

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0305.01 Shelby Ross x4510

HOUSE BILL 22-1260

HOUSE SPONSORSHIP

Froelich,

SENATE SPONSORSHIP

Simpson and Fields,

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENSURING STUDENTS HAVE REASONABLE ACCESS TO**
102 **MEDICALLY NECESSARY SERVICES IN SCHOOLS.**

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>.)

Under the bill, a student who has a medical diagnosis and presents an accompanying prescription from a qualified health-care professional to an administrative unit must receive reasonable accommodations, as determined by a collaborative care team, to allow the student to receive medically necessary services in the school setting.

The bill prohibits an administrative unit from prohibiting a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 26, 2022

functional health-care specialist from providing medically necessary services to a student during school hours.

The bill authorizes an administrative unit to utilize onsite therapists when selecting a functional health-care specialist to provide the medically necessary services to the student. If the administrative unit does not have an appropriate specialist available on site, the bill requires the administrative unit to allow a community-based specialist to provide the medically necessary services in the school setting. The administrative unit is also required to consider selecting specialists who provide frequent and regular therapy to the student outside of the school setting to provide the medically necessary service to the student in the school setting in order to maintain continuity of care.

The bill does not increase, alter, or reduce an administrative unit's obligation to provide required services pursuant to the federal "Individuals with Disabilities Education Act" or section 504 of the federal "Rehabilitation Act of 1974".

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Colorado has a strong recent history of passing legislation that
5 has significantly improved access to medically necessary behavioral
6 health treatments for children, resulting in great strides in service access
7 across many settings. Unfortunately, access to medically necessary
8 services in the school setting has lagged.

9 (b) Applied behavioral analysis (ABA) is one critical example of
10 a medically necessary service that, when prescribed by a physician or
11 other qualified health-care provider, may need to be delivered within a
12 school setting for children with an autism spectrum disorder (ASD)
13 diagnosis. ASD is a global developmental disorder typically involving
14 difficulty in acquiring and generalizing functional skills across
15 environments. Generally accepted standards of care for this population
16 require that ABA therapy is provided across settings, including schools,

1 in accordance with a child's clinical needs. It is in the interest of the child,
2 the child's family, and the state that a child who is diagnosed with ASD
3 receive proper care and treatment in order to have the opportunity to be
4 a fully functioning individual in society.

5 (c) The Colorado health insurance mandate to cover ASD requires
6 state-regulated health insurance plans to cover all specified medically
7 necessary treatment for ASD, including treatment in school settings;

8 (d) Pursuant to 42 U.S.C. sec. 1396 and sec. 1396d (r)(5),
9 Colorado's medicaid program is required to cover all medically necessary
10 treatment, whether or not included in the current medicaid state plan, to
11 correct or ameliorate defects, illnesses, or conditions in medicaid-eligible
12 children under twenty-one years of age, including treatment in school
13 settings;

14 (e) The lack of access to medically necessary services in schools
15 has detrimental effects on the children who are unable to achieve
16 maximum long-term functioning, as well as significant social costs,
17 including lost productivity and increased costs of care. Over the course
18 of a child's lifetime, inadequate access to treatment during the child's
19 school-aged years may result in millions of dollars of therapies and
20 supports needed later in life, as well as lost economic and employment
21 opportunities over time.

22 (f) While schools provide special education and related services,
23 many children have unmet medical needs in their school setting. These
24 needs can be met by allowing access to services funded by third parties.
25 Funding for medically necessary services for these children is appropriate
26 and available through medicaid's early and periodic screening, diagnostic,
27 and treatment program or through a family's private health insurance plan,

1 thereby placing no greater financial burden on the state's public schools.

2 (g) Currently, access to medically necessary services in the school
3 setting is too often restricted, causing damage to Colorado children and
4 the state, which bears the cost when medically necessary services are not
5 provided. No family should have to choose between a child attending
6 public school or receiving access to medically necessary services.
7 Ensuring that children have access to these services will also improve the
8 efficacy of their treatment and their integration into the community, as
9 well as reduce long-term costs to the state.

10 **SECTION 2.** In Colorado Revised Statutes, **add 22-20-121** as
11 follows:

12 **22-20-121. Medically necessary treatment in school setting -**
13 **- policy - report - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE
14 CONTEXT OTHERWISE REQUIRES:

15 (a) "MEDICALLY NECESSARY TREATMENT" MEANS TREATMENT
16 RECOMMENDED OR ORDERED BY A COLORADO LICENSED HEALTH-CARE
17 PROVIDER ACTING WITHIN THE SCOPE OF THE HEALTH-CARE PROVIDER'S
18 LICENSE.

19 (b) "PRIVATE HEALTH-CARE SPECIALIST" MEANS A HEALTH-CARE
20 PROVIDER WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO
21 PROVIDE HEALTH-CARE SERVICES IN COLORADO, INCLUDING PEDIATRIC
22 BEHAVIORAL HEALTH TREATMENT PROVIDERS PURSUANT TO THE STATE
23 MEDICAL ASSISTANCE PROGRAM, ARTICLES 4, 5, AND 6 OF TITLE 25.5, AND
24 AUTISM SERVICES PROVIDERS WHO PROVIDE TREATMENT PURSUANT TO
25 SECTION 10-16-104 (1.4).

26 (2) (a) NO LATER THAN JULY 1, 2023, EACH ADMINISTRATIVE UNIT
27 SHALL ADOPT A POLICY THAT ADDRESSES HOW A STUDENT WHO HAS A

1 PRESCRIPTION FROM A QUALIFIED HEALTH-CARE PROVIDER FOR
2 MEDICALLY NECESSARY TREATMENT RECEIVES SUCH TREATMENT IN THE
3 SCHOOL SETTING AS REQUIRED BY APPLICABLE FEDERAL AND STATE LAWS,
4 INCLUDING SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF
5 1973", 29 U.S.C. SEC. 794, AS AMENDED, AND TITLE II OF THE FEDERAL
6 "AMERICANS WITH DISABILITIES ACT OF 1990".

7 (b) THE POLICY DEVELOPED PURSUANT TO SUBSECTION (2)(a) OF
8 THIS SECTION MUST:

9 (I) INCLUDE A NOTICE TO THE PARENT OR LEGAL GUARDIAN OF THE
10 STUDENT THAT SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF
11 1973", 29 U.S.C. SEC. 794, AS AMENDED, AND TITLE II OF THE FEDERAL
12 "AMERICANS WITH DISABILITIES ACT OF 1990" PROVIDE RIGHTS AND
13 PROTECTIONS TO STUDENTS TO ACCESS MEDICALLY NECESSARY
14 TREATMENT REQUIRED BY THE STUDENT TO HAVE MEANINGFUL ACCESS TO
15 THE BENEFITS OF A PUBLIC EDUCATION, OR TO ATTEND SCHOOL WITHOUT
16 RISKS TO THE STUDENT'S HEALTH OR SAFETY DUE TO THE STUDENT'S
17 DISABLING MEDICAL CONDITION;

18 (II) ADDRESS THE PROCESS IN WHICH A PRIVATE HEALTH-CARE
19 SPECIALIST MAY OBSERVE THE STUDENT IN THE SCHOOL SETTING,
20 COLLABORATE WITH INSTRUCTIONAL PERSONNEL IN THE SCHOOL SETTING,
21 AND PROVIDE MEDICALLY NECESSARY TREATMENT IN THE SCHOOL
22 SETTING AS REQUIRED BY SECTION 504 OF THE FEDERAL "REHABILITATION
23 ACT OF 1973", 29 U.S.C. SEC. 794, AS AMENDED, AND TITLE II OF THE
24 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990"; AND

25 (III) PROVIDE NOTICE OF A STUDENT'S RIGHT TO APPEAL THE
26 DECISION OF AN ADMINISTRATIVE UNIT CONCERNING ACCESS TO
27 MEDICALLY NECESSARY TREATMENT IN THE SCHOOL SETTING.

1 (3) EACH ADMINISTRATIVE UNIT SHALL MAKE THE POLICY
2 DEVELOPED PURSUANT TO SUBSECTION (2) OF THIS SECTION PUBLICLY
3 AVAILABLE ON THE ADMINISTRATIVE UNIT'S WEBSITE AND AVAILABLE TO
4 THE PARENT OR LEGAL GUARDIAN OF THE STUDENT, UPON REQUEST.

5 (4) (a) BEGINNING JULY 1, 2024, AND EACH JULY 1 THEREAFTER,
6 EACH ADMINISTRATIVE UNIT SHALL COMPILE AND PROVIDE TO THE
7 DEPARTMENT OF EDUCATION THE TOTAL NUMBER OF REQUESTS FOR
8 ACCESS TO A STUDENT BY A PRIVATE HEALTH-CARE SPECIALIST PURSUANT
9 TO THIS SECTION AND WHETHER THE ACCESS WAS AUTHORIZED OR DENIED.

10 (b) BEGINNING JANUARY 2025, AND EACH JANUARY THEREAFTER,
11 THE DEPARTMENT OF EDUCATION SHALL MAKE THE INFORMATION
12 REPORTED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION AVAILABLE
13 ON THE DEPARTMENT'S WEBSITE AND REPORT THE INFORMATION TO THE
14 HOUSE OF REPRESENTATIVES EDUCATION COMMITTEE AND THE SENATE
15 EDUCATION COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, AS PART OF
16 THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND
17 TRANSPARENT (SMART) GOVERNMENT ACT" PRESENTATION REQUIRED
18 BY PART 2 OF ARTICLE 7 OF TITLE 2.

19 **SECTION 3. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly; except
22 that, if a referendum petition is filed pursuant to section 1 (3) of article V
23 of the state constitution against this act or an item, section, or part of this
24 act within such period, then the act, item, section, or part will not take
25 effect unless approved by the people at the general election to be held in
26 November 2022 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.