

CHAPTER 185

HUMAN SERVICES - BEHAVIORAL HEALTH

HOUSE BILL 22-1283

BY REPRESENTATIVE(S) Michaelson Jenet and Bradfield, Amabile, Gonzales-Gutierrez, Bacon, Benavidez, Bird, Boesenecker, Caraveo, Cutter, Daugherty, Esgar, Exum, Froelich, Gray, Herod, Hooton, Jodeh, Kipp, Lindsay, Lontine, McCluskie, McCormick, McLachlan, Mullica, Ortiz, Roberts, Sirota, Snyder, Sullivan, Titone, Valdez A., Valdez D., Weissman, Woodrow, Young, Garnett, Van Beber;

also SENATOR(S) Buckner and Priola, Gonzales, Hansen, Lee, Simpson, Zenzinger, Fenberg.

AN ACT

CONCERNING ENHANCED RESIDENTIAL SERVICES FOR PERSONS WITH BEHAVIORAL HEALTH NEEDS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

(a) During the COVID-19 pandemic, children and youth faced unprecedented behavioral health challenges;

(b) During this unprecedented time, children, youth, and their families may have lost access to, or needed increased availability of, behavioral and mental health care;

(c) Since the COVID-19 pandemic began, rates of psychological distress among youth have increased, including symptoms of anxiety, depression, and other behavioral and mental health disorders;

(d) Additional in-home and residential respite care services and facilities for children and families must be created in ten to twelve regions of the state to meet the increased need;

(e) Funding for additional operational support is critical for psychiatric residential treatment facilities and qualified residential treatment programs for youth across the state;

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.

(f) It is crucial to begin the process of building and staffing a neuro-psych facility with a capacity of up to sixteen beds for youth less than twenty-one years of age at the Colorado mental health institute at Fort Logan; and

(g) The federal government enacted the "American Rescue Plan Act of 2021" to provide support to state, local, and tribal governments in responding to the impact of the COVID-19 pandemic.

(2) The general assembly further declares that:

(a) Children, youth, and families have been disproportionately impacted by the COVID-19 pandemic and its negative public health impacts, especially the behavioral health of children, youth, and families. The programs and services funded by the federal money in this act are appropriate uses of the money transferred to Colorado under the "American Rescue Plan Act". This money will expand access to evidence-based treatment for behavioral health services, including additional in-home and residential respite care; operational support that is critical for psychiatric residential treatment facilities and qualified residential treatment programs for youth across the state; and building and staffing a neuro-psych facility with a capacity of up to sixteen beds for youth less than twenty-one years of age at the Colorado mental health institute at Fort Logan.

(b) The services described in this act are critical government services.

SECTION 2. In Colorado Revised Statutes, **add with amended and relocated provisions 26-5-117** as follows:

26-5-117. [Formerly 27-60-113] Out-of-home placement for children and youth with mental or behavioral needs - funding - report - rules - legislative declaration - repeal. (1) (a) The general assembly finds and declares that:

(I) The COVID-19 pandemic has lead to an emergency need for increased placements for children and youth with behavioral or mental health needs, including those involved with the child welfare system; and

(II) As the state works to transition to the critical requirements of the federal "Family First Prevention Services Act", it must ensure a smooth transition by helping existing residential child care facilities transition to qualified residential treatment programs or psychiatric residential treatment facilities.

(b) Therefore, the general assembly declares that the state should provide resources to qualified residential treatment programs, psychiatric residential treatment facilities, or therapeutic foster care providers to address this emergency situation and ensure there are high-quality providers available to meet these needs.

(2)(a) On or before August 1, 2021, the state department shall develop a program to provide emergency resources to licensed providers to help remove barriers such providers face in serving children and youth whose behavioral or mental health needs require services and treatment in a residential child care facility. Any such licensed provider shall meet the requirements of a qualified residential treatment program, as defined in section 26-5.4-102; a psychiatric residential treatment

facility, as defined in ~~section 26-5.4-103 (19.5)~~ SECTION 25.5-4-103 (19.5); TREATMENT FOSTER CARE; or therapeutic foster care. as defined in ~~section 26-6-102 (39)~~.

(b) (I) BEGINNING JULY 1, 2022, THE STATE DEPARTMENT SHALL PROVIDE ONGOING OPERATIONAL SUPPORT FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES, THERAPEUTIC FOSTER CARE, TREATMENT FOSTER CARE, AND QUALIFIED RESIDENTIAL TREATMENT PROGRAMS AS DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION.

(II) FOR THE 2022-23 BUDGET YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEY FROM THE BEHAVIORAL AND MENTAL HEALTH CASH FUND CREATED IN SECTION 24-75-230 TO THE STATE DEPARTMENT TO FUND OPERATIONAL SUPPORT FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR YOUTH, QUALIFIED RESIDENTIAL TREATMENT PROGRAMS, THERAPEUTIC FOSTER CARE, AND TREATMENT FOSTER CARE FOR YOUTH ACROSS THE STATE AS DESCRIBED IN THIS SUBSECTION (2).

(III) MONEY SPENT PURSUANT TO THIS SUBSECTION (2) MUST CONFORM WITH THE ALLOWABLE PURPOSES SET FORTH IN THE FEDERAL "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2, AS AMENDED. THE STATE DEPARTMENT SHALL EITHER SPEND OR OBLIGATE SUCH APPROPRIATION PRIOR TO DECEMBER 30, 2024, AND EXPEND THE APPROPRIATION ON OR BEFORE DECEMBER 31, 2026.

(IV) THIS SUBSECTION (2)(b) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027.

(c) THE STATE DEPARTMENT AND ANY PERSON WHO RECEIVES MONEY FROM THE STATE DEPARTMENT SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION REQUIREMENTS ESTABLISHED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION 24-75-226 (5).

~~(3) The state department may promulgate rules concerning the placement of a child or youth in the program. The rules may address quality assurance monitoring, admissions, discharge planning, appropriate length of stay, an appeals process for children and youth who are determined ineligible for the program, and compliance with applicable federal law, including the federal "Family First Prevention Services Act"; except that rules concerning the placement of a child or youth who is not in the custody of a state or county department of human or social services shall not inappropriately apply compliance with such act.~~

(4) (a) On or before December 31, 2021, the state department shall contract with licensed providers for the delivery of services to children and youth who are determined eligible for and placed in the program. A provider that contracts with the state department shall not:

(I) Deny admittance of a child or youth if the child or youth otherwise meets the eligibility criteria for the program; or

(II) Discharge a child or youth based on the severity or complexity of the ~~child~~ CHILD'S or youth's physical, behavioral, or mental health needs; except that the state

department may arrange for the placement of a child or youth with an alternate contracted provider if the placement with the alternate provider is better suited to deliver services that meet the needs of the child or youth.

(b) The state department shall reimburse a provider directly for the costs associated with the placement of a child or youth in the program for the duration of the treatment, including the costs the provider demonstrates are necessary in order for the provider to operate continuously during this period.

(c) The state department shall coordinate with the department of health care policy and financing to support continuity of care and payment for services for any children or youth placed in the program.

(d) The state department shall reimburse the provider one hundred percent of the cost of unutilized beds in the program to ensure available space for emergency residential out-of-home placements.

(5) (a) A hospital, health-care provider, provider of case management services, school district, managed care entity, or state or county department of human or social services may refer a family for the placement of a child or youth in the program. The entity referring a child or youth for placement in the program shall submit or assist the family with submitting an application to the state department for review. The state department shall consider each application as space becomes available. The state department shall approve admissions into the program and determine admission and discharge criteria for placement.

(b) The state department shall develop a discharge plan for each child or youth placed in the program. The plan must include the eligible period of placement of the child or youth and shall identify the entity that will be responsible for the placement costs if the child or youth remains with the provider beyond the date of eligibility identified in the plan.

(c) The entity or family that places the child or youth in the program retains the right to remove the child or youth from the program any time prior to the discharge date specified by the state department.

(6) Within seven days after submitting an application to the state department for placing a child or youth in the program, the state department shall work with the referring entity and the child's or youth's parents or legal guardians to ensure the child or youth is assessed for eligibility for enrollment into the state medical assistance program. A child or youth who is eligible for enrollment into the state medical assistance program shall be enrolled. Enrollment of a child or youth into the state medical assistance program does not constitute automatic placement into the program.

(7) ~~No later than November 1, 2022, 2023, and 2024~~ ON OR BEFORE NOVEMBER 1, 2023, AND EVERY NOVEMBER 1 THEREAFTER, the state department shall submit a written report to the house of representatives public and behavioral health and human services committee, the senate health and human services committee, or their successor committees, and the joint budget committee. At a minimum, the report must include:

(a) The number of applications received for placement of children and youth in the program;

(b) The number of children and youth accepted for placement in the program;

(c) The duration of each placement; and

(d) The daily rate paid to each provider for placement of children and youth.

(8) This section is intended to provide enhanced emergency services resulting from the increased need for services due to the COVID-19 pandemic. No later than September 30, 2024, the state department shall submit recommendations to the house of representatives public and behavioral health and human services committee, the senate health and human services committee, or their successor committees, and the joint budget committee about how to provide necessary services for children and youth in need of residential care, including hospital step-down services on an ongoing basis.

(9) This section is repealed, effective ~~July 1, 2025~~ JULY 1, 2028.

SECTION 3. In Colorado Revised Statutes, 27-60-103, **add** (1.5) as follows:

27-60-103. Behavioral health crisis response system - services - request for proposals - criteria - reporting - rules - definition - repeal. (1.5) (a) BEGINNING JANUARY 1, 2023, THE STATE DEPARTMENT SHALL CREATE IN-HOME AND RESIDENTIAL RESPITE CARE SERVICES AND FACILITIES FOR CHILDREN AND FAMILIES IN UP TO SEVEN REGIONS OF THE STATE, AS DETERMINED BY THE STATE DEPARTMENT AND A COMMITTEE OF INTERESTED STAKEHOLDERS.

(b) (I) FOR THE 2022-23 BUDGET YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEY FROM THE BEHAVIORAL AND MENTAL HEALTH CASH FUND PURSUANT TO SECTION 24-75-230 TO THE STATE DEPARTMENT TO FUND IN-HOME AND RESIDENTIAL RESPITE CARE ACROSS THE STATE AS DESCRIBED IN THIS SUBSECTION (1.5).

(II) MONEY SPENT PURSUANT TO THIS SUBSECTION (1.5) MUST CONFORM WITH THE ALLOWABLE PURPOSES SET FORTH IN THE FEDERAL "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2, AS THE ACT MAY BE SUBSEQUENTLY AMENDED. THE STATE DEPARTMENT SHALL EITHER SPEND OR OBLIGATE SUCH APPROPRIATION PRIOR TO DECEMBER 30, 2024, AND EXPEND THE APPROPRIATION ON OR BEFORE DECEMBER 31, 2026.

(III) THIS SUBSECTION (1.5)(b) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027.

(c) (I) BEGINNING IN STATE FISCAL YEAR 2023-24, MONEY APPROPRIATED TO THE STATE DEPARTMENT FOR THE PURPOSE OF THIS SUBSECTION (1.5) MUST CONTINUE THE STATEWIDE ACCESS TO CRISIS SYSTEM SERVICES FOR CHILDREN AND YOUTH UNTIL JUNE 30, 2026.

(II) BEGINNING IN THE STATE FISCAL YEAR 2022-23, MONEY APPROPRIATED TO THE STATE DEPARTMENT FOR THE PURPOSE OF IMPLEMENTING THIS SUBSECTION (1.5)

MUST SUPPORT RESIDENTIAL RESPITE CARE PROVIDED TO YOUTH INVOLVED IN THE FOSTER CARE SYSTEM.

(III) RESPITE FOSTER CARE HOMES MUST BE IN COMPLIANCE WITH ALL OTHER APPLICABLE RULES REGULATING FOSTER CARE HOMES.

(d) THE STATE DEPARTMENT AND ANY PERSON THAT RECEIVES MONEY FROM THE STATE DEPARTMENT SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION REQUIREMENTS ESTABLISHED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION 24-75-226 (5).

SECTION 4. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal 27-60-113.**

SECTION 5. In Colorado Revised Statutes, **add 27-80-127** as follows:

27-80-127. Children and youth in need of residential mental health and substance use treatment -repeal. (1) ON OR BEFORE JULY 1, 2023, THE BEHAVIORAL HEALTH ADMINISTRATION, CREATED PURSUANT TO PART 2 OF ARTICLE 60 OF TITLE 27, SHALL CREATE, DEVELOP, OR CONTRACT TO ADD ADDITIONAL RESIDENTIAL SUBSTANCE USE TREATMENT BEDS FOR YOUTH. TO THE GREATEST EXTENT POSSIBLE, THE DEPARTMENT SHALL ENSURE THAT BOTH MENTAL HEALTH AND SUBSTANCE USE TREATMENT SERVICES ARE AVAILABLE IN ONE RESIDENTIAL LOCATION. THE DEPARTMENT SHALL WORK COLLABORATIVELY WITH THE BEHAVIORAL HEALTH ADMINISTRATION FOR LICENSING AND DETERMINING THE GREATEST AREAS OF NEED.

(2) (a) (I) FOR THE 2022-23 BUDGET YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE FIVE MILLION DOLLARS FROM THE BEHAVIORAL AND MENTAL HEALTH CASH FUND, CREATED PURSUANT TO SECTION 24-75-230, TO THE DEPARTMENT TO EXPAND SUBSTANCE USE RESIDENTIAL TREATMENT BEDS FOR ADOLESCENTS, AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(II) MONEY SPENT PURSUANT TO THIS SUBSECTION (2) MUST CONFORM WITH THE ALLOWABLE PURPOSES SET FORTH IN THE FEDERAL "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2, AS AMENDED. THE DEPARTMENT SHALL EITHER SPEND OR OBLIGATE SUCH APPROPRIATION PRIOR TO DECEMBER 30, 2024, AND EXPEND THE APPROPRIATION ON OR BEFORE DECEMBER 31, 2026.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027.

(3) THE DEPARTMENT OF HUMAN SERVICES AND ANY PERSON THAT RECEIVES MONEY FROM THE DEPARTMENT OF HUMAN SERVICES SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION REQUIREMENTS ESTABLISHED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION 24-75-226 (5).

(4) THIS SECTION IS KNOWN AS THE "ANDY CAMPOS-PADILLA ACT".

SECTION 6. In Colorado Revised Statutes, **add 27-90-112** as follows:

27-90-112. Youth neuro-psych facility - funding - repeal. (1) BEGINNING JULY 1, 2022, THE DEPARTMENT OF HUMAN SERVICES SHALL BEGIN THE PROCESS TO CREATE, DEVELOP, OR CONTRACT FOR A NEURO-PSYCH FACILITY. THE NEURO-PSYCH FACILITY MUST HAVE A CAPACITY OF AT LEAST SIXTEEN RESIDENTIAL BEDS FOR COLORADO YOUTH WHO ARE LESS THAN TWENTY-ONE YEARS OF AGE. THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT ADMISSION CRITERIA THAT ENSURES THAT COLORADO CHILDREN AND YOUTH, PRIOR TO BEING ADMITTED, HAVE BEEN EVALUATED FOR THE LEAST RESTRICTIVE LEVEL OF CARE AND THAT GEOGRAPHIC LOCATION, CURRENT HEALTH-CARE PROVIDER, AND PAYER TYPE ARE NOT THE PRIMARY DETERMINING FACTORS IN WHETHER A YOUTH HAS ACCESS TO A BED AT THE NEURO-PSYCH FACILITY.

(2) (a) (I) FOR THE 2022-23 BUDGET YEAR, THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEY FROM THE BEHAVIORAL AND MENTAL HEALTH CASH FUND PURSUANT TO SECTION 24-75-230 TO THE DEPARTMENT OF HUMAN SERVICES TO FUND OPERATIONAL SUPPORT FOR PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES FOR YOUTH AND QUALIFIED RESIDENTIAL TREATMENT PROGRAMS FOR YOUTH ACROSS THE STATE AS DESCRIBED IN THIS SUBSECTION (2).

(II) MONEY SPENT PURSUANT TO THIS SUBSECTION (2) MUST CONFORM WITH THE ALLOWABLE PURPOSES SET FORTH IN THE FEDERAL "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 117-2, AS AMENDED. THE DEPARTMENT OF HUMAN SERVICES SHALL EITHER SPEND OR OBLIGATE SUCH APPROPRIATION PRIOR TO DECEMBER 30, 2024, AND EXPEND THE APPROPRIATION ON OR BEFORE DECEMBER 31, 2026.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2027.

(3) THE DEPARTMENT OF HUMAN SERVICES AND ANY PERSON THAT RECEIVES MONEY FROM THE DEPARTMENT OF HUMAN SERVICES SHALL COMPLY WITH THE COMPLIANCE, REPORTING, RECORD-KEEPING, AND PROGRAM EVALUATION REQUIREMENTS ESTABLISHED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND THE STATE CONTROLLER IN ACCORDANCE WITH SECTION 24-75-226 (5).

SECTION 7. Appropriation. For the 2022-23 state fiscal year, \$11,628,023 is appropriated to the department of human services for use by the division of child welfare. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. The division may use this appropriation for respite and residential programs. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the division from July 1, 2023, through December 30, 2024, for the same purpose. These appropriations are based on the assumption that the office will require 4.0 FTE in the 2022-23 state fiscal year and 4.0 FTE in the 2023-24 state fiscal year to implement the act.

SECTION 8. Appropriation. (1) For the 2022-23 state fiscal year, \$7,500,000 is appropriated to the department of human services for use by the behavioral health administration. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the

administration from July 1, 2023, through December 30, 2024, for the same purpose. To implement this act, the department may use this appropriation as follows:

(a) \$5,000,000 to expand substance use residential treatment beds for adolescents pursuant to section 27-80-127, C.R.S.; and

(b) \$2,500,000 for crisis response system services.

SECTION 9. Appropriation. For the 2022-23 state fiscal year, \$539,926 is appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. The office may use this appropriation for building maintenance costs associated with the youth neuro-psych facility at the Colorado mental health institute at Fort Logan established pursuant to section 27-94-107, C.R.S. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the administration from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 10. Capital construction appropriation. For the 2022-23 state fiscal year, \$35,000,000 is appropriated to the department of human services. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. To implement this act, the department may use this appropriation for capital construction related to the construction of a neuro-psych facility at the Colorado mental health institute at Fort Logan. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the administration from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 11. 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: May 18, 2022