254 Habitability of Residential Premises

- The bill expands conditions covered under the warranty of habitability for residential premises in relation to indoor air quality, water quality, and other health and safety issues.
- The bill adds water damage, fire damage, and damage due to a natural or an environmental event as conditions under which a residential premises is deemed uninhabitable.

# HB23-1254 Habitability of Residential Premises cont.

- The bill requires a landlord to have a residential premises inspected and tested by a certified industrial hygienist or an industrial hygienist to determine if the premises is safe for habitability.
- The bill also clarifies landlord responsibilities in remediating a residential premises to a habitable standard and how a tenant must give notice to a landlord if there are habitability issues with the tenant's residence.
- The bill prohibits a landlord from retaliating against a tenant for making a good faith complaint about the conditions of the residential premises and provides conditions by which a tenant may terminate a lease if a habitability issue is not remediated.

# SB23-184 Protections for Residential Tenants

The bill restricts a landlord from considering or inquiring about certain information relating to a prospective tenant's rental history, amount of income, and credit history. It also requires a landlord who solicits and accepts rental applications for the rental of a residential premises to rent to the first prospective tenant who applies and satisfies the landlord's financial and other rental screening criteria. A landlord must keep records of when rental applications are received and provide a time-stamped receipt to any prospective tenant who submits a rental application and requests such a receipt.

# SB23-184 Protections for Residential Tenants cont.

- The bill states that a landlord who violates any of the bill's new prohibitions is subject to an initial penalty of \$50, to be paid to the aggrieved party. A landlord who does not cure the violation is also subject to a statutory penalty of \$5,000, to be paid to the aggrieved party in addition to the initial penalty and any economic damages, court costs, and attorney fees.
- The bill establish that a violation of any of the bill's new prohibitions is an unfair housing practice subject to enforcement by private persons, the attorney general, and the Colorado civil rights division.

# SB23-184 Protections for Residential Tenants cont.

- The bill requires a landlord to allow a tenant to pay a security deposit in monthly installments over a period that is equal to half the term of the tenancy. It also prohibits a landlord from requiring a tenant to submit a security deposit in an amount that exceeds the amount of one monthly rent payment under the rental agreement.
- The bill establish that a tenant who alleges that the tenant's landlord has violated or is in violation of any state laws concerning unfair housing practices has an affirmative defense against an eviction action.

# SB23-196: Income Tax Credit For Retrofitting A Home For Health Reasons

- Extends C.R.S. 39-22-541 from 2024 to 2029
- Allows a person who retrofits a home for disability related improvements (i.e. installing a ramp) to receive a tax credit for up to \$5000 to cover the cost of the improvement.
- Expands the carry over credit through 2028, which means if an improvement takes more than 1 year to complete the remaining credit can be used the following year

# Housing Resources

# Resources-Finding Housing

- Colorado Housing Connects-Housing Navigators
- United Way of Weld County-Housing Navigation Center-focused on preventing and ending homelessness
- Hope Communities-Housing and Resource Navigation-Denver Area
- Partners in Housing-Housing Navigation in Colorado Springs area
- Housing Resources of Western Colorado-Housing and Resource counseling
- Many different regional Housing Navigators

# Housing Resources-Disability Discrimination

- Disability Law Colorado
- Colorado Cross-Disability Coalition
- Denver Metro Fair Housing Center

# Housing Resources-other issues

- Colorado Legal Services
- Centers for Independent Living
- Colorado Poverty Law Project

# Housing Resources: I/DD specific

- Advocates at the Arc, Information on CO Arc Chapters
- Mission Supports Program
- Inclusive Housing Denver
- Autism Housing Network
- Self-advocacy assistance

# Thank you for attending!

- Please complete the evaluation to help us develop additional webinars or resources on this issue.