

CHAPTER 344

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 21-278

BY SENATOR(S) Moreno, Hansen, Rankin, Bridges, Buckner, Coram, Danielson, Fields, Ginal, Gonzales, Jaquez Lewis, Kirkmeyer, Kolker, Liston, Pettersen, Priola, Smallwood, Story, Winter, Woodward, Zenzinger;
also REPRESENTATIVE(S) Herod, McCluskie, Bernett, Bird, Duran, Esgar, Exum, Froelich, Gray, Hooton, Jodeh, Kipp, Michaelson Jenet, Young.

AN ACT

CONCERNING REIMBURSEMENT FOR PLACEMENT OF CHILDREN IN OUT-OF-HOME PLACEMENT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 19-1-115, **amend** (4)(e) introductory portion and (4)(h) introductory portion as follows:

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement. (4) (e) ~~Within sixty days after a placement of a child, juvenile, or youth in a qualified residential treatment program, or within thirty days after a placement when the qualified individual does not support the qualified residential treatment program level of care or the child, juvenile, or youth, guardian ad litem, or any party objects to the placement, a juvenile court or the administrative review division of the state department when a juvenile has been committed to the division of youth services and the court no longer has ongoing jurisdiction, shall:~~ WHEN A CHILD, JUVENILE, OR YOUTH HAS BEEN COMMITTED TO THE DIVISION OF YOUTH SERVICES AND THE COURT NO LONGER HAS ONGOING JURISDICTION, THE ADMINISTRATIVE REVIEW DIVISION SHALL REVIEW THE PLACEMENT OF THAT CHILD, JUVENILE, OR YOUTH IN A QUALIFIED RESIDENTIAL TREATMENT PROGRAM WITHIN SIXTY DAYS AFTER PLACEMENT. WHEN THE CHILD, JUVENILE, OR YOUTH HAS NOT BEEN COMMITTED TO THE DIVISION OF YOUTH SERVICES AND THE COURT HAS ONGOING JURISDICTION, WITHIN SIXTY DAYS AFTER A PLACEMENT OF THAT CHILD, JUVENILE, OR YOUTH IN A QUALIFIED RESIDENTIAL TREATMENT PROGRAM, OR WITHIN THIRTY DAYS AFTER A PLACEMENT WHEN THE QUALIFIED INDIVIDUAL DOES NOT SUPPORT THE QUALIFIED RESIDENTIAL TREATMENT PROGRAM LEVEL OF CARE OR THE CHILD, JUVENILE, YOUTH, GUARDIAN AD LITEM, OR

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

ANY PARTY OBJECTS TO THE PLACEMENT, A JUVENILE COURT SHALL REVIEW THAT PLACEMENT. IN BOTH INSTANCES, THE JUVENILE COURT OR THE ADMINISTRATIVE REVIEW DIVISION OF THE STATE DEPARTMENT SHALL:

(h) In making a decision as to proper placement in a qualified residential treatment program, the court or the administrative review division shall consider the assessment provided by the qualified individual and the most recent assessment, as described in subsection (4)(e) of this section, and shall give great weight to the recommendation in the assessment when making a qualified residential treatment program placement decision. An assessment prepared by the qualified individual must identify whether a qualified residential treatment program is the most effective, appropriate, and least restrictive placement for the child or youth. The assessment must also identify child- or youth-specific short- and long-term goals for the child or youth and the family. If the court or administrative review division deviates from the qualified individual's assessment and recommendation, the court OR THE ADMINISTRATIVE REVIEW DIVISION shall make specific findings of fact regarding the most effective, appropriate, and least restrictive placement for the child or youth and whether the placement is consistent with child- or youth-specific short- and long-term goals for the child or youth and the family. When making such findings of fact, the court OR ADMINISTRATIVE REVIEW DIVISION shall consider all relevant information, including:

SECTION 2. In Colorado Revised Statutes, 19-3-208, **add** (2)(d.5) and (2)(d.7) as follows:

19-3-208. Services - county required to provide - out-of-home placement options - rules - definitions. (2) (d.5) ON OR BEFORE JANUARY 1, 2022, THE DEPARTMENT OF HUMAN SERVICES, IN COOPERATION WITH COUNTY DEPARTMENTS OF HUMAN OR SOCIAL SERVICES, SHALL ANALYZE NECESSARY DATA TO ASSESS AND DETERMINE THE NUMBER OF PLACEMENTS NECESSARY FOR EACH LEVEL OF CARE FOR CHILDREN OR YOUTH WHO ARE IN OUT-OF-HOME PLACEMENTS.

(d.7) ON OR BEFORE JULY 1, 2022, THE DEPARTMENT OF HUMAN SERVICES, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, SHALL DEVELOP AND IMPLEMENT A PLAN TO BUILD CAPACITY AND DEVELOP APPROPRIATE AND AVAILABLE OUT-OF-HOME PLACEMENT OPTIONS FOR EACH NECESSARY LEVEL OF CARE IN THE STATE IN ORDER TO SERVE THE NUMBER OF CHILDREN AND YOUTH WHO REQUIRE A GIVEN LEVEL OF CARE.

SECTION 3. In Colorado Revised Statutes, 26-5-102, **amend** (2) introductory portion and (2)(b) as follows:

26-5-102. Provision of child welfare services - system reform goals - out-of-home placements for children and youth with intellectual and developmental disabilities - rules - definition. (2) Reforms in child welfare and related delivery systems ~~shall~~ **MUST** be directed at the following objectives:

(b) Increased flexibility and collaboration across multiple agencies and funding streams to ~~more appropriately meet consumer needs and avoid cost shifting between systems~~ **ENSURE** THE DELIVERY OF SERVICES BASED ON THE NEEDS OF THE CHILD OR YOUTH;

SECTION 4. In Colorado Revised Statutes, 26-5-104, **amend** (6)(a), (6)(g), (6.2) introductory portion, and (6.2)(c); and **add** (6)(i) and (6.7) as follows:

26-5-104. Funding of child welfare services provider contracts - funding mechanism review - fund - report - rules - definitions - repeal. (6) **County negotiations with providers.** (a) Subject to rules promulgated by the state department pursuant to subsection (6)(b) of this section and the methodology adopted pursuant to subsections (6)(e) to (6)(h) of this section, for each child or youth placed in an out-of-home placement setting, a county is authorized to negotiate rates related to services and outcomes with licensed out-of-home placement providers; except that a county may not negotiate rates below the base anchor rates established by the state department. ~~Counties with an approved alternative methodology shall use a request for proposal process to solicit bids from licensed out-of-home placement providers that allows for adequate private competition and provides opportunities for competitive negotiations~~ A COUNTY IS AUTHORIZED TO NEGOTIATE RATES ABOVE THE BASE ANCHOR RATES ESTABLISHED BY THE STATE DEPARTMENT WITH LICENSED OUT-OF-HOME PLACEMENT PROVIDERS SERVING CHILDREN IN HIGHER ACUITY CASES.

(g)(I) Subject to available appropriations, the methodology must be implemented on or before July 1, 2018, except for those rates that must be approved by CMS. Rates that must be approved by CMS must be implemented upon approval. In the event that the representatives identified in subsection (6)(e) of this section do not agree on the rate-setting methodology on or before February 1, 2018, the state department, the county representatives, and the licensed out-of-home placement providers shall submit alternatives to the joint budget committee. The joint budget committee shall then select a methodology prior to the start of the succeeding state fiscal year. It is the intent of the general assembly that the rate methodology developed pursuant to this subsection (6) be fully implemented on or before June 30, 2022, through incremental rate increases established by the state department. For fiscal year 2019-20 through fiscal year 2021-22, the state department is encouraged to submit, as a part of the annual budget process, a request for increased appropriations to fund the increased rates required by the methodology.

(II) (A) EXCEPT FOR THOSE RATES THAT MUST BE APPROVED BY CMS, ON OR BEFORE SEPTEMBER 30, 2021, THE STATE DEPARTMENT SHALL FULLY IMPLEMENT ADJUSTED RATES FOR LICENSED OUT-OF-HOME PLACEMENT PROVIDERS USING THE EXISTING RATE METHODOLOGY ESTABLISHED PURSUANT TO SUBSECTION (6)(g)(I) OF THIS SECTION. THE STATE DEPARTMENT SHALL IMPLEMENT RATES THAT MUST BE APPROVED BY CMS UPON APPROVAL BY CMS. THE FULL IMPLEMENTATION OF THE UPDATED RATE METHODOLOGY ADJUSTMENTS MUST INCLUDE RATES FOR DIVISION OF YOUTH SERVICES OUT-OF-HOME PLACEMENT PROVIDERS AND FOR NEW OUT-OF-HOME PLACEMENT PROVIDER OPTIONS REQUIRED PURSUANT TO THE FEDERAL "FAMILY FIRST PREVENTION SERVICES ACT OF 2018", AS DEFINED IN SECTION 26-5-101, AND AS INFORMED BY AN UPDATED ACTUARIAL ANALYSIS OF THE COSTS ASSOCIATED WITH SUCH NEW PROVIDER OPTIONS, WITH THE EXCEPTION OF THERAPEUTIC FOSTER CARE AND TREATMENT FOSTER CARE, CONDUCTED PURSUANT TO SUBSECTION (6)(g)(II)(B) OF THIS SECTION.

(B) FOR PURPOSES OF SUBSECTION (6)(g)(II)(A) OF THIS SECTION, THE STATE DEPARTMENT SHALL CONTRACT WITH AN INDEPENDENT VENDOR TO UPDATE THE

ACTUARIAL ANALYSIS CONDUCTED PURSUANT TO SUBSECTION (6)(e)(II) OF THIS SECTION TO ADD AN ANALYSIS OF THE COSTS NECESSARY TO PROVIDE SERVICES BY DIVISION OF YOUTH SERVICES OUT-OF-HOME PLACEMENT PROVIDERS AND LICENSED OUT-OF-HOME PLACEMENT PROVIDER OPTIONS INCLUDED IN THE FEDERAL "FAMILY FIRST PREVENTION SERVICES ACT OF 2018", AS DEFINED IN SECTION 26-5-101, THAT ARE NOT INCLUDED IN THE ORIGINAL ACTUARIAL ANALYSIS, WITH THE EXCEPTION OF THERAPEUTIC FOSTER CARE AND TREATMENT FOSTER CARE. THE VENDOR SHALL COMPLETE THE UPDATED ACTUARIAL ANALYSIS ON OR BEFORE SEPTEMBER 1, 2021.

(i) (I) AT THE BEGINNING OF THE 2022-23 FISCAL YEAR, AND AT THE BEGINNING OF EVERY THIRD FISCAL YEAR THEREAFTER, THE STATE DEPARTMENT SHALL CONTRACT WITH AN INDEPENDENT VENDOR TO CONDUCT A NEW ACTUARIAL ANALYSIS OF ALL PROVIDER RATES FOR LICENSED OUT-OF-HOME PLACEMENT PROVIDERS, INCLUDING THE DIVISION OF YOUTH SERVICES OUT-OF-HOME PLACEMENT PROVIDERS, THAT ANALYZES THE COSTS NECESSARY TO PROVIDE SERVICES AT A LEVEL REQUIRED BY STATE STATUTE, DEPARTMENT RULE, OR FEDERAL RULES AND REGULATIONS, AS APPROPRIATE FOR THE CHILD OR YOUTH. THE VENDOR SHALL DETERMINE WHETHER THE SALARY SURVEY PERFORMED PURSUANT TO SECTION (6)(e)(I) OF THIS SECTION IS SUFFICIENT FOR THE ACTUARIAL ANALYSIS REQUIRED PURSUANT TO THIS SUBSECTION (6)(i)(I) OR WHETHER TO UPDATE THE SALARY SURVEY. THE VENDOR SHALL COMPLETE THE ACTUARIAL ANALYSIS BY SEPTEMBER 1, 2023, AND BY SEPTEMBER 1 OF EACH YEAR IN WHICH AN ACTUARIAL ANALYSIS IS CONDUCTED PURSUANT TO THIS SUBSECTION (6)(i)(I).

(II) THE STATE DEPARTMENT SHALL UPDATE THE RATE-SETTING METHODOLOGY FOR LICENSED OUT-OF-HOME PLACEMENT PROVIDERS, INCLUDING THE DIVISION OF YOUTH SERVICES OUT-OF-HOME PLACEMENT PROVIDERS, TO REFLECT THE NEW ACTUARIAL ANALYSIS BY JULY 1, 2024, AND BY JULY 1 OF EACH FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR IN WHICH A NEW ACTUARIAL ANALYSIS RESULTS IN ADJUSTED RATES.

(III) SUBJECT TO AVAILABLE APPROPRIATIONS, EXCEPT FOR THOSE RATES THAT MUST BE APPROVED BY CMS, THE STATE DEPARTMENT SHALL IMPLEMENT ANY ADJUSTED RATES REQUIRED BY THE RATE-SETTING METHODOLOGY BY JULY 1, 2024, AND BY JULY 1 OF EACH FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR IN WHICH A NEW ACTUARIAL ANALYSIS RESULTS IN ADJUSTED RATES. THE UPDATED RATE-SETTING METHODOLOGY MAY INCLUDE TIERED PROVIDER RATES BASED ON ACUITY.

(IV) THE STATE DEPARTMENT IS ENCOURAGED TO SUBMIT FOR CONSIDERATION DURING THE ANNUAL BUDGET PROCESS A REQUEST FOR ADJUSTED APPROPRIATIONS TO FUND THE RATES REQUIRED BY THE UPDATED METHODOLOGY.

(V) THE STATE DEPARTMENT SHALL SUBMIT A REPORT TO THE JOINT BUDGET COMMITTEE NO LATER THAN DECEMBER 30, 2022, AND NO LATER THAN DECEMBER 30 OF EACH YEAR THEREAFTER IN WHICH AN ACTUARIAL ANALYSIS IS CONDUCTED. THE REPORT MUST INCLUDE A SUMMARY OF THE ACTUARIAL ANALYSIS AND THE RESULTING ADJUSTMENTS TO THE RATE-SETTING METHODOLOGY.

(6.2) ~~For the purposes of~~ AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(c) "Licensed out-of-home placement provider" means a licensed residential child care facility, a child placement agency, ~~or~~ a secure residential treatment center, A PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, A QUALIFIED RESIDENTIAL TREATMENT PROGRAM, OR THERAPEUTIC FOSTER CARE, as defined in section 26-6-102.

(6.7) BEGINNING IN THE STATE FISCAL YEAR 2021-22 AND THROUGH STATE FISCAL YEAR 2022-23, THE STATE DEPARTMENT SHALL ASSIST RESIDENTIAL PLACEMENT PROVIDERS IN THE TRANSITION TO A BUSINESS MODEL THAT ENSURES THAT OUT-OF-HOME PLACEMENTS WITH THE PROVIDER ARE ELIGIBLE FOR REIMBURSEMENT UNDER TITLE IV-E OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, AND ENSURES THAT A MEDICAID-ELIGIBLE CHILD OR YOUTH PLACED WITH THE PROVIDER MAINTAINS ELIGIBILITY FOR ENROLLMENT IN THE STATE'S MEDICAL ASSISTANCE PROGRAM. ASSISTANCE PROVIDED BY THE STATE DEPARTMENT INCLUDES GRANTS FROM NOT LESS THAN FIFTEEN PERCENT OF THE FUNDING RECEIVED FROM THE FEDERAL "FAMILY FIRST TRANSITION AND SUPPORT ACT OF 2019". THE STATE DEPARTMENT SHALL MAKE GRANTS AVAILABLE TO PROVIDERS NO LATER THAN SEPTEMBER 1, 2021, AND SHALL CONTINUE TO MAKE GRANTS AVAILABLE AND AWARD GRANTS UNTIL JANUARY 1, 2023. FEDERAL FUNDING THAT HAS NOT BEEN AWARDED AS GRANTS TO PROVIDERS BY JANUARY 1, 2023, MUST BE USED FOR OTHER PURPOSES RELATED TO THE IMPLEMENTATION OF THE FEDERAL "FAMILY FIRST PREVENTION SERVICES ACT OF 2018".

SECTION 5. In Colorado Revised Statutes, 26-1-132, **amend** (1) introductory portion as follows:

26-1-132. Department of human services - rate setting - residential treatment service providers - monitoring and auditing - report. (1) In conjunction with the group of representatives convened by the state department pursuant to section 26-5-104 (6)(e), ~~(6)(g)~~, AND ~~(6)(i)~~ to review the rate-setting process for child welfare services, the state department shall develop a rate-setting process consistent with medicaid requirements for providers of residential treatment services in Colorado. The department of health care policy and financing shall approve the rate-setting process for rates funded by medicaid. The rate-setting process developed pursuant to this section may include:

SECTION 6. In Colorado Revised Statutes, 19-1-115, **add** (4)(d)(III) as follows:

19-1-115. Legal custody - guardianship - placement out of the home - petition for review for need of placement. (4) (d) (III) THE STATE DEPARTMENT OF HUMAN SERVICES SHALL CONVENE A WORKING GROUP OF GEOGRAPHICALLY AND DEMOGRAPHICALLY DIVERSE PARTNERS AND STAKEHOLDERS TO PROVIDE FEEDBACK AND RECOMMENDATIONS REGARDING THE COLLECTION OF FEES FOR THE RESIDENTIAL CARE OF CHILDREN OR YOUTH IN OUT-OF-HOME PLACEMENT WHO ARE NOT ADJUDICATED DEPENDENT OR NEGLECTED PURSUANT TO SECTION 19-3-102, ENSURING COMPLIANCE WITH FEDERAL LAW, INCLUDING BUT NOT LIMITED TO TITLE IV OF THE FEDERAL "SOCIAL SECURITY ACT". ON OR BEFORE MARCH 31, 2022, THE STATE DEPARTMENT SHALL SUBMIT A REPORT OF THE RECOMMENDATIONS OF THE WORKING GROUP TO THE PUBLIC BEHAVIORAL HEALTH CARE AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR THEIR SUCCESSOR COMMITTEES.

SECTION 7. Appropriation. For the 2021-22 state fiscal year, \$250,000 is appropriated to the department of human services for use by the division of child welfare. This appropriation is from the general fund. To implement this act, the division may use this appropriation for the provider rate actuarial analysis.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 25, 2021