

CHAPTER 332

SOCIAL SERVICES

SENATE BILL 94-147

BY SENATORS Meiklejohn, Bishop, Cassidy, Gallagher, Hopper, Mendez, Norton, Traylor, Wattenberg, Weissmann, and Wham; also REPRESENTATIVES Anderson, Greenwood, Keller, Kerns, Knox, Mattingly, Morrison, Nichol, Pierson, Rupert, Shoemaker, and Wright.

AN ACT

CONCERNING THE AUTHORITY TO IMPLEMENT A HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH BRAIN INJURY AS PROVIDED BY FEDERAL WAIVER.

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

SECTION 1. Part 6 of article 4 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPART to read:

SUBPART 6
HOME AND COMMUNITY-BASED SERVICES
FOR PERSONS WITH BRAIN INJURY

26-4-681. Short title - citation. THIS SUBPART 6 SHALL BE COMPRISED OF SECTIONS 26-4-681 TO 26-4-685 AND MAY BE CITED AS SUBPART 6. THE TITLE OF THIS SUBPART 6 SHALL BE KNOWN AND MAY BE CITED AS THE "HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH BRAIN INJURY ACT".

26-4-682. Legislative declaration - no entitlement created. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PURPOSE OF THIS SUBPART 6 IS TO PROVIDE, UNDER FEDERAL AUTHORIZATION AND SUBJECT TO AVAILABLE APPROPRIATIONS, HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH BRAIN INJURY.

(2) NOTHING IN THIS SUBPART 6 SHALL BE CONSTRUED TO ESTABLISH THAT ELIGIBLE PERSONS AS DEFINED IN SECTION 26-4-673 (1) ARE ENTITLED TO RECEIVE SERVICES FROM THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. THE PROVISION OF ANY SERVICES PURSUANT TO THIS SUBPART 6 SHALL BE SUBJECT TO FEDERAL WAIVER AUTHORIZATION AND AVAILABLE APPROPRIATIONS.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

26-4-683. Definitions. AS USED IN THIS SUBPART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADULT DAY CARE" MEANS HEALTH AND SOCIAL SERVICES FURNISHED TWO OR MORE HOURS PER DAY ON A REGULARLY SCHEDULED BASIS FOR ONE OR MORE DAYS PER WEEK IN AN OUTPATIENT SETTING AND FOR THE PURPOSE OF ENSURING THE OPTIMAL FUNCTIONING OF THE RECIPIENT.

(2) "BEHAVIORAL PROGRAMMING" MEANS AN INDIVIDUALIZED PLAN THAT SETS FORTH STRATEGIES TO DECREASE A RECIPIENT'S MALADAPTIVE BEHAVIORS THAT INTERFERE WITH THE RECIPIENT'S ABILITY TO REMAIN IN THE COMMUNITY. BEHAVIORAL PROGRAMMING INCLUDES A COMPLETE ASSESSMENT OF MALADAPTIVE BEHAVIORS OF THE RECIPIENT, THE DEVELOPMENT AND IMPLEMENTATION OF A STRUCTURED BEHAVIORAL INTERVENTION PLAN, CONTINUOUS TRAINING AND SUPERVISION OF CAREGIVERS AND BEHAVIORAL AIDES, AND PERIODIC REASSESSMENT OF THE INDIVIDUALIZED PLAN.

(3) "BRAIN INJURY" MEANS AN INJURY TO THE BRAIN ARISING FROM EXTERNAL FORCES INCLUDING, BUT NOT LIMITED TO, TOXIC CHEMICAL REACTIONS, ANOXIA, NEAR DROWNINGS, CLOSED OR OPEN HEAD INJURIES, AND FOCAL BRAIN INJURIES.

(4) "ELIGIBLE PERSON" MEANS A PERSON:

(a) WHO HAS A DIAGNOSIS OF BRAIN INJURY, AS SUCH TERM IS DEFINED IN SUBSECTION (3) OF THIS SECTION;

(b) WHO IS IN NEED OF THE LEVEL OF CARE AVAILABLE IN A HOSPITAL, REHABILITATION HOSPITAL, OR HOSPITAL IN LIEU OF A NURSING FACILITY;

(c) WHO IS CATEGORICALLY ELIGIBLE FOR MEDICAL ASSISTANCE, OR HAS A GROSS INCOME THAT DOES NOT EXCEED THREE HUNDRED PERCENT OF THE CURRENT FEDERAL SUPPLEMENTAL SECURITY INCOME BENEFIT LEVEL AND RESOURCES THAT DO NOT EXCEED THE LIMIT ESTABLISHED FOR INDIVIDUALS RECEIVING A MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS; AND

(d) FOR WHOM THE COST OF SERVICES WOULD NOT EXCEED THE AVERAGE COST OF HOSPITAL CARE.

(5) "INDEPENDENT LIVING SKILLS TRAINING" MEANS SKILLS AND THERAPIES THAT ARE DIRECTED AT THE DEVELOPMENT AND MAINTENANCE OF COMMUNITY LIVING SKILLS AND COMMUNITY INTEGRATION. INDEPENDENT LIVING SKILLS INCLUDE SUPERVISION OR TRAINING WITH RESPECT TO OR ASSISTANCE WITH SELF-CARE, COMMUNICATION SKILLS, SOCIALIZATION, SENSORY AND MOTOR DEVELOPMENT, REDUCING MALADAPTIVE BEHAVIOR, COMMUNITY LIVING AND MOBILITY, AND THERAPEUTIC RECREATION.

(6) "PERSONAL CARE SERVICES" MEANS ASSISTANCE WITH EATING, BATHING, DRESSING, PERSONAL HYGIENE, AND ACTIVITIES OF DAILY LIVING. PERSONAL CARE SERVICES INCLUDE ASSISTANCE WITH THE PREPARATION OF MEALS, BUT NOT THE COST

OF THE MEALS, AND HOMEMAKER SERVICES THAT ARE NECESSARY FOR THE HEALTH AND SAFETY OF THE RECIPIENT.

(7) "STRUCTURED DAY TREATMENT" MEANS STRUCTURED, NONRESIDENTIAL THERAPEUTIC TREATMENT SERVICES THAT ARE DIRECTED AT THE DEVELOPMENT AND MAINTENANCE OF COMMUNITY LIVING SKILLS AND ARE PROVIDED TWO OR MORE HOURS PER DAY ON A REGULARLY SCHEDULED BASIS FOR ONE OR MORE DAYS PER WEEK. DAY TREATMENT SERVICES INCLUDE SUPERVISION AND SPECIFIC TRAINING THAT ALLOWS A RECIPIENT TO FUNCTION AT THE RECIPIENT'S MAXIMUM POTENTIAL. THE SERVICES INCLUDE, BUT ARE NOT LIMITED TO, SOCIAL SKILLS TRAINING THAT ALLOWS FOR REINTEGRATION INTO THE COMMUNITY, SENSORY AND MOTOR DEVELOPMENT SERVICES, AND SERVICES AIMED AT REDUCING MALADAPTIVE BEHAVIOR.

(8) "SUPPORTED LIVING" MEANS ASSISTANCE OR SUPPORT DESIGNED TO MAXIMIZE OR MAINTAIN INDEPENDENCE AND SELF-DIRECTION AT DIFFERENT INTERVALS OF TIME.

(9) "TRANSITIONAL LIVING" MEANS A NONMEDICAL RESIDENTIAL PROGRAM THAT PROVIDES TRAINING AND TWENTY-FOUR-HOUR SUPERVISION TO A RECIPIENT OVER A SIX-TO-TWELVE-MONTH PERIOD THAT WILL ENHANCE THE RECIPIENT'S ABILITY TO LIVE MORE INDEPENDENTLY.

26-4-684. Implementation of home and community-based services program for persons with brain injury authorized - federal waiver - duties of the department. (1) THE DEPARTMENT IS HEREBY AUTHORIZED TO SEEK ANY NECESSARY WAIVER FROM THE FEDERAL GOVERNMENT TO DEVELOP AND IMPLEMENT A HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH BRAIN INJURY. THE DEPARTMENT SHALL DESIGN THE PROGRAM TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO ELIGIBLE PERSONS. ELIGIBILITY SHALL BE LIMITED TO PERSONS WHO MEET THE LEVEL OF SERVICES PROVIDED IN A HOSPITAL, REHABILITATION HOSPITAL, OR HOSPITAL IN LIEU OF NURSING FACILITY CARE.

(2) SERVICES FOR ELIGIBLE PERSONS MAY BE ESTABLISHED IN DEPARTMENT RULES TO THE EXTENT AUTHORIZED OR REQUIRED BY FEDERAL WAIVER, BUT SHALL INCLUDE AT LEAST THE FOLLOWING:

(a) INDEPENDENT LIVING SKILLS TRAINING, AS INDICATED IN THE ELIGIBLE PERSON'S PLAN OF CARE, AND PROVIDED BY LOCAL AGENCIES DETERMINED BY THE DEPARTMENT TO BE QUALIFIED TO PROVIDE THE SERVICES;

(b) RESIDENTIAL CARE INCLUDING, BUT NOT LIMITED TO:

(I) TRANSITIONAL LIVING;

(II) RESPITE CARE;

(III) SUPPORTED LIVING;

(c) PERSONAL CARE SERVICES;

(d) ASSISTED TRANSPORTATION;

(e) COUNSELING AND TRAINING INCLUDING SUBSTANCE ABUSE TREATMENT AND FAMILY COUNSELING;

(f) ENVIRONMENTAL MODIFICATION SERVICES;

(g) DAY CARE, WHICH MAY INCLUDE PHYSICAL, OCCUPATIONAL, AND SPEECH THERAPIES AS INDICATED IN THE ELIGIBLE PERSON'S PLAN OF CARE;

(h) STRUCTURED DAY TREATMENT, WHICH MAY INCLUDE PHYSICAL, OCCUPATIONAL, SPEECH, AND COGNITIVE THERAPIES IF DEEMED NECESSARY BY THE ELIGIBLE PERSON'S CASE MANAGER AND AS INDICATED IN THE PERSON'S PLAN OF CARE. STRUCTURED DAY TREATMENT SERVICES ARE FOR INDIVIDUALS WHO MAY BENEFIT FROM CONTINUED REHABILITATION AND REINTEGRATION INTO THE COMMUNITY.

(i) BEHAVIORAL PROGRAMMING THAT MAY BE PROVIDED IN OR OUTSIDE AN ELIGIBLE PERSON'S RESIDENCE;

(j) ASSISTIVE TECHNOLOGY.

(3) (a) THE DEPARTMENT SHALL PROVIDE A SYSTEM OF REIMBURSEMENT FOR SERVICES PROVIDED PURSUANT TO THIS SUBPART 6 THAT ENCOURAGES THE MOST COST-EFFECTIVE PROVISION OF SERVICES.

(b) A MEMBER OF AN ELIGIBLE PERSON'S FAMILY, OTHER THAN THE PERSON'S SPOUSE OR A PARENT OF A MINOR, MAY BE EMPLOYED TO PROVIDE PERSONAL CARE SERVICES TO SUCH PERSON. THE MAXIMUM REIMBURSEMENT FOR THE SERVICES PROVIDED BY A MEMBER OF THE PERSON'S FAMILY PER YEAR FOR AN ELIGIBLE PERSON SHALL NOT EXCEED FIVE THOUSAND DOLLARS PER FAMILY PER YEAR. STANDARDS THAT APPLY TO OTHER VENDORS WHO PROVIDE PERSONAL CARE SERVICES APPLY TO A FAMILY MEMBER WHO PROVIDES THESE SERVICES. IN ADDITION, A REGISTERED NURSE SHALL SUPERVISE A FAMILY MEMBER IN PROVIDING SERVICES TO THE EXTENT INDICATED IN THE ELIGIBLE PERSON'S PLAN OF CARE.

(4) THE DEPARTMENT SHALL, SUBJECT TO APPROPRIATION, USE AVAILABLE FEDERAL, STATE, LOCAL, OR PRIVATE FUNDS INCLUDING, BUT NOT LIMITED TO, MEDICAID FUNDS AVAILABLE UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, TO CARRY OUT THE PURPOSES OF THIS SUBPART 6.

(5) THE DEPARTMENT SHALL ADOPT RULES CONCERNING THE CERTIFICATION OF AGENCIES AS MEDICAID PROVIDERS FOR THE PURPOSES OF THIS SUBPART 6, FISCAL AND ADMINISTRATIVE PROCEDURES, PROCEDURES FOR REVIEWING PLANS OF CARE, REIMBURSEMENT RATES, AND THE SCOPE, DURATION, AND CONTENT OF PROGRAMS AND THE ELIGIBILITY FOR SPECIFIC SERVICES PROVIDED PURSUANT TO THIS SUBPART 6. THE DEPARTMENT SHALL ADOPT SUCH RULES AS ARE NECESSARY TO FULFILL THE OBLIGATIONS OF THE DEPARTMENT AS THE SINGLE STATE AGENCY TO ADMINISTER MEDICAL ASSISTANCE PROGRAMS IN ACCORDANCE WITH TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

26-4-685. Implementation of subpart contingent upon receipt of federal waiver - repeal of subpart. (1) THE IMPLEMENTATION OF THIS SUBPART 6 IS

CONDITIONED UPON THE ISSUANCE OF NECESSARY WAIVERS BY THE FEDERAL GOVERNMENT AND AVAILABLE APPROPRIATIONS. THE PROVISIONS OF THIS SUBPART 6 SHALL BE IMPLEMENTED TO THE EXTENT AUTHORIZED BY FEDERAL WAIVER. THE STATE DEPARTMENT SHALL PROPOSE LEGISLATION THAT CONFORMS WITH THE WAIVER PROVISIONS NO LATER THAN THE NEXT REGULAR LEGISLATIVE SESSION FOLLOWING THE ISSUANCE OF THE WAIVER.

(2) PROVISIONS OF THIS SUBPART 6 THAT ARE APPROVED BY THE FEDERAL GOVERNMENT AND ARE AUTHORIZED BY FEDERAL WAIVER SHALL REMAIN IN EFFECT ONLY FOR SO LONG AS SPECIFIED IN THE FEDERAL WAIVER, UNLESS OTHERWISE EXTENDED BY THE FEDERAL GOVERNMENT. THE STATE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO THE REVISOR OF STATUTES OF THE FINAL TERMINATION DATE OF THE WAIVER, AND THIS SUBPART 6 SHALL BE REPEALED, EFFECTIVE JULY 1 OF THE YEAR IN WHICH THE WAIVER IS TERMINATED.

(3) THIS SUBPART 6 IS REPEALED, EFFECTIVE JULY 1, 1999, UNLESS OTHERWISE REPEALED PRIOR TO SAID DATE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

26-4-686 to 26-4-690. (Reserved)

SECTION 2. 26-4-302 (1) (c), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-302. Basic services for the categorically needy - optional services.

(1) The following are services for which federal financial participation is available and which Colorado has selected to provide as optional services under the medical assistance program:

(c) Home and community-based services, as specified in part 6 of this article, which include:

(I) Home and community-based services for elderly, blind, and disabled persons, as specified in subpart 1 of part 6 of this article;

(II) Home and community-based services for developmentally disabled persons, as specified in subpart 2 of part 6 of this article;

(III) Home and community-based services for persons living with AIDS, as specified in subpart 3 of part 6 of this article;

(IV) Home and community-based services for persons with major mental illnesses, as specified in subpart 5 of part 6 of this article;

(V) HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH BRAIN INJURY, AS SPECIFIED IN SUBPART 6 OF PART 6 OF THIS ARTICLE.

SECTION 3. 26-4-303 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-303. Optional programs with special state provisions. (1) This section

specifies programs developed by Colorado to increase federal financial participation through selecting optional services or optional eligible groups. These programs include but are not limited to:

(d.7) THE HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH BRAIN INJURY, AS SPECIFIED IN SUBPART 6 OF PART 6 OF THIS ARTICLE;

SECTION 4. 26-4-522 (3) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-522. Single entry point system - authorization - phases for implementation - services provided. (3) **Single entry point agencies - service programs - functions.** (b) The agency may serve private paying clients on a fee-for-service basis and shall serve clients of publicly funded long-term care programs, including, but not limited to, the following:

(I) Nursing facility care;

(II) Home and community-based services for the elderly, blind, and disabled;

(III) Home and community-based services for persons living with acquired immune deficiency syndrome;

(IV) Long-term home health care;

(V) Home care allowance;

(VI) Alternative care facilities;

(VII) Adult foster care; ~~and~~

(VIII) Certain in-home services available pursuant to the federal "Older Americans Act of 1965", as amended; AND

(IX) HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH BRAIN INJURY.

SECTION 5. Appropriations - appropriations in long bill to be adjusted - directive to implement within existing appropriations. (1) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing for medical assistance administration, for the fiscal year beginning July 1, 1994, the sum of one hundred thirty-three thousand one hundred fifty-six dollars (\$133,156) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act. Of said sum, forty-nine thousand eight hundred sixteen dollars (\$49,816) shall be from the general fund and eighty-three thousand three hundred forty dollars (\$83,340) shall be from federal funds.

(2) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing, medical assistance, medical programs, for the fiscal year beginning July 1, 1994, is decreased by one hundred seventy-three thousand five hundred fourteen dollars (\$173,514). Of said sum, eighty-one thousand thirty-one dollars (\$81,031) shall be from the general

fund and ninety-two thousand four hundred eighty-three dollars (\$92,483) shall be from federal funds.

(3) The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys shall be made to carry out the purposes of this act.

SECTION 6. Effective date. This act shall take effect July 1, 1994.

SECTION 7. 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.

Approved: June 3, 1994