A BILL FOR AN ACT

CONCERNING THE REAUTHORIZATION OF THE "CHILD MENTAL HEALTH TREATMENT ACT".

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.)

The bill extends indefinitely the "Child Mental Health Treatment Act" and renames it the "Children and Youth Mental Health Treatment Act" (act). Significant changes to the act include:

! Continuing the ability of a parent or guardian of a non-medicaid eligible child or youth to receive mental health services for the child or youth without unwarranted
child welfare involvement;

! When evaluating a child or youth for eligibility for mental health treatment services (services), the evaluating mental health agency shall use a standardized risk stratification tool;

! Establishing a new definition of "mental health agency" to capture a larger set of behavioral health services providers;

! Reporting requirements for the department of health care policy and financing and mental health agencies that provide services for children and youth are updated and clarified;

! Requiring the department of human services to maintain and update a list of providers on its website, as well as post information from various reports required by the act, excluding any personal health information; and

! Revising the membership of the advisory board that assists and advises the executive director of the department of human services with the development of service standards and rules for the provision of services.

The bill makes conforming amendments.

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

SECTION 1. In Colorado Revised Statutes, amend 27-67-101 as follows:

27-67-101. Short title. This article shall be known and may be cited as the "Child Mental Health Treatment Act". The short title of this article 67 is the "Children and Youth Mental Health Treatment Act".

SECTION 2. In Colorado Revised Statutes, amend 27-67-102 as follows:

27-67-102. Legislative declaration. (1) The general assembly finds that many parents in Colorado have experienced challenging circumstances because their children have significant mental health needs. Many times, the parents are loving, caring parents who have become increasingly frustrated in their attempts to navigate the various
governmental systems, including child welfare, mental health, law
enforcement, juvenile justice, education, and youth services, in an attempt
to find help for their children. Frequently in these situations, an action in
dependency or neglect under article 3 of title 19 is neither appropriate nor
warranted.

(2) The general assembly finds that it is desirable to assist children
AND YOUTH with mental health needs and their families. The general
assembly further finds that it is desirable to make mental health services
more available to families who want treatment for their children. THE
GENERAL ASSEMBLY FINDS THAT IT IS IN THE BEST INTEREST OF THE STATE
TO PROVIDE A FULL RANGE OF MENTAL HEALTH TREATMENT SERVICES,
INCLUDING RESIDENTIAL CARE, TO CHILDREN AND YOUTH WHO ARE NOT
ELIGIBLE FOR MEDICAID. The general assembly FURTHER finds that,
although the mental health agencies are responsible for providing OR
COORDINATING the full range of mental health treatment services,
including residential care, for those children AND YOUTH who have been
found to be categorically eligible for medicaid, there remains a population
of children AND YOUTH in need of mental health services who are not
categorically eligible for medicaid. Accordingly, the general assembly
determines that it is appropriate to adopt a program pursuant to which a
continuum of services would be provided to these children AND YOUTH.

(3) THE GENERAL ASSEMBLY THEREFORE FINDS THAT CHILDREN
AND YOUTH WHO ARE CATEGORICALLY ELIGIBLE FOR MEDICAID AND WHO
MAY BE ELIGIBLE FOR MENTAL HEALTH TREATMENT SERVICES, INCLUDING
RESIDENTIAL CARE, MAY NEED SUPPORT IN IDENTIFYING CLEAR APPEALS
PROCESSES.

SECTION 3. In Colorado Revised Statutes, repeal and reenact,
with amendments, 27-67-103 as follows:

27-67-103. Definitions. As used in this Article 67, unless the context otherwise requires:

(1) "Care management" includes, but is not limited to, consideration of the continuity of care and array of services necessary for appropriately treating a child or youth and the decision-making authority regarding the child's or youth's placement in and discharge from behavioral health services.

(2) "Child or youth who is at risk of out-of-home placement" means a child or youth who, although not otherwise categorically eligible for Medicaid, meets the following criteria:

(a) The child or youth has been diagnosed as having a mental health disorder, as defined in section 27-65-102 (11.5);

(b) The child or youth requires a level of care that is provided in a residential child care facility pursuant to section 25.5-5-306, or that is provided through community-based programs, and who, without such care, is at risk of unwarranted child welfare involvement or other system involvement, as described in section 27-67-102, in order to receive funding for treatment;

(c) If the child or youth is determined to be in need of placement in a residential child care facility, he or she shall apply for supplemental security income, but any determination for supplemental security income must not be a criterion for a child or youth to receive services pursuant to this Article 67;

(d) The child or youth is a person for whom there is no
PENDING OR CURRENT ACTION IN DEPENDENCY OR NEGLECT PURSUANT TO
ARTICLE 3 OF TITLE 19; AND

(e) The child or youth is younger than eighteen years of
age, but he or she may continue to remain eligible for services
until his or her twenty-first birthday.

(3) "Community-based care" means any intervention that
is designed to be an alternative to residential or hospital level
of care in which the child or youth resides within a
noninstitutional setting.

(4) "Community mental health center" has the same
meaning as provided in section 27-66-101 (2).

(5) "County department" means the county or district
department of human or social services.

(6) "Family advocate" has the same meaning as provided in
section 27-69-102 (5).

(7) "Family systems navigator" has the same meaning as
provided in section 27-69-102 (5.5).

(8) "First-level appeal" means the initial process a
Medicaid member is required to enact to contest a benefit,
service, or eligibility decision made by Medicaid or a Medicaid
managed care entity.

(9) "Medicaid child or youth who is at risk of out-of-home
placement" means a child or youth who is categorically eligible
for Medicaid but who otherwise meets the definition of a child or
youth who is at risk of out-of-home placement as defined in
subsection (2) of this section.

(10) "Mental health agency" means a behavioral health
SERVICES CONTRACTOR THROUGH THE STATE DEPARTMENT OF HUMAN SERVICES SERVING CHILDREN AND YOUTH STATEWIDE OR IN A PARTICULAR GEOGRAPHIC AREA, INCLUDING BUT NOT LIMITED TO COMMUNITY MENTAL HEALTH CENTERS, AND WITH THE ABILITY TO MEET ALL EXPECTATIONS OF THIS ARTICLE 67.

(11) "PROFESSIONAL PERSON" MEANS A PERSON LICENSED TO PRACTICE MEDICINE IN THIS STATE, A PSYCHOLOGIST CERTIFIED TO PRACTICE IN THIS STATE, OR A PERSON LICENSED AND IN GOOD STANDING TO PRACTICE MEDICINE IN ANOTHER STATE OR A PSYCHOLOGIST CERTIFIED TO PRACTICE AND IN GOOD STANDING IN ANOTHER STATE WHO IS PROVIDING MEDICAL OR CLINICAL SERVICES AT A TREATMENT FACILITY IN THIS STATE THAT IS OPERATED BY THE ARMED FORCES OF THE UNITED STATES, THE UNITED STATES PUBLIC HEALTH SERVICE, OR THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS.

(12) "STATE DEPARTMENT" MEANS THE STATE DEPARTMENT OF HUMAN SERVICES.

SECTION 4. In Colorado Revised Statutes, amend 27-67-104 as follows:

27-67-104. Provision of mental health treatment services for children and youth. (1) (a) A parent or guardian may apply to a mental health agency on behalf of his or her minor child OR YOUTH for mental health treatment services for the child OR YOUTH pursuant to this section, whether the child is categorically eligible for medicaid under the capitated mental health system described in section 25.5-5-411, C.R.S., or whether the parent believes his or her child is a child IF THE PARENT OR GUARDIAN BELIEVES THE CHILD OR YOUTH IS at risk of out-of-home placement. THE PARENT'S OR GUARDIAN'S REQUEST FOR SERVICES DESCRIBED IN THIS
SECTION MAY BE DONE WITH ASSISTANCE FROM A FAMILY ADVOCATE,
FAMILY SYSTEMS NAVIGATOR, NONPROFIT ADVOCACY ORGANIZATION, OR
COUNTY DEPARTMENT; HOWEVER, THE STATE DEPARTMENT IS NOT
OBLIGATED TO PAY FOR ANY SERVICES PROVIDED BY ENTITIES WITH WHICH
THEY DO NOT CONTRACT. In such circumstances, it shall be the
responsibility of the mental health agency to evaluate IS RESPONSIBLE FOR
EVALUATING the child OR YOUTH and to clinically assess ASSESSING the
child's OR YOUTH'S need for mental health services and, when warranted,
to provide treatment services as necessary and in the best interests of the
child OR YOUTH and the child's OR YOUTH'S family. Subject to available
state appropriations WHEN EVALUATING A CHILD OR YOUTH FOR
ELIGIBILITY, THE MENTAL HEALTH AGENCY SHALL USE A STANDARDIZED
RISK STRATIFICATION TOOL, IN A MANNER DETERMINED BY RULE OF THE
STATE DEPARTMENT. FOLLOWING THE EVALUATION OF THE CHILD OR
YOUTH, THE MENTAL HEALTH AGENCY SHALL PROVIDE A WRITTEN
NOTIFICATION TO THE CHILD'S OR YOUTH'S PARENT OR GUARDIAN THAT
INCLUDES A COMPREHENSIVE LIST OF POTENTIAL TREATMENT PROVIDERS,
WITH A DISCLOSURE THAT THE CHILD'S OR YOUTH'S FAMILY MAY CHOOSE
TO SEEK SERVICES FROM THE PROVIDER OF THEIR CHOICE, INCLUDING BUT
NOT LIMITED TO THE MENTAL HEALTH AGENCY. THE WRITTEN
NOTIFICATION MUST ALSO INFORM THE CHILD'S OR YOUTH'S FAMILY THAT
THEY MAY REQUEST ASSISTANCE FROM A FAMILY ADVOCATE, FAMILY
SYSTEMS NAVIGATOR, NONPROFIT ADVOCACY ORGANIZATION, OR COUNTY
DEPARTMENT; HOWEVER, THE STATE DEPARTMENT IS NOT OBLIGATED TO
PAY FOR ANY SERVICES PROVIDED BY ENTITIES WITH WHICH THEY DO NOT
CONTRACT. THE STATE DEPARTMENT SHALL MAINTAIN A LIST OF
AVAILABLE PROVIDERS ON A PUBLIC WEBSITE AND SHALL UPDATE THE
WEBSITE QUARTERLY. The mental health agency shall be responsible for the provision of the treatment services and care management, including any in-home family mental health treatment, other family preservation services, residential treatment, COMMUNITY-BASED CARE, or any post-residential follow-up services that may be appropriate for the child's or YOUTH'S NEEDS OR HIS OR HER family's needs. For the purposes of this section, the term "care management" includes, but is not limited to, consideration of the continuity of care and array of services necessary for appropriately treating the child and the decision-making authority regarding a child's placement in and discharge from mental health services. A dependency or neglect action pursuant to article 3 of title 19 C.R.S., shall not be required in order to allow a family access to residential mental health treatment services for a child OR YOUTH.

(b) At the time of the assessment by the mental health agency, if residential services are denied, or at the time when the mental health agency has recommended that the child OR YOUTH be discharged from services, the mental health agency shall advise the family, both orally and in writing, of the appeal process available to them. The mental health agency shall have two working days within which to complete any internal appeal process. Within five working days after the mental health agency's final denial or recommendation for discharge, a parent or guardian may request an objective third party at the state department who is a professional person as that term is defined in section 27-65-102(17), to review the action of the mental health agency. A FAMILY ADVOCATE, FAMILY SYSTEMS NAVIGATOR, NONPROFIT ADVOCACY ORGANIZATION, OR COUNTY DEPARTMENT MAY ASSIST A FAMILY IN FILING AN APPEAL; HOWEVER, THE STATE DEPARTMENT IS NOT OBLIGATED TO PAY FOR ANY
SERVICES PROVIDED BY ENTITIES WITH WHICH THEY DO NOT CONTRACT.

The review shall occur within three working days of the parent’s or guardian’s request. The professional person shall determine if the requested services are appropriate.

(1.5) (a) The parent or guardian of a Medicaid child or youth who is at risk of out-of-home placement may request, within five days after all first-level Medicaid appeals processes are exhausted, an objective third party at the state department who is a professional person to review the service request made to Medicaid. A family advocate, family system navigator, or county department may assist a family in filing an appeal. The review must occur within three working days of the parent’s or guardian’s request.

(b) The administrative law judge considering the Medicaid appeal for the Medicaid child or youth who is at risk of out-of-home placement shall take into consideration the objective third-party review by the state department as part of his or her reconsideration and decision of the Medicaid service request.

(2) If at any time the mental health agency determines pursuant to section 19-3-304 C.R.S., that there is reasonable cause to know or suspect that a child or youth has been subjected to abuse or neglect, then the mental health agency shall immediately contact the statewide child abuse hotline established in section 26-5-111 or the appropriate county department. Within ten working days after the referral, if assigned for an assessment by the county department, a representative of the mental health agency shall meet
with the county department and the family. Upon referral to the county
department, IF ASSIGNED FOR AN ASSESSMENT, the county department
shall proceed with THE assessment to determine whether there is a
sufficient basis to believe that physical or sexual abuse or neglect or some
other form of abuse or neglect of a child's OR YOUTH's physical
well-being has occurred. warranting a dependency or neglect action.

SECTION 5. In Colorado Revised Statutes, repeal and reenact,
with amendments, 27-67-105 as follows:

27-67-105. Monitoring - reports. (1) ON OR BEFORE SEPTEMBER
1, 2018, AND BY SEPTEMBER 1 OF EACH YEAR THEREAFTER, EACH MENTAL
HEALTH AGENCY SHALL REPORT TO THE STATE DEPARTMENT THE
FOLLOWING INFORMATION:

(a) THE NUMBER OF CHILDREN AND YOUTH WHO ARE AT RISK OF
OUT-OF-HOME PLACEMENT AND WHOSE PARENT OR LEGAL GUARDIAN
REQUESTED RESIDENTIAL OR COMMUNITY-BASED CARE PURSUANT TO
SECTION 27-67-104 TO WHOM THE FOLLOWING SERVICES WERE PROVIDED:

(I) AN ASSESSMENT PURSUANT TO SECTION 27-67-104 (1)(a);

(II) COMMUNITY-BASED CARE;

(III) RESIDENTIAL TREATMENT; OR

(IV) POST-RESIDENTIAL FOLLOW-UP SERVICES;

(b) THE NUMBER OF CHILDREN AND YOUTH WHO ARE AT RISK OF
OUT-OF-HOME PLACEMENT AND FOR WHOM A CHILD ABUSE AND NEGLECT
REFERRAL WAS MADE TO THE COUNTY DEPARTMENT;

(c) THE NUMBER OF CHILDREN AND YOUTH FOR WHOM EITHER:

(I) AN ASSESSMENT WAS REQUESTED BUT NOT PERFORMED, AND

THE REASONS THAT THE ASSESSMENT WAS NOT PERFORMED; OR

(II) AN ASSESSMENT WAS PERFORMED BUT THE MENTAL HEALTH
AGENCY DID NOT PROVIDE SERVICES PURSUANT TO THIS ARTICLE 67, AND
THE REASONS THAT SERVICES WERE NOT PROVIDED, INCLUDING WHETHER
THE FAMILY REFUSED THE SERVICES OFFERED;
(d) THE COSTS ASSOCIATED WITH THE PROVISION OF THE MENTAL
HEALTH TREATMENT SERVICES DESCRIBED IN SUBSECTION (1)(a) OF THIS
SECTION;
(e) THE DEMOGRAPHIC INFORMATION OF THE CHILDREN, YOUTH,
AND FAMILIES SERVED, AS OUTLINED BY THE STATE DEPARTMENT;
(f) THE OUTCOMES OF TREATMENT FOR THE CHILDREN AND YOUTH
SERVED, AS DETERMINED BY THE STATE DEPARTMENT IN CONSULTATION
WITH MENTAL HEALTH AGENCIES, SERVICE PROVIDERS, AND FAMILIES;
(g) THE LENGTH OF STAY AND FUNDING TOTALS FOR RESIDENTIAL
SERVICES AND COMMUNITY-BASED CARE; AND
(h) THE AGGREGATE NUMBER OF THIRD-PARTY REVIEWS
COMPLETED BY THE STATE DEPARTMENT FOR CHILDREN SERVED
PURSUANT TO THIS ARTICLE 67, DELINEATED BY CHILDREN WHO ARE AND
ARE NOT CATEGORICALLY ELIGIBLE FOR MEDICAID.

(2) ON OR AFTER JANUARY 1, 2019, THE STATE DEPARTMENT
SHALL MAKE THE INFORMATION OBTAINED PURSUANT TO SUBSECTION (1)
OF THIS SECTION AVAILABLE TO THE PUBLIC BY POSTING IT TO THE STATE
DEPARTMENT'S WEBSITE. ANY INFORMATION SO POSTED MUST NOT
INCLUDE ANY PERSONAL HEALTH INFORMATION.

(3) as follows:

27-67-106. Funding - rules. (3) The state board of human
services in consultation with the department of health care policy and
financing, shall promulgate rules implementing a sliding scale for the payment of services, including mental health treatment and room and board, that are not covered by private insurance or federal medicaid funding. It is the intent of the general assembly that the portion of such expenses paid from general fund moneys shall not exceed the general fund appropriations made for such purpose in any given fiscal year. It is the further intent of the general assembly that subsidies provided by the state through general fund moneys shall be used to assist the lowest income families to ensure the maximum use of appropriate least restrictive treatment services and to provide access to the greatest number of children and youth.

SECTION 7. In Colorado Revised Statutes, repeal 27-67-108 as follows:

27-67-108. Repeal of article. This article is repealed, effective July 1, 2019.

SECTION 8. In Colorado Revised Statutes, add 27-67-109 as follows:

27-67-109. Child and youth mental health services standards - advisory board. (1) The advisory board established in subsection (2) of this section is responsible for recommending standards and rules relevant to the provision of mental health services to children and youth covered by this article 67.

(2) An advisory board to the state department is established for the purpose of assisting and advising the executive director in accordance with this section in the development of service standards and rules. The advisory board
CONSISTS OF NOT LESS THAN ELEVEN NOR MORE THAN FIFTEEN MEMBERS

APPOINTED BY THE STATE DEPARTMENT AS FOLLOWS:

(a) ONE REPRESENTATIVE EACH FROM THE OFFICE OF BEHAVIORAL

HEALTH; THE OFFICE OF CHILDREN, YOUTH, AND FAMILIES; THE

DEPARTMENT OF HEALTH CARE POLICY AND FINANCING; AND A LEADING

PROFESSIONAL ASSOCIATION OF PSYCHIATRISTS IN THIS STATE;

(b) ONE MEMBER REPRESENTING NONPROFIT HEALTH CARE

FACILITIES;

(c) ONE MEMBER REPRESENTING CHILDREN OR YOUTH CONSUMERS

OF SERVICES FOR PERSONS WITH MENTAL HEALTH DISORDERS;

(d) ONE MEMBER REPRESENTING FAMILIES OF PERSONS WITH

MENTAL HEALTH DISORDERS;

(e) ONE MEMBER REPRESENTING CHILDREN'S HEALTH CARE

FACILITIES;

(f) ONE MEMBER REPRESENTING A COMMUNITY MENTAL HEALTH

CENTER THAT PERFORMS EVALUATIONS PURSUANT TO THIS ARTICLE 67;

(g) ONE MEMBER REPRESENTING A COUNTY HUMAN OR SOCIAL

SERVICES AGENCY;

(h) ONE MEMBER REPRESENTING INDIVIDUALS WITH INTELLECTUAL

AND DEVELOPMENTAL DISABILITIES; AND

(i) OTHER PERSONS FROM BOTH THE PRIVATE AND THE PUBLIC

SECTORS WHO ARE RECOGNIZED OR KNOWN TO BE INTERESTED AND

INFORMED IN THE AREA OF THE ADVISORY BOARD'S PURPOSE AND

FUNCTION.

(3) IN MAKING APPOINTMENTS TO THE ADVISORY BOARD, THE

STATE DEPARTMENT MUST INCLUDE REPRESENTATION BY AT LEAST ONE

MEMBER WHO IS A PERSON WITH A DISABILITY, AS DEFINED IN SECTION
SECTION 9. In Colorado Revised Statutes, 19-3-308, amend (1.5)(b) as follows:

19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules - report. (1.5) (b) If, during the investigation and assessment process, the county department determines that the family's issues may be attributable to the child's mental health status, rather than dependency or neglect issues, and that mental health treatment services pursuant to section 27-67-104 C.R.S., may be more appropriate, the county department shall contact the mental health agency, as that term is defined in section 27-67-103 (6), C.R.S. Within ten days after the commencement of the investigation, the county department shall meet with a representative from the mental health agency and the family. The county department, in conjunction with the mental health agency, shall jointly determine whether mental health services should be provided pursuant to section 27-67-104 C.R.S., or whether the provision of services through the county department is more appropriate.

SECTION 10. In Colorado Revised Statutes, 25.5-4-406, amend (1)(a) as follows:

25.5-4-406. Rate setting - medicaid residential treatment service providers - monitoring and auditing - report. (1) The state department shall approve a rate-setting process consistent with medicaid requirements for providers of medicaid residential treatment services in
the state of Colorado as developed by the department of human services.
The rate-setting process developed pursuant to this section may include,
but shall not be limited to:

(a) A range for reimbursement that represents a base-treatment
rate for serving a child who is subject to out-of-home placement due to
dependency and neglect, a child placed in a residential child care facility
pursuant to the "Child Mental Health Treatment Act" "CHILDREN AND
YOUTH MENTAL HEALTH TREATMENT ACT", article 67 of title 27, C.R.S.,
or a child who has been adjudicated a delinquent, which includes a
defined service package to meet the needs of the child;

SECTION 11. In Colorado Revised Statutes, 26-1-132, amend
(1)(a) as follows:

26-1-132. Department of human services - rate setting -
residential treatment service providers - monitoring and auditing -
report - repeal. (1) In conjunction with the group of representatives
convened by the state department pursuant to section 26-5-104 (6)(e) 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:

(a) A range that represents a base-treatment rate for serving a
child who is subject to out-of-home placement due to dependency and
neglect, a child placed in a residential child care facility pursuant to the
"Child Mental Health Treatment Act" "CHILDREN AND YOUTH MENTAL
HEALTH TREATMENT ACT", article 67 of title 27, C.R.S.; or a child who
has been adjudicated a delinquent, which includes a defined service
package to meet the needs of the child;

SECTION 12. Effective date. This act takes effect June 30,
2018.

SECTION 13. 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.