

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0926.01 Shelby Ross x4510

HOUSE BILL 23-1269

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House Committees

Public & Behavioral Health & Human Services
Appropriations

Senate Committees

Health & Human Services
Appropriations

A BILL FOR AN ACT

101 **CONCERNING EFFORTS TO PROMOTE CLINICAL STABILIZATION FOR**
102 **YOUTH INVOLVED IN THE BEHAVIORAL HEALTH SYSTEM, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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 requires the department of health care policy and financing to analyze how directed payment authority can be used as part of a comprehensive plan to facilitate an adequate network of services for children and youth by requiring each managed care entity to pay no less than state department-established fee schedule rates for services needed

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

SENATE
3rd Reading Unamended
May 5, 2023

SENATE
2nd Reading Unamended
May 4, 2023

HOUSE
3rd Reading Unamended
April 24, 2023

HOUSE
Amended 2nd Reading
April 21, 2023

to promote clinical stabilization.

No later than July 1, 2023, the bill requires the department of human services (CDHS) to form a working group to make recommendations about developing an incentive funding pool pilot program to incentivize residential treatment providers to accept and treat children and youth who have high-acuity behavioral health needs to appropriate treatment and placement.

The bill requires the behavioral health administration (BHA) to develop a framework to measure and assess how the behavioral health system for children and youth is functioning, which framework must include measures of accountability for children and youth who are boarding or in extended stay.

Beginning September 1, 2023, and each quarter thereafter until October 1, 2024, the bill requires each hospital to report de-identified information to the BHA on the total number of children and youth patients who were boarding or had extended stay in the previous quarter; if known, how many children and youth who were boarding or had extended stay and were in county custody at the time; and, for patients who were discharged during the quarter, where the patients were discharged to.

Beginning September 1, 2023, and each quarter thereafter until October 1, 2024, the bill requires CDHS to report de-identified information to the BHA on the total number of children and youth in the custody of, or who had involvement with, a county department of human or social services who spent time at least overnight in a hotel or a county department office as a stopgap setting or remained in detention when the child or youth could have been released but no placement was available.

No later than September 1, 2023, and each quarter thereafter until October 1, 2024, the bill requires the BHA to report aggregated and de-identified information submitted to the BHA to the BHA advisory council and to the child and youth mental health service standards advisory board.

The bill requires CDHS to develop a plan for whenever a residential treatment facility for children and youth closes or has a substantial change in operation to support children and youth treatment capacity elsewhere in a manner that most appropriately serves the behavioral health needs of the child or youth.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25.5-4-427 as
3 follows:

4 **25.5-4-427. Increasing access to behavioral health care for**

1 **children and youth - directed payment authority - fee schedule rates.**

2 (1) (a) THE STATE DEPARTMENT SHALL ANALYZE HOW DIRECTED
3 PAYMENT AUTHORITY CAN BE USED AS PART OF A COMPREHENSIVE PLAN
4 TO FACILITATE AN ADEQUATE NETWORK OF SERVICES FOR CHILDREN AND
5 YOUTH WITH BEHAVIORAL HEALTH NEEDS WHO ARE UNDER TWENTY-ONE
6 YEARS OF AGE AND RECEIVE MEDICAID BENEFITS BY REQUIRING EACH
7 MANAGED CARE ENTITY TO PAY NO LESS THAN STATE
8 DEPARTMENT-ESTABLISHED FEE SCHEDULE RATES TO INCREASE ACCESS TO
9 CARE FOR SERVICES NEEDED TO PROMOTE CLINICAL STABILIZATION. THE
10 STATE DEPARTMENT SHALL ANALYZE HOW DIRECTED PAYMENT
11 AUTHORITY MAY BE APPLIED TO CLINICAL STABILIZATION SERVICES,
12 INCLUDING, BUT NOT LIMITED TO, RESIDENTIAL TREATMENT SERVICES,
13 MULTISYSTEMIC THERAPY, FUNCTIONAL FAMILY THERAPY, AND
14 PSYCHOTHERAPY SERVICES FOR CHILDREN AND YOUTH.

15 (b) IN ANALYZING DIRECTED PAYMENT AUTHORITY AND
16 ESTABLISHING FEE SCHEDULE RATES, THE STATE DEPARTMENT SHALL
17 CONSIDER WHETHER THE RATES SHOULD INCREASE BASED ON THE ACUITY
18 OF THE CHILD OR YOUTH.

19 (2) NO LATER THAN OCTOBER 1, 2023, THE STATE DEPARTMENT
20 SHALL REPORT TO THE HOUSE OF REPRESENTATIVES PUBLIC AND
21 BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE AND THE SENATE
22 HEALTH AND HUMAN SERVICES COMMITTEE, OR THEIR SUCCESSOR
23 COMMITTEES, AND THE JOINT BUDGET COMMITTEE WHETHER DIRECTED
24 PAYMENT AUTHORITY SHOULD BE PURSUED AND WHETHER FUNDING
25 SHOULD BE REQUESTED TO EXPAND ACCESS TO RESIDENTIAL TREATMENT
26 SERVICES, MULTISYSTEMIC THERAPY, FUNCTIONAL FAMILY THERAPY, AND
27 PSYCHOTHERAPY SERVICES. IF THE STATE DEPARTMENT DETERMINES THAT

1 DIRECTED PAYMENTS ARE NOT APPROPRIATE TO EXPAND ACCESS TO SUCH
2 SERVICES, THE STATE DEPARTMENT SHALL PRESENT AN ALTERNATIVE
3 PLAN TO EXPANDING ACCESS TO THE SERVICES.

4 **SECTION 2.** In Colorado Revised Statutes, 26-5-104, **add (7.5)**
5 as follows:

6 **26-5-104. Funding of child welfare services provider contracts**
7 **- funding mechanism review - fund - report - rules - definitions -**
8 **repeal. (7.5) High-acuity treatment and services cash fund.**

9 (a) THERE IS CREATED IN THE STATE TREASURY THE HIGH-ACUITY
10 TREATMENT AND SERVICES CASH FUND, REFERRED TO IN THIS SUBSECTION
11 (7.5) AS THE "HIGH-ACUITY CASH FUND".

12 (b) THE STATE DEPARTMENT SHALL RETAIN ANY UNSPENT MONEY
13 APPROPRIATED IN FISCAL YEAR 2022-23 AND 2023-24 FROM THE GENERAL
14 FUND TO COUNTIES DURING THE INITIAL ALLOCATIONS FOR THE
15 ADMINISTRATION OF CHILD WELFARE SERVICES, CORE SERVICES, OR CHILD
16 WELFARE STAFFING. UNSPENT GENERAL FUND MONEY INCLUDES MONEY
17 REMAINING AFTER TRANSFERS TO THE PREVENTION AND INTERVENTION
18 SERVICES CASH FUND CREATED IN SUBSECTION (7)(a)(I) OF THIS SECTION.

19 (c) ON JUNE 30, 2023 AND JUNE 30, 2024, THE STATE TREASURER
20 SHALL TRANSFER ANY MONEY RETAINED PURSUANT TO SUBSECTION
21 (7.5)(b) OF THIS SECTION TO THE HIGH-ACUITY CASH FUND. THE MONEY
22 TRANSFERRED PURSUANT TO THIS SUBSECTION (7.5)(c) IS AVAILABLE FOR
23 EXPENDITURE THROUGH JUNE 30, 2025.

24 (d) (I) THE STATE DEPARTMENT SHALL EXPEND MONEY FROM THE
25 HIGH-ACUITY CASH FUND TO PROVIDE ADDITIONAL RESOURCES TO
26 LICENSED PROVIDERS TO HELP REMOVE BARRIERS THAT PROVIDERS FACE
27 IN SERVING CHILDREN AND YOUTH WHOSE BEHAVIORAL OR MENTAL

1 HEALTH NEEDS REQUIRE SERVICES AND TREATMENT THAT EXCEED
2 CAPACITY OF THE ESTABLISHED DAILY RATES, INCLUDING FOR THE SAME
3 PURPOSES IDENTIFIED IN SECTION 26-5-117 (2).

4 (II) ANY LICENSED PROVIDER WHO RECEIVES MONEY PURSUANT TO
5 SUBSECTION (7)(d)(I) SHALL MEET THE REQUIREMENTS OF A QUALIFIED
6 RESIDENTIAL TREATMENT PROGRAM, AS DEFINED IN SECTION 26-5.4-102,
7 A PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, AS DEFINED IN
8 SECTION 25.5-4-103 (19.5), OR THERAPEUTIC FOSTER CARE, AS DEFINED IN
9 SECTION 26-6-903 (35).

10 (e) THIS SUBSECTION (7.5) IS REPEALED, EFFECTIVE JULY 1, 2025.
11 ANY MONEY REMAINING IN THE HIGH-ACUITY CASH FUND AT THE END OF
12 THE 2024-25 FISCAL YEAR REVERTS TO THE GENERAL FUND.

13 **SECTION 3.** In Colorado Revised Statutes, 26-5-117, **add**
14 (2)(a.5) as follows:

15 **26-5-117. Out-of-home placement for children and youth with**
16 **mental or behavioral needs - funding - report - rules - legislative**
17 **declaration - definitions - repeal.** (2) (a.5) (I) NO LATER THAN JULY 1,
18 2023, THE STATE DEPARTMENT, IN COLLABORATION WITH THE
19 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING AND OTHER
20 RELEVANT STAKEHOLDERS, INCLUDING STAKEHOLDERS THAT REPRESENT
21 INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES,
22 SHALL FORM A WORKING GROUP TO MAKE RECOMMENDATIONS ABOUT
23 DEVELOPING AN INCENTIVE FUNDING POOL PILOT PROGRAM TO
24 INCENTIVIZE RESIDENTIAL TREATMENT PROVIDERS TO ACCEPT AND TREAT
25 CHILDREN AND YOUTH WHO ARE UNDER TWENTY-ONE YEARS OF AGE AND
26 HAVE HIGH-ACUITY BEHAVIORAL HEALTH NEEDS OR OTHER COMMON
27 BARRIERS TO APPROPRIATE TREATMENT AND PLACEMENT, INCLUDING THE

1 PRESENCE OF CO-OCCURRING DISABILITIES.

2 (II) IN DEVELOPING THE INCENTIVE FUNDING POOL, THE STATE
3 DEPARTMENT MAY CONSIDER PROVIDING AN ENHANCED PAYMENT, IN
4 ADDITION TO ANY DAILY BED RATE AUTHORIZED AND PAID FOR BY PUBLIC
5 FUNDING, AND AUTHORIZING THE FUNDING POOL TO BE USED TO EXTEND
6 AND EXPAND ACCESS TO CARE PURSUANT TO SUBSECTION (2)(b)(I) OF THIS
7 SECTION.

8 (III) NO LATER THAN OCTOBER 1, 2023, THE WORKING GROUP
9 SHALL SUBMIT ITS RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE.

10 **SECTION 4.** In Colorado Revised Statutes, 27-50-101, **add** (8.5)
11 and (13.5) as follows:

12 **27-50-101. Definitions.** As used in this article 50, unless the
13 context otherwise requires:

14 (8.5) "BOARDING" MEANS WHEN A CHILD OR YOUTH UNDER
15 TWENTY-ONE YEARS OF AGE HAS BEEN WAITING LONGER THAN TWELVE
16 HOURS TO BE PLACED IN AN APPROPRIATE TREATMENT SETTING AFTER
17 BEING CLINICALLY ASSESSED AND DETERMINED TO BE IN NEED OF
18 INPATIENT PSYCHIATRIC TREATMENT AND RECEIVED A DETERMINATION
19 FROM A LICENSED PROVIDER OF MEDICAL STABILITY WITHOUT THE NEED
20 FOR URGENT MEDICAL ASSESSMENT OR HOSPITALIZATION FOR A PHYSICAL
21 CONDITION.

22 (13.5) "EXTENDED STAY" MEANS WHEN A CHILD OR YOUTH UNDER
23 TWENTY-ONE YEARS OF AGE HAS BEEN WAITING LONGER THAN
24 SEVENTY-TWO HOURS TO BE DISCHARGED FROM AN ACUTE LEVEL OF
25 INPATIENT PSYCHIATRIC CARE TO A LESS INTENSIVE OR LESS RESTRICTIVE
26 CLINICALLY APPROPRIATE LEVEL OF PSYCHIATRIC CARE, INCLUDING A
27 DISCHARGE HOME OR TO A HOME-LIKE SETTING WITH BEHAVIORAL HEALTH

1 SUPPORTS.

2 **SECTION 5.** In Colorado Revised Statutes, 27-50-201, **add** (3.5)
3 and (3.7) as follows:

4 **27-50-201. Behavioral health system monitoring - capacity -**
5 **safety net performance.** (3.5) (a) IN SETTING MINIMUM PERFORMANCE
6 STANDARDS FOR CHILDREN AND YOUTH UNDER TWENTY-ONE YEARS OF
7 AGE, THE BHA SHALL CONSULT WITH A WORKING GROUP, INCLUDING
8 MEMBERS FROM THE DEPARTMENT OF HEALTH CARE POLICY AND
9 FINANCING, THE DEPARTMENT OF HUMAN SERVICES, COUNTY
10 DEPARTMENTS OF HUMAN OR SOCIAL SERVICES, MANAGED CARE ENTITIES,
11 HOSPITALS, AND OTHER RELEVANT STAKEHOLDERS, INCLUDING
12 STAKEHOLDERS WHO REPRESENT INDIVIDUALS WITH INTELLECTUAL AND
13 DEVELOPMENTAL DISABILITIES, TO HELP DEVELOP THE PERFORMANCE
14 MONITORING SYSTEM FRAMEWORK THAT ADDRESSES THE MINIMUM
15 PERFORMANCE STANDARDS FOR TREATMENT OF CHILDREN AND YOUTH
16 PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE FRAMEWORK MUST
17 CONSIDER MEASURES OF ACCOUNTABILITY FOR CHILDREN AND YOUTH
18 WHO ARE BOARDING OR IN EXTENDED STAY.

19 (b) THE WORKING GROUP MAY, THROUGH GIFTS, GRANTS, OR
20 DONATIONS, ENTER INTO AN AGREEMENT WITH A THIRD-PARTY
21 CONTRACTOR THAT HAS EXPERTISE IN CHILD WELFARE AND YOUTH
22 MENTAL HEALTH RESEARCH, INCLUDING OUTCOME MEASUREMENT AND
23 IMPACT ANALYSIS, TO ASSIST IN DEVELOPING THE FRAMEWORK.

24 (c) NO LATER THAN APRIL 1, 2024, THE WORKING GROUP SHALL
25 SUBMIT THE FRAMEWORK TO THE BHA TO INFORM THE PERFORMANCE
26 MONITORING SYSTEM. THE BHA SHALL MAKE THE FRAMEWORK
27 PUBLICLY AVAILABLE ON THE BHA'S WEBSITE.

1 (3.7) (a) (I) BEGINNING SEPTEMBER 1, 2023, AND EACH QUARTER
2 THEREAFTER UNTIL OCTOBER 1, 2024, EACH HOSPITAL SHALL REPORT
3 INFORMATION TO THE BHA THAT ARE CONSISTENT WITH FEDERAL
4 PRIVACY LAWS IN A FORM AND MANNER SPECIFIED BY THE BHA ON THE
5 TOTAL NUMBER OF CHILDREN AND YOUTH PATIENTS WHO WERE BOARDING
6 OR HAD EXTENDED STAYS IN THE PREVIOUS QUARTER; IF KNOWN, HOW
7 MANY CHILDREN AND YOUTH WHO WERE BOARDING OR HAD EXTENDED
8 STAYS AND WERE IN COUNTY CUSTODY AT THE TIME THEY WERE
9 BOARDING OR HAD EXTENDED STAYS; AND, TO THE EXTENT POSSIBLE, FOR
10 PATIENTS WHO WERE ULTIMATELY DISCHARGED DURING THE QUARTER,
11 WHERE THE PATIENTS WERE DISCHARGED TO.

12 (II) BEGINNING SEPTEMBER 1, 2023, AND EACH QUARTER
13 THEREAFTER UNTIL OCTOBER 1, 2024, THE DEPARTMENT OF HUMAN
14 SERVICES, IN CONSULTATION WITH COUNTY DEPARTMENTS OF HUMAN OR
15 SOCIAL SERVICES, SHALL REPORT INFORMATION TO THE BHA IN A FORM
16 AND MANNER SPECIFIED BY THE BHA THAT ARE CONSISTENT WITH
17 FEDERAL PRIVACY LAWS ON THE TOTAL NUMBER OF CHILDREN AND YOUTH
18 IN THE CUSTODY OF, OR WHO HAD INVOLVEMENT WITH, A COUNTY
19 DEPARTMENT OF HUMAN OR SOCIAL SERVICES WHO SPENT TIME AT LEAST
20 OVERNIGHT IN A HOTEL OR A COUNTY DEPARTMENT OF HUMAN OR SOCIAL
21 SERVICES OFFICE AS A STOPGAP SETTING.

22 (b) (I) NO LATER THAN SEPTEMBER 1, 2023, AND EACH QUARTER
23 THEREAFTER UNTIL OCTOBER 1, 2024, THE BHA SHALL REPORT
24 AGGREGATED AND DE-IDENTIFIED INFORMATION SUBMITTED TO THE BHA
25 PURSUANT TO SUBSECTION (3.7)(a) OF THIS SECTION TO THE WORKING
26 GROUP. THE BHA SHALL MAKE THE DE-IDENTIFIED AND AGGREGATED
27 DATA PUBLICLY AVAILABLE ON THE BHA'S WEBSITE.

1 (II) IF THE INFORMATION REPORTED PURSUANT TO THIS
2 SUBSECTION (3.7)(b) IS NOT ABLE TO BE AGGREGATED AND DE-IDENTIFIED
3 IN COMPLIANCE WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY
4 AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, 42 U.S.C. SECS.
5 1320d TO 1320d-9, THE BHA SHALL NOT REPORT THE INFORMATION UNTIL
6 THE POPULATION IS LARGE ENOUGH TO BE REPORTED IN COMPLIANCE WITH
7 THE FEDERAL LAW.

8 **SECTION 6.** In Colorado Revised Statutes, 26-1-132, **add** (5) as
9 follows:

10 **26-1-132. Department of human services - rate setting -**
11 **residential treatment service providers - monitoring and auditing -**
12 **report.** (5) THE STATE DEPARTMENT, IN COLLABORATION WITH THE
13 BEHAVIORAL HEALTH ADMINISTRATION AND THE DEPARTMENT OF HEALTH
14 CARE POLICY AND FINANCING, SHALL DEVELOP A **CAPACITY** PLAN FOR
15 WHENEVER A RESIDENTIAL TREATMENT FACILITY FOR CHILDREN AND
16 YOUTH THAT IS LICENSED BY THE STATE DEPARTMENT CLOSES OR HAS A
17 SUBSTANTIVE **CHANGE IN OPERATION.** **THE STATE** DEPARTMENT SHALL
18 INCLUDE UPDATES ON THE CAPACITY PLAN DURING THE STATE
19 DEPARTMENT'S "SMART ACT" HEARING.

20 **SECTION 7. Appropriation.** For the 2023-24 state fiscal year,
21 \$5,900,000 is appropriated to the department of human services for use
22 by the division of child welfare. This appropriation is from the
23 high-acuity treatment and services cash fund created in section 26-5-104
24 (7.5)(a), C.R.S. To implement this act, the division may use this
25 appropriation for high-acuity treatment and services. Any money
26 appropriated in this section not expended prior to July 1, 2024, is further
27 appropriated to the department for the 2024-25 state fiscal year for the

1 same purpose.

2 **SECTION 8. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, or safety.