

HEALTH

Colorado violates Americans with Disabilities Act, U.S. Justice Department finds

Colorado “unnecessarily” segregates people with physical disabilities in nursing homes, the department found.

Tatiana Flowers 5:59 PM MST on Mar 4, 2022 — Updated at 6:45 PM MST on Mar 5, 2022



Nancy Bach, 63, and her niece Elizabeth, 36, on Monday, July 19, 2021, in Northglenn. Nancy struggles to Elizabeth’s pill boxes because her hands tremble, and aids have mistakenly caused Elizabeth to overdose providing inaccurate amounts. Elizabeth, who has a developmental disability along with bipolar disorder, has lived with her aunt for five years and gone through four different home aid agencies.  *(Olive Sun, The Colorado*

lived with her aunt for five years and gone through four different home aid agencies. (Olivia Sun, The Colorado Sun)

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Colorado has violated the Americans with Disabilities Act and a major Supreme Court ruling by “unnecessarily” segregating people with physical disabilities in nursing facilities, the U.S. Justice Department announced Thursday.

The findings, detailed in a letter to Colorado Gov. Jared Polis, come after a three-year investigation into the state’s system of care for people with disabilities, a news release from the Justice Department said.

The investigation found that a “significant number” of residents at Colorado’s Medicaid-funded nursing facilities are interested in transitioning to community-based settings, and could do so successfully with appropriate support. However, few Coloradans with physical disabilities who want to move out of their nursing facilities are able to do so because most are unaware of services that could help them make the transition, according to the Justice Department.

The DOJ did not share details about the number or location of nursing facilities under investigation with the Department of Health Care Policy and Financing, which oversees the Medicaid division, because the complaints are confidential, said Marc Williams, a spokesman for the state department.

The DOJ investigation began in November 2018. Williams said the state department received the findings Thursday. The department will compare its home- and community-based



services accomplishments to the DOJ's findings to help identify ways to address any more gaps.

The ADA and the Supreme Court's Olmstead ruling require state and local governments to make services available to people with disabilities in "the most integrated setting appropriate for their needs," regardless of their age or disability. However, many Coloradans with disabilities don't receive the services they need in their own homes and communities, such as help with bathing, dressing, medications and preparing meals, according to the investigation, which was conducted by the Civil Rights Division's Disability Rights section with help from the U.S. Attorney's Office in Colorado.

"People with disabilities have too often been unlawfully segregated in institutions like nursing facilities," Assistant Attorney General Kristen Clarke said in a news release. "The Civil Rights Division will vigorously enforce the rights of people with physical disabilities, including older adults, to access the community-based services they need to age in place and thrive at home."

The Health Care Policy and Financing department is committed to creating a system that ensures people with disabilities always have the option to receive their care in the community, Williams said.

Over the past decade, the department has worked to strengthen and enhance the home and community-based services available to people with disabilities, he said. About 81% of people with Medicaid are receiving Colorado's long-term services and support in their own homes, he said, up from about 76% six years ago.



“We have accomplished this through a number of initiatives,” he said. For example, Colorado was the first state to implement a program that supports people with disabilities by helping them transition back into the community from institutional settings. Since its inception in 2019, the program has helped 687 people transition back to their homes and ensured that they continue to receive service there, he said.

After Congress passed the American Rescue Plan Act in March and offered states federal funding to strengthen community-based services for people with disabilities, Colorado was the first state to receive almost \$530 million to improve its system. The 65 projects included in that plan are working to ensure that people can receive care in their communities, Williams said.

Older adults and people with physical disabilities in Colorado increasingly expect to remain in their homes as their needs increase, said Cole Finegan, the U.S. attorney for the district of Colorado.

That desire has become more acute during the pandemic, as reports confirm that a significant number of all COVID-19 deaths are linked to nursing homes and other long-term care facilities. Enabling people to move out of these facilities and into the community can reduce that risk and comply with the ADA, according to leaders of the investigation.

Finegan said he hopes the situation can be remediated so that people with physical disabilities are no longer isolated.



Williams said the health care department is committed to working with the DOJ to address the issues identified in the investigation. “The department’s commitment to ensuring that people receive care in their homes has and will continue to drive all of the work we do.”

CORRECTION: This story was updated at 6:45 p.m. on March 5, 2021, to correct the percentage of disabled Coloradans on Medicaid receiving in-home long-term care services and to clarify that the U.S. Department of Justice did not provide details to the state agency that oversees Medicaid about which nursing homes were under investigation.



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Tatiana Flowers is the inequality and general assignment beat reporter for the Colorado Sun.

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