

CHAPTER 160

HEALTH CARE POLICY AND FINANCING

SENATE BILL 04-029

BY SENATOR(S) Windels, and Groff;
 also REPRESENTATIVE(S) Jahn, Borodkin, Boyd, Butcher, Coleman, Frangas, Lee, Marshall, McFadyen, McGihon, Merrifield,
 Rhodes, Romanoff, and Williams S.

AN ACT**CONCERNING MEDICALLY FRAGILE INDIVIDUALS.**

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

SECTION 1. 27-10.5-102 (20), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

27-10.5-102. Definitions. As used in this article, unless the context otherwise requires:

(20) (d) (I) EVERY INDIVIDUALIZED PLAN THAT INCLUDES THE PROVISION OF RESPITE CARE FOR MEDICAL PURPOSES, PURSUANT TO SECTION 27-10.5-104, SHALL INCLUDE A PROCESS BY WHICH THE PERSON RECEIVING SERVICES AND SUPPORTS MAY RECEIVE NECESSARY CARE IF THE PERSON'S FAMILY OR CAREGIVER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR UNFORESEEN CIRCUMSTANCES. THE FAMILY OR CAREGIVER SHALL BE DULY INFORMED BY THE INTERDISCIPLINARY TEAM OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE INDIVIDUALIZED PLAN IS INITIATED.

(II) NOTHING IN THIS PARAGRAPH (d) REQUIRES THE PROVISION OF RESPITE CARE, ONLY THAT EACH INDIVIDUAL PLAN THAT INCLUDES THE PROVISION OF RESPITE CARE FOR MEDICAL PURPOSES HAVE A CONTINGENCY PLAN.

SECTION 2. 26-1-304 (3), Colorado Revised Statutes, is amended to read:

26-1-304. Services for persons with traumatic brain injuries - limitations - covered services. (3) (a) All individuals receiving assistance from the trust fund shall receive case management services from the designated entity pursuant to section 26-1-303 or the department.

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

(b) THE CASE MANAGEMENT AGENCY, IN COORDINATION WITH THE ELIGIBLE INDIVIDUAL, THE INDIVIDUAL'S FAMILY OR GUARDIAN, AND THE INDIVIDUAL'S PHYSICIAN, SHALL INCLUDE IN EACH CASE PLAN A PROCESS BY WHICH THE ELIGIBLE INDIVIDUAL MAY RECEIVE NECESSARY CARE, WHICH MAY INCLUDE RESPITE CARE, IF THE ELIGIBLE INDIVIDUAL'S SERVICE PROVIDER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR UNFORESEEN CIRCUMSTANCES. THE ELIGIBLE INDIVIDUAL AND THE INDIVIDUAL'S FAMILY OR GUARDIAN SHALL BE DULY INFORMED BY THE CASE MANAGEMENT AGENCY OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE CASE PLAN IS INITIATED.

SECTION 3. 26-4-509.2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-509.2. Children's personal assistance services and family support program. (5.5) THE CASE MANAGEMENT AGENCY, IN COORDINATION WITH THE ELIGIBLE DISABLED CHILD'S FAMILY AND THE CHILD'S PHYSICIAN, SHALL INCLUDE IN EACH CASE PLAN A PROCESS BY WHICH THE ELIGIBLE DISABLED CHILD MAY RECEIVE NECESSARY CARE, WHICH MAY INCLUDE RESPITE CARE, IF THE ELIGIBLE DISABLED CHILD'S FAMILY OR CARE PROVIDER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR TO UNFORESEEN CIRCUMSTANCES. THE ELIGIBLE DISABLED CHILD'S FAMILY SHALL BE DULY INFORMED BY THE CASE MANAGEMENT AGENCY OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE CASE PLAN IS INITIATED.

SECTION 4. 26-4-517 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-517. Private-duty nursing. (3) (c) THE HOME HEALTH AGENCY, IN CONJUNCTION WITH THE FAMILY OR IN-HOME CAREGIVER AND THE ATTENDING PHYSICIAN, SHALL INCLUDE IN A CARE PLAN THAT INCLUDES PRIVATE-DUTY NURSING SERVICES A PROCESS BY WHICH THE ELIGIBLE PERSON MAY RECEIVE NECESSARY CARE, WHICH MAY INCLUDE RESPITE CARE, IF THE FAMILY OR IN-HOME CAREGIVER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR TO UNFORESEEN CIRCUMSTANCES. THE FAMILY OR IN-HOME CAREGIVER SHALL BE DULY INFORMED BY THE HOME HEALTH AGENCY OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE CARE PLAN IS INITIATED.

SECTION 5. 26-4-607, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-607. Services for the elderly, blind, and disabled. (4) (a) THE CASE MANAGEMENT AGENCY, IN COORDINATION WITH THE ELIGIBLE PERSON, THE PERSON'S FAMILY OR GUARDIAN, AND THE PERSON'S PHYSICIAN, SHALL INCLUDE IN EACH CASE PLAN A PROCESS BY WHICH THE ELIGIBLE PERSON MAY RECEIVE NECESSARY CARE, WHICH MAY INCLUDE RESPITE CARE, IF THE ELIGIBLE PERSON'S FAMILY OR SERVICE PROVIDER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR TO UNFORESEEN CIRCUMSTANCES. THE ELIGIBLE PERSON AND THE PERSON'S FAMILY OR GUARDIAN SHALL BE DULY INFORMED BY THE CASE MANAGEMENT AGENCY OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE CASE PLAN IS INITIATED.

(b) THE REQUIREMENTS OF THIS SUBSECTION (4) SHALL NOT APPLY IF THE ELIGIBLE

PERSON IS RESIDING IN AN ALTERNATIVE CARE FACILITY.

SECTION 6. 26-4-629 (4), Colorado Revised Statutes, is amended to read:

26-4-629. Services for persons with developmental disabilities. (4) Any services for the developmentally disabled provided through this program shall be set forth in a plan of care developed and managed by a community centered board and subject to review and approval pursuant to section 26-4-624. The plan of care shall:

(a) Be based on the particular services needs of the eligible person; ~~and~~

(b) Describe the services necessary to avoid institutionalization; AND

(c) (I) INCLUDE A PROCESS BY WHICH THE PERSON WHO IS RECEIVING SERVICES MAY RECEIVE NECESSARY CARE FOR MEDICAL PURPOSES, WHICH MAY INCLUDE RESPITE CARE, IF THE PERSON'S SERVICE PROVIDER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR TO UNFORESEEN CIRCUMSTANCES. THE PERSON WHO IS RECEIVING SERVICES AND THE PERSON'S FAMILY OR GUARDIAN SHALL BE DULY INFORMED BY THE COMMUNITY CENTERED BOARD OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE PLAN OF CARE IS INITIATED.

(II) NOTHING IN THIS PARAGRAPH (c) REQUIRES A COMMUNITY CENTERED BOARD TO PROVIDE SERVICES SET FORTH IN A PLAN OF CARE THAT THE COMMUNITY CENTERED BOARD IS NOT OTHERWISE REQUIRED TO PROVIDE TO THE PERSON RECEIVING SERVICES, ONLY THAT THE PLAN OF CARE INCLUDE A CONTINGENCY FOR SUCH SERVICES.

SECTION 7. 26-4-645, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-645. Services for long-term-care eligible persons. (8) (a) THE CASE MANAGEMENT AGENCY, IN COORDINATION WITH THE ELIGIBLE PERSON AND THE PERSON'S FAMILY OR GUARDIAN, SHALL INCLUDE IN EACH CASE PLAN A PROCESS BY WHICH THE ELIGIBLE PERSON MAY RECEIVE NECESSARY CARE, WHICH MAY INCLUDE RESPITE CARE, IF THE ELIGIBLE PERSON'S FAMILY OR SERVICE PROVIDER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR TO UNFORESEEN CIRCUMSTANCES. THE ELIGIBLE PERSON AND THE PERSON'S FAMILY OR GUARDIAN SHALL BE DULY INFORMED BY THE CASE MANAGEMENT AGENCY OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE CASE PLAN IS INITIATED.

(b) THE REQUIREMENTS OF THIS SUBSECTION (8) SHALL NOT APPLY IF THE ELIGIBLE PERSON IS RESIDING IN A NURSING FACILITY OR AN ALTERNATIVE CARE FACILITY.

SECTION 8. 26-4-684, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-684. Implementation of home- and community-based services program for persons with brain injury authorized - federal waiver - duties of the department. (2.5) THE CASE MANAGER, IN COORDINATION WITH THE ELIGIBLE PERSON AND THE PERSON'S FAMILY OR GUARDIAN, SHALL INCLUDE IN EACH PLAN OF CARE A PROCESS BY WHICH THE ELIGIBLE PERSON MAY RECEIVE NECESSARY CARE,

WHICH MAY INCLUDE RESPITE CARE, IF THE ELIGIBLE PERSON'S FAMILY OR SERVICE PROVIDER IS UNAVAILABLE DUE TO AN EMERGENCY SITUATION OR TO UNFORESEEN CIRCUMSTANCES. THE ELIGIBLE PERSON AND THE PERSON'S FAMILY OR GUARDIAN SHALL BE DULY INFORMED BY THE CASE MANAGER OF THESE ALTERNATIVE CARE PROVISIONS AT THE TIME THE PLAN OF CARE IS INITIATED.

SECTION 9. 26-6-102 (5.6) (e), Colorado Revised Statutes, is amended to read:

26-6-102. Definitions. As used in this article, unless the context otherwise requires:

(5.6) "Medical foster care" means a program of foster care that provides home-based care for medically fragile children and youth who would otherwise be confined to a hospital or institutional setting and includes, but is not limited to, the following:

(e) Children dependent on technology such as respirators, TRACHEOTOMY TUBES, or ventilators in order to survive.

SECTION 10. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 20, 2004