Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1067.01 Brita Darling x2241

HOUSE BILL 18-1407

HOUSE SPONSORSHIP
Young and Rankin, Hamner

SENATE SPONSORSHIP
Lambert and Moreno, Lundberg

House Committees
Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

CONCERNING INCREASING ACCESS TO SERVICES FOR PERSONS WITH
INTELLECTUAL AND DEVELOPMENTAL DISABILITIES THAT ARE
PROVIDED BY A STABLE WORKFORCE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)

Joint Budget Committee. The bill requires the department of health care policy and financing (department) to seek federal approval for a 6.5% increase in the reimbursement rate for certain services specified in the bill that are delivered through the home- and community-based services intellectual and developmental disabilities, supported living

Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.
services, and children's extensive supports waivers.

Service agencies shall use 100% of the increased funding resulting from the increase in the reimbursement rate for compensation, as defined in the bill, for direct support professionals, as defined in the bill.

The bill requires service agencies to document the use of the increased funding for compensation using a reporting tool developed by the department and the service agencies. The department has access to the supporting documentation and may determine that a service agency is not using the increased funding as required.

If the department determines that a service agency does not use 100% of the increased funding resulting from the increase in the reimbursement rate for compensation for direct support professionals, the service agency may take action within a specific time frame to contest the determination or submit a corrective action plan to the department.

The department shall recoup from the service agency the amount of funding resulting from the reimbursement rate increase that is not used for compensation for direct support professionals.

Once sufficient data is available to assess the impact and outcomes of the reimbursement rate increase on persons with intellectual and developmental disabilities, the department shall include the impact and outcome data, including staff stability survey data, in its annual report to the general assembly concerning the waiting list for intellectual and developmental disability services.

The bill requires the department to initiate 300 nonemergency enrollments from the waiting list for the home- and community-based services developmental disabilities waiver in the 2018-19 state fiscal year.

The medical services board (board) in the department shall promulgate rules establishing additional criteria for reserve capacity enrollments based on the age and capacity of a person's parent or caregiver. As part of the rule-making process, the board shall solicit stakeholder feedback from persons with intellectual and developmental disabilities and their families. The department shall include in a monthly report the number of persons who were moved off the developmental disabilities waiting list for both nonemergency enrollments and reserve capacity enrollments.

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

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Thousands of Coloradans with intellectual and developmental disabilities spend years and even decades waiting for comprehensive
services provided by the home- and community-based services for
developmental disabilities (HCBS-DD) waiver;
(b) Reducing and eliminating the waiting list for HCBS-DD
waiver services is a longstanding goal of the general assembly and the
intellectual and developmental disability community;
(c) Many persons on the waiting list for HCBS-DD waiver
services must experience a crisis before being offered services on an
emergency basis, creating undue hardship and strain on the person, his or
her caregivers, and the service system;
(d) In order to best serve these persons and others receiving
waiver services, Colorado must have a stable direct support workforce;
(e) Colorado and the nation are experiencing a shortage of direct
support professionals who provide support to persons with intellectual
and developmental disabilities in the community; and
(f) A stable direct support workforce is critical to ensuring
continuity of support and positive outcomes for persons with intellectual
and developmental disabilities.
(2) Therefore, the general assembly declares that a significant
investment is needed to ensure a stable workforce and access to services
for Coloradans with intellectual and developmental disabilities.
SECTION 2. In Colorado Revised Statutes, amend 25.5-6-406
as follows:
25.5-6-406. Appropriations - reimbursement for services -
direct support professionals - legislative declaration - definitions.
(1) To carry out duties and obligations pursuant to this part 4 and for the
administration and provision of services to eligible persons, all medicaid
funds appropriated pursuant to Title XIX of the federal "Social Security
Act”, as amended, for the provision of care for persons with
developmental disabilities and all other funds otherwise appropriated by
the general assembly as additional sources of program funding shall be
available for the placement of eligible individuals either in
intermediate care facilities for individuals with intellectual
disabilities or alternatives to such placements.

(2) (a) (I) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(A) COLORADO'S SYSTEM OF HOME- AND COMMUNITY-BASED
SERVICES THAT SUPPORTS COLORADANS WITH INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES HAS GROWN TO SERVE MORE THAN TWELVE
THOUSAND PERSONS AND THEIR FAMILIES;

(B) COSTS ASSOCIATED WITH PROVIDING THESE SERVICES
CONTINUE TO RISE WITH GROWTH IN DEMAND, INFLATION, INCREASED
REGULATION, RISING MINIMUM WAGES, RISING HEALTH CARE COSTS, AND
OTHER ECONOMIC FACTORS;

(C) REIMBURSEMENT RATES HAVE NOT KEPT PACE WITH THESE
RISING COSTS, RESULTING IN REDUCED ACCESS TO SERVICES FOR
COLORADANS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(D) COLORADO NEEDS SIGNIFICANT INITIAL INVESTMENTS TO
ADDRESS THE MOST URGENT ISSUES CONCERNING SERVICES FOR PERSONS
WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, AS WELL AS
FUTURE LONG-TERM PLANNING TO ADDRESS THE GROWING STRAIN ON THE
SYSTEM;

(E) ONE OF THE MOST URGENT ISSUES IS THE WORKFORCE CRISIS
AMONG DIRECT SUPPORT PROFESSIONALS, CHARACTERIZED BY
CHRONICALLY LOW WAGES, LIMITED BENEFITS, AND LACK OF CAREER
ADVANCEMENT OPPORTUNITIES FOR THESE CRITICAL WORKERS;
COLORADO IS EXPERIENCING A WORKFORCE CRISIS AMONG DIRECT SUPPORT PROFESSIONALS BECAUSE REIMBURSEMENT RATES CANNOT SUPPORT THE COMPENSATION NEEDED TO MATCH THE HIGH LEVEL OF RESPONSIBILITY REQUIRED IN THESE JOBS;

AGENCIES THAT SERVE PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES INCREASINGLY STRUGGLE TO RECRUIT AND RETAIN DIRECT SUPPORT PROFESSIONALS TO MEET THE DEMAND FOR SERVICES; AND

HIGH TURNOVER AMONG DIRECT SUPPORT PROFESSIONALS RESULTS IN REDUCED CONTINUITY OF SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

THEREFORE, AS AN INITIAL INVESTMENT, COLORADO'S REIMBURSEMENT RATES SHOULD BE INCREASED TO ALLOW FOR DIRECT SUPPORT PROFESSIONAL COMPENSATION THAT BETTER REFLECTS MARKET REALITIES AND THE HIGH LEVEL OF RESPONSIBILITY REQUIRED IN THESE JOBS.

(b) AS USED IN THIS SUBSECTION (2), UNLESS THE CONTEXT OTHERWISE Requires:

"COMPENSATION" MEANS ANY FORM OF MONETARY PAYMENT, INCLUDING BONUSES, EMPLOYER-PAID HEALTH AND OTHER INSURANCE PROGRAMS, PAID TIME OFF, PAYROLL TAXES, AND ALL OTHER FIXED AND VARIABLE BENEFITS CONFERRED ON OR RECEIVED BY A DIRECT SUPPORT PROFESSIONAL.

"DIRECT SUPPORT PROFESSIONAL" MEANS A WORKER WHO ASSISTS OR SUPERVISES A WORKER TO ASSIST A PERSON WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES TO LEAD A FULFILLING LIFE IN THE COMMUNITY THROUGH A DIVERSE RANGE OF SERVICES,
INCLUDING HELPING THE PERSON GET READY IN THE MORNING, TAKE
MEDICATION, GO TO WORK OR FIND WORK, AND PARTICIPATE IN SOCIAL
ACTIVITIES. "DIRECT SUPPORT PROFESSIONAL" INCLUDES ALL WORKERS
CATEGORIZED AS PROGRAM DIRECT SUPPORT PROFESSIONALS AND
EXCLUDES WORKERS CATEGORIZED AS ADMINISTRATIVE, AS DEFINED IN
STANDARDS ESTABLISHED BY THE FINANCIAL ACCOUNTING STANDARDS
BOARD.

(c) THE STATE DEPARTMENT SHALL IMMEDIATELY SEEK A SIX AND
ONE-HALF PERCENT INCREASE IN THE REIMBURSEMENT RATE FOR THE
FOLLOWING SERVICES DELIVERED THROUGH THE HOME- AND
COMMUNITY-BASED SERVICES FOR PERSONS WITH DEVELOPMENTAL
DISABILITIES, SUPPORTED LIVING SERVICES, AND CHILDREN'S EXTENSIVE
SUPPORTS WAIVERS:

(I) GROUP RESIDENTIAL SERVICES AND SUPPORTS;
(II) INDIVIDUAL RESIDENTIAL SERVICES AND SUPPORTS;
(III) SPECIALIZED HABILITATION;
(IV) RESPITE;
(V) HOMEMAKER BASIC;
(VI) HOMEMAKER ENHANCED;
(VII) PERSONAL CARE;
(VIII) PREVOCATIONAL SERVICES;
(IX) SUPPORTED COMMUNITY CONNECTIONS;
(X) MENTORSHIP;
(XI) SUPPORTED EMPLOYMENT- JOB DEVELOPMENT; AND
(XII) SUPPORTED EMPLOYMENT- JOB COACHING.

(d) THE STATE DEPARTMENT SHALL IMPLEMENT A CORRESPONDING
INCREASE IN SERVICE PLAN AUTHORIZATION LIMITS TO ACCOUNT FOR THIS
INCREASE IN REIMBURSEMENT RATES.

(e) SERVICE AGENCIES SHALL USE ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION TO INCREASE COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS ABOVE THE RATE OF COMPENSATION THAT DIRECT SUPPORT PROFESSIONALS ARE RECEIVING AS OF JUNE 30, 2018. THIS REQUIREMENT APPLIES TO FUNDS BILLED BY COMMUNITY-CENTERED BOARDS IN THEIR ROLE AS ORGANIZED HEALTH CARE DELIVERY SYSTEMS. SERVICE AGENCIES SHALL NOT USE FUNDING RESULTING FROM THE REIMBURSEMENT RATE INCREASE FOR GENERAL AND ADMINISTRATIVE EXPENSES, SUCH AS CHIEF EXECUTIVE OFFICER SALARIES, HUMAN RESOURCES, INFORMATION TECHNOLOGY, OVERSIGHT, BUSINESS MANAGEMENT, GENERAL RECORD KEEPING, BUDGETING AND FINANCE, AND OTHER ACTIVITIES NOT IDENTIFIABLE TO A SINGLE PROGRAM.

(f)(I) SERVICE AGENCIES SHALL TRACK AND REPORT HOW THEY USED THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION USING A REPORTING TOOL DEVELOPED BY THE STATE DEPARTMENT IN COLLABORATION WITH SERVICE AGENCIES. ON OR BEFORE DECEMBER 31, 2019, SERVICE AGENCIES SHALL SUBMIT THE REPORT TO THE STATE DEPARTMENT.

(II) SERVICE AGENCIES SHALL MAINTAIN ALL BOOKS, DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE REQUIRED TO SUPPORT THE REPORTING OF PAYROLL INFORMATION FOR INCREASED COMPENSATION TO DIRECT SUPPORT PROFESSIONALS PURSUANT TO SUBSECTION (2)(f)(I) OF THIS SECTION FOR AT LEAST THREE YEARS FROM THE DATE OF REIMBURSEMENT FOR THE SERVICES INCLUDED IN THE
REPORT. SERVICE AGENCIES SHALL MAKE THE INFORMATION AND
MATERIALS AVAILABLE FOR INSPECTION BY THE STATE DEPARTMENT OR
ITS DESIGNEES AT ALL REASONABLE TIMES.

(g) If a service agency does not use one hundred percent
of the funding resulting from the increase in the reimbursement
rate pursuant to subsection (2)(c) of this section to increase
compensation for direct support professionals, the state
department may recoup part or all of the funding resulting
from the increase in the reimbursement rate as provided in
subsections (2)(h) and (2)(i) of this section.

(h) If the state department determines that the service
agency did not use the funding resulting from the increase in the
reimbursement rate pursuant to subsection (2)(c) of this section
as required, the state department shall notify the service
agency in writing of the state department's determination.

(i) The service agency has forty-five days after receiving
notice of the determination under subsection (2)(h) of this
section to:

(I) Challenge the determination of the state department;

(II) Provide additional information to the state
department demonstrating compliance; or

(III) Submit a plan of correction to the state department.

(j) The state department shall notify the service agency
in writing of its final determination after affording the service
agency the opportunity to take the actions specified in
subsection (2)(i) of this section.

(k) The state department shall recoup from a service
AGENCY ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION THAT THE SERVICE AGENCY RECEIVED BUT DID NOT USE FOR COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS IF:

(I) THE SERVICE AGENCY FAILS TO RESPOND TO A NOTICE OF DETERMINATION OF THE STATE DEPARTMENT WITHIN THE TIME PROVIDED IN SUBSECTION (2)(i) OF THIS SECTION;

(II) THE SERVICE AGENCY IS UNABLE TO PROVIDE DOCUMENTATION OF COMPLIANCE; OR

(III) THE STATE DEPARTMENT DOES NOT ACCEPT THE PLAN OF CORRECTION SUBMITTED BY THE SERVICE AGENCY PURSUANT TO SUBSECTION (2)(i) OF THIS SECTION.

(l) THE STATE DEPARTMENT SHALL PARTICIPATE IN THE NATIONAL CORE INDICATORS STAFF STABILITY SURVEY.

(m) ONCE THE STATE DEPARTMENT DETERMINES THAT A SUFFICIENT QUANTITY AND QUALITY OF DATA EXISTS TO DETERMINE THE IMPACT AND OUTCOMES, IF ANY, ATTRIBUTED TO THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION ON PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, THE STATE DEPARTMENT SHALL INCLUDE IN ITS ANNUAL REPORT CONCERNING THE WAITING LIST FOR SERVICES AND SUPPORTS FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, REQUIRED PURSUANT TO SECTION 25.5-10-207.5, INFORMATION FROM THE NATIONAL CORE INDICATORS DATA, OR ANOTHER COMPARABLE SOURCE, CONCERNING IN WHAT WAYS OUTCOMES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES CHANGED AS A RESULT OF THE INCREASE IN REIMBURSEMENT RATES PURSUANT TO SUBSECTION (2)(c) OF THIS
SECTION. THE REPORT MUST INCLUDE, IF AVAILABLE, MULTIYEAR PERSONAL OUTCOME DATA SPECIFIC TO COLORADO AND COMPARISONS TO OTHER STATES, AS APPROPRIATE, AS WELL AS DATA FROM THE NATIONAL CORE INDICATORS STAFF STABILITY SURVEY.

SECTION 3. In Colorado Revised Statutes, 25.5-10-207.5, amend (1)(a)(IV); and add (1)(a)(VI), (1)(a)(VII), (1)(a)(VIII), (6), (7), and (8) as follows:

25.5-10-207.5. Strategic plan for services and supports - joint hearing - appropriation - reporting - legislative declaration - rules.

(1) (a) The general assembly finds that:

(IV) The presence of a waiting list as long as fifteen years for essential services and supports contradicts Colorado's commitment to supporting persons in the least restrictive environment of their choosing; and

(VI) The waiting list includes persons with intellectual and developmental disabilities who are at risk of experiencing a crisis due to the advanced age, reduced capacity, and illness of their caregivers;

(VII) After a lifetime of providing continuous support, these caregivers deserve the comfort of knowing that their loved one will have needed services and supports; and

(VIII) Persons with intellectual and developmental disabilities and their caregivers should not have to experience a crisis before getting needed assistance, as each crisis puts undue hardship and strain on the person and caregiver, and the services system.

(6) (a) Subject to the availability of reserve capacity
ENROLLMENT, A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL
DISABILITY WHO IS ON THE WAITING LIST FOR SERVICES AND WHO IS AT
RISK OF EXPERIENCING AN EMERGENCY DUE TO ANY OF THE CRITERIA
INCLUDED IN SUBSECTION (6)(b) OF THIS SECTION AND WHO MEETS OTHER
APPLICABLE CRITERIA FOR ENROLLMENT ESTABLISHED BY THE STATE
BOARD SHALL BE OFFERED ENROLLMENT INTO THE HOME-AND
COMMUNITY-BASED SERVICES DEVELOPMENTAL DISABILITIES WAIVER
USING A PERSON-CENTERED TRANSITION PROCESS.

(b) NO LATER THAN JUNE 1, 2019, THE STATE BOARD SHALL
PROMULGATE RULES REGARDING THE CRITERIA FOR RESERVE CAPACITY
ENROLLMENTS FOR THOSE PERSONS DESCRIBED IN SUBSECTION (6)(a) OF
THIS SECTION, WHICH CRITERIA MUST INCLUDE BUT IS NOT LIMITED TO:

(I) THE AGE OF THE CUSTODIAL PARENT OR CAREGIVER;
(II) THE LOSS OF THE CUSTODIAL PARENT OR CAREGIVER;
(III) INCAPACITATION OF THE CUSTODIAL PARENT OR CAREGIVER;
(IV) ANY LIFE-THREATENING OR SERIOUS PERSISTENT ILLNESS OF
THE CUSTODIAL PARENT OR CAREGIVER; AND
(V) A THREAT TO HEALTH OR SAFETY THAT THE CUSTODIAL
PARENT OR CAREGIVER PLACES ON THE PERSON WITH INTELLECTUAL AND
DEVELOPMENTAL DISABILITIES.

(c) AS PART OF THE RULE-MAKING PROCESS FOR RESERVE
CAPACITY ENROLLMENT PURSUANT TO SUBSECTION (6)(b) OF THIS
SECTION, THE STATE BOARD SHALL SOLICIT FEEDBACK FROM PERSONS
WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AND FAMILY
MEMBERS OF PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL
DISABILITIES.

(7) DURING THE STATE FISCAL YEAR BEGINNING JULY 1, 2018, THE

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STATE DEPARTMENT SHALL INITIATE THREE HUNDRED NONEMERGENCY
ENROLLMENTS FROM THE WAITING LIST FOR THE HOME- AND
COMMUNITY-BASED SERVICES DEVELOPMENTAL DISABILITIES WAIVER.

(8) BEGINNING JULY 2018, AND CONTINUING MONTHLY
THEREAFTER, THE STATE DEPARTMENT SHALL INCLUDE IN ITS MONTHLY
PREMIUMS, EXPENDITURES, AND CASELOAD REPORT THE NUMBER OF
PERSONS WHO WERE MOVED OFF THE DEVELOPMENTAL DISABILITIES
WAITING LIST, SPECIFYING THE ENROLLMENTS INITIATED UNDER THE
ORDER OF SELECTION AND THE ENROLLMENTS INITIATED UNDER THE
RESERVE CAPACITY CRITERIA.

SECTION 4. 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.