

## CHAPTER 280

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**SOCIAL SERVICES**

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**SENATE BILL 93-246**

BY SENATORS Wham, Bird, Rizzuto, Traylor, Bishop, Blickensderfer, Casey, Cassidy, Hopper, Johnson, Lacy, Mendez, Norton, Ruddick, Tebedo, and Wells;  
also REPRESENTATIVES Romero, Owen, and Reeser.

**AN ACT**

**CONCERNING THE AUTHORITY TO IMPLEMENT A HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH MAJOR MENTAL ILLNESSES AS PROVIDED BY FEDERAL WAIVER.**

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

**SECTION 1.** Part 6 of article 4 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPART to read:

SUBPART 5  
HOME AND COMMUNITY-BASED SERVICES  
FOR PERSONS WITH MAJOR MENTAL ILLNESSES

**26-4-671. Short title - citation.** THIS SUBPART 5 SHALL BE COMPRISED OF SECTIONS 26-4-671 TO 26-4-676 AND MAY BE CITED AS SUBPART 5. THE TITLE OF THIS SUBPART 5 SHALL BE KNOWN AND MAY BE CITED AS THE "HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MAJOR MENTAL ILLNESSES ACT".

**26-4-672. Legislative declaration - no entitlement created.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE PURPOSE OF THIS SUBPART 5 IS TO PROVIDE, UNDER FEDERAL AUTHORIZATION AND SUBJECT TO AVAILABLE APPROPRIATIONS, HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MAJOR MENTAL ILLNESSES.

(2) NOTHING IN THIS SUBPART 5 SHALL BE CONSTRUED TO ESTABLISH THAT ELIGIBLE PERSONS AS DEFINED IN SECTION 26-4-673 (1) ARE ENTITLED TO RECEIVE SERVICES FROM THE DEPARTMENT OF SOCIAL SERVICES OR THE DEPARTMENT OF INSTITUTIONS. THE PROVISION OF ANY SERVICES PURSUANT TO THIS SUBPART 5 SHALL

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

BE SUBJECT TO FEDERAL WAIVER AUTHORIZATION AND AVAILABLE APPROPRIATIONS.

**26-4-673. Definition.** AS USED IN THIS SUBPART 5, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ELIGIBLE PERSON" MEANS A PERSON:

(a) WHO HAS A PRIMARY DIAGNOSIS OF MAJOR MENTAL ILLNESS, AS SUCH TERM IS DEFINED IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS USED BY THE MENTAL HEALTH PROFESSION, AND INCLUDES SCHIZOPHRENIC, PARANOID, MAJOR AFFECTIVE, AND SCHIZOAFFECTIVE DISORDERS, AND ATYPICAL PSYCHOSIS, BUT DOES NOT INCLUDE DEMENTIA, INCLUDING ALZHEIMER'S DISEASE OR RELATED DISORDERS;

(b) WHO IS IN NEED OF THE LEVEL OF CARE AVAILABLE IN A NURSING FACILITY;

(c) WHO IS CATEGORICALLY ELIGIBLE FOR MEDICAL ASSISTANCE, OR WHOSE GROSS INCOME DOES NOT EXCEED THREE HUNDRED PERCENT OF THE CURRENT FEDERAL SUPPLEMENTAL SECURITY INCOME BENEFIT LEVEL, AND WHOSE RESOURCES DO NOT EXCEED THE LIMIT ESTABLISHED FOR INDIVIDUALS RECEIVING A MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS; AND

(d) FOR WHOM THE COST OF SERVICES NECESSARY TO PREVENT NURSING FACILITY PLACEMENT WOULD NOT EXCEED THE AVERAGE COST OF NURSING HOME CARE.

**26-4-674. Relationship to single entry point for long-term care.** THE HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH MAJOR MENTAL ILLNESSES SHALL NOT BE CONSIDERED A PUBLICLY FUNDED LONG-TERM CARE PROGRAM FOR THE PURPOSES OF SECTIONS 26-4-521 TO 26-4-525, CONCERNING THE SINGLE ENTRY POINT SYSTEM, UNLESS AND UNTIL THE DEPARTMENTS OF SOCIAL SERVICES AND INSTITUTIONS PROVIDE IN THE MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS FOR THE INCLUSION OF THE PROGRAM IN THE SINGLE ENTRY POINT SYSTEM.

**26-4-675. Implementation of program for mentally ill authorized - federal waiver - duties of the department of social services and the department of institutions.** (1) THE STATE DEPARTMENT IS HEREBY AUTHORIZED TO SEEK ANY NECESSARY WAIVER FROM THE FEDERAL GOVERNMENT TO DEVELOP AND IMPLEMENT A HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH MAJOR MENTAL ILLNESSES. THE PROGRAM SHALL BE DESIGNED TO PROVIDE HOME AND COMMUNITY-BASED SERVICES TO ELIGIBLE PERSONS. ELIGIBILITY MAY BE LIMITED TO PERSONS WHO MEET THE LEVEL OF SERVICES PROVIDED IN A NURSING FACILITY AND SERVICES FOR ELIGIBLE PERSONS MAY BE ESTABLISHED IN STATE BOARD OF SOCIAL SERVICES RULES TO THE EXTENT SUCH ELIGIBILITY CRITERIA AND SERVICES ARE AUTHORIZED OR REQUIRED BY FEDERAL WAIVER.

(2) THE DEPARTMENT OF SOCIAL SERVICES AND THE DEPARTMENT OF INSTITUTIONS SHALL PROVIDE A SYSTEM OF REIMBURSEMENT FOR SERVICES PROVIDED PURSUANT TO THIS SUBPART 5 WHICH ENCOURAGES THE MOST COST-EFFECTIVE PROVISION OF SERVICES.

(3) THE DEPARTMENT OF SOCIAL SERVICES AND THE DEPARTMENT OF INSTITUTIONS SHALL, SUBJECT TO APPROPRIATION, USE AVAILABLE FEDERAL, STATE, LOCAL, OR PRIVATE FUNDS, INCLUDING BUT NOT LIMITED TO, MEDICAID FUNDS AVAILABLE UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, TO CARRY OUT THE PURPOSES OF THIS SUBPART 5.

(4) THE DEPARTMENT OF SOCIAL SERVICES MAY INCLUDE IN THE MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF INSTITUTIONS PROVISIONS THAT ALLOW THE DEPARTMENT OF INSTITUTIONS TO CERTIFY AGENCIES AS MEDICAID PROVIDERS FOR THE PURPOSES OF THIS SUBPART 5, TO ADOPT FISCAL AND ADMINISTRATIVE PROCEDURES, TO REVIEW PLANS OF CARE, TO RECOMMEND REIMBURSEMENT RATES, AND TO MAKE RECOMMENDATIONS REGARDING THE SCOPE, DURATION, AND CONTENT OF PROGRAMS AND THE ELIGIBILITY OF PERSONS FOR SPECIFIC SERVICES PROVIDED PURSUANT TO THIS SUBPART 5, AND TO FULFILL ANY OTHER RESPONSIBILITIES NECESSARY TO IMPLEMENT THIS SUBPART 5. HOWEVER, THE PROVISIONS SHALL BE CONSISTENT WITH THE DESIGNATION OF THE DEPARTMENT OF SOCIAL SERVICES AS THE SINGLE STATE AGENCY IN SECTION 26-4-104.

(5) THE STATE BOARD OF SOCIAL SERVICES SHALL PROMULGATE SUCH RULES AND REGULATIONS REGARDING THIS SUBPART 5 AS ARE NECESSARY TO FULFILL THE OBLIGATIONS OF THE DEPARTMENT OF SOCIAL SERVICES AS THE SINGLE STATE AGENCY TO ADMINISTER MEDICAL ASSISTANCE PROGRAMS IN ACCORDANCE WITH TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(6) THE DEPARTMENT OF INSTITUTIONS SHALL PROMULGATE SUCH RULES AS ARE NECESSARY TO PERFORM ITS FUNCTION PURSUANT TO THIS SUBPART 5. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH SECTION 24-4-103, C.R.S., AND SHALL BE CONSISTENT WITH THE STATE BOARD OF SOCIAL SERVICES RULES.

(7) IN THE EVENT A DIRECT CONFLICT ARISES BETWEEN THE RULES AND REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES PROMULGATED PURSUANT TO SUBSECTION (5) OF THIS SECTION AND THE RULES AND REGULATIONS OF THE DEPARTMENT OF INSTITUTIONS PROMULGATED PURSUANT TO SUBSECTION (6) OF THIS SECTION, REGARDING IMPLEMENTATION OF THIS SUBPART 5, THE RULES AND REGULATIONS OF THE DEPARTMENT OF SOCIAL SERVICES SHALL CONTROL.

**26-4-676. Implementation of subpart contingent upon receipt of federal waiver - repeal of subpart.** (1) THE IMPLEMENTATION OF THIS SUBPART 5 IS CONDITIONED UPON THE ISSUANCE OF NECESSARY WAIVERS BY THE FEDERAL GOVERNMENT AND AVAILABLE APPROPRIATIONS. THE PROVISIONS OF THIS SUBPART 5 SHALL BE IMPLEMENTED TO THE EXTENT AUTHORIZED BY FEDERAL WAIVER. THE STATE DEPARTMENT SHALL PROPOSE LEGISLATION THAT CONFORMS WITH THE WAIVER PROVISIONS NO LATER THAN THE NEXT REGULAR LEGISLATIVE SESSION FOLLOWING THE ISSUANCE OF THE WAIVER.

(2) PROVISIONS OF THIS SUBPART 5 THAT ARE APPROVED BY THE FEDERAL GOVERNMENT AND ARE AUTHORIZED BY FEDERAL WAIVER SHALL REMAIN IN EFFECT ONLY FOR SO LONG AS SPECIFIED IN THE FEDERAL WAIVER, UNLESS OTHERWISE EXTENDED BY THE FEDERAL GOVERNMENT. THE STATE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO THE REVISOR OF STATUTES OF THE FINAL TERMINATION DATE OF THE WAIVER, AND THIS SUBPART 5 SHALL BE REPEALED, EFFECTIVE JULY 1 OF THE

YEAR IN WHICH THE WAIVER IS TERMINATED.

(3) THIS SUBPART 5 IS REPEALED, EFFECTIVE JULY 1, 1998, UNLESS OTHERWISE REPEALED PRIOR TO SAID DATE IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

**26-4-677 to 26-4-680. (Reserved)**

**SECTION 2.** The introductory portion to 26-4-622 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**26-4-622. Legislative declaration.** (1) ~~It is the intent of the general assembly to provide cost-effective services in the least restrictive setting to individuals who are mentally ill. It is from that philosophy that the general assembly authorized and the state implemented a home and community-based services program under the auspices of a federal medicaid waiver. Inasmuch as the federal government has been unwilling to continue Colorado's waiver for mentally ill persons, the enabling state statutory provisions for that medicaid-funded program are hereby removed. However, the general assembly has an ongoing interest in examining the needs of those who are in need of long-term care because of their mental illness and in the most cost-effective mental health and supportive services as may be necessary to allow the greatest degree of independence. In furtherance of this intent, the department of institutions is charged to report to the general assembly on or before January 1, 1991, on any additional statutory, budget, or administrative modifications that will facilitate the goal of home and community-based care for the mentally ill. The general assembly hereby finds and declares that it is the purpose of this article to provide services for the developmentally disabled which would foster the following goals:~~

**SECTION 3.** 26-4-302 (1) (c), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**26-4-302. Basic services for the categorically needy - optional services.**

(1) The following are services for which federal financial participation is available and which Colorado has selected to provide as optional services under the medical assistance program:

(c) Home and community-based services, as specified in part 6 of this article, which include:

(IV) HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MAJOR MENTAL ILLNESSES, AS SPECIFIED IN SUBPART 5 OF PART 6 OF THIS ARTICLE.

**SECTION 4.** 26-4-303 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**26-4-303. Optional programs with special state provisions.** (1) This section specifies programs developed by Colorado to increase federal financial participation through selecting optional services or optional eligible groups. These programs include but are not limited to:

(d.5) THE HOME AND COMMUNITY-BASED SERVICES PROGRAM FOR PERSONS WITH

MAJOR MENTAL ILLNESSES, AS SPECIFIED IN SUBPART 5 OF PART 6 OF THIS ARTICLE;

**SECTION 5. 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.

Approved: June 6, 1993