

CHAPTER 272

HUMAN SERVICES - INSTITUTIONS

HOUSE BILL 99-1116

BY REPRESENTATIVES Keller, Alexander, Paschall, Bacon, Chavez, Clarke, Coleman, Fairbank, Larson, Lee, Leyba, Mace, Morrison, Ragsdale, Spence, Takis, Tochtrop, Tupa, Veiga, Vigil, S. Williams, Windels, and Witwer;
also SENATORS Arnold, Linkhart, Wham, Hernandez, Martinez, Pascoe, Phillips, Reeves, Rupert, Tanner, Tebedo, and Weddig.

AN ACT

CONCERNING THE PROVISION OF SERVICES TO CHILDREN WHOSE MENTAL ILLNESS PLACES THEM AT RISK OF OUT-OF-HOME PLACEMENT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Title 27, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 10.3
Child Mental Health Treatment Act

27-10.3-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "CHILD MENTAL HEALTH TREATMENT ACT".

27-10.3-102. 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 CORRECTIONS 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, C.R.S., IS NEITHER APPROPRIATE NOR WARRANTED.

(2) THE GENERAL ASSEMBLY FINDS THAT IT IS DESIRABLE TO ASSIST CHILDREN WITH MENTAL HEALTH NEEDS AND SUCH CHILDREN'S FAMILIES. THE GENERAL ASSEMBLY FURTHER FINDS THAT IT IS DESIRABLE TO MAKE MENTAL HEALTH SERVICES

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

MORE AVAILABLE TO THESE FAMILIES DESIRING SUCH TREATMENT FOR THEIR CHILDREN. THE GENERAL ASSEMBLY FINDS THAT, ALTHOUGH THE MENTAL HEALTH AGENCIES ARE RESPONSIBLE FOR PROVIDING THE FULL RANGE OF MENTAL HEALTH TREATMENT SERVICES, INCLUDING RESIDENTIAL CARE, FOR THOSE CHILDREN WHO HAVE BEEN FOUND TO BE CATEGORICALLY ELIGIBLE FOR MEDICAID, THERE REMAINS A POPULATION OF CHILDREN IN NEED OF SUCH SERVICES WHO ARE NOT CATEGORICALLY ELIGIBLE FOR MEDICAID. ACCORDINGLY, THE GENERAL ASSEMBLY DETERMINES THAT IT IS APPROPRIATE TO ADOPT A PROGRAM PURSUANT TO WHICH SERVICES WOULD BE PROVIDED TO SUCH CHILDREN.

27-10.3-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CHILD AT RISK OF OUT-OF-HOME PLACEMENT" MEANS A CHILD WHO HAS BEEN DIAGNOSED AS A MENTALLY ILL PERSON, AS DEFINED IN SECTION 27-10-102 (7), AND WHO REQUIRES THE LEVEL OF CARE PROVIDED IN A RESIDENTIAL CHILD CARE FACILITY PURSUANT TO SECTION 26-4-527, C.R.S., AND WHO, ALTHOUGH NOT OTHERWISE CATEGORICALLY ELIGIBLE FOR MEDICAID, IS DETERMINED TO BE ELIGIBLE FOR SOCIAL SECURITY INCOME AND THEREFORE MEDICAID-ELIGIBLE BECAUSE OF THE CHILD'S NEED FOR MENTAL HEALTH SERVICES AND FOR WHOM IT IS NOT APPROPRIATE OR WARRANTED TO FILE AN ACTION IN DEPENDENCY OR NEGLECT PURSUANT TO ARTICLE 3 OF TITLE 19, C.R.S.

(2) "COMMUNITY MENTAL HEALTH CENTER" MEANS EITHER A PHYSICAL FACILITY OR A GROUP OF SERVICE PROVIDERS UNDER UNIFIED ADMINISTRATION OR OTHERWISE AFFILIATED WITH ONE ANOTHER THAT PROVIDES, AT A MINIMUM, THE FOLLOWING SERVICES FOR THE PREVENTION AND TREATMENT OF MENTAL ILLNESS IN PERSONS RESIDING IN A PARTICULAR COMMUNITY IN OR NEAR THE FACILITY OR GROUP SO SITUATED:

- (a) INPATIENT SERVICES;
- (b) OUTPATIENT SERVICES;
- (c) PARTIAL HOSPITALIZATION;
- (d) RESIDENTIAL TREATMENT;
- (e) EMERGENCY SERVICES; AND
- (f) CONSULTATIVE AND EDUCATIONAL SERVICES.

(3) "COUNTY DEPARTMENT" MEANS THE COUNTY OR DISTRICT DEPARTMENT OF SOCIAL SERVICES.

(4) "MENTAL HEALTH AGENCY" MEANS THE COMMUNITY MENTAL HEALTH CENTER SERVING CHILDREN IN A PARTICULAR GEOGRAPHIC AREA OR THE MENTAL HEALTH ASSESSMENT AND SERVICES AGENCY SERVING CHILDREN IN A PARTICULAR GEOGRAPHIC AREA WHO ARE RECEIVING MEDICAID.

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

27-10.3-104. Provision of mental health treatment services for youth. (1) A PARENT OR GUARDIAN MAY APPLY TO A MENTAL HEALTH AGENCY ON BEHALF OF HIS OR HER MINOR CHILD FOR MENTAL HEALTH TREATMENT SERVICES FOR THE CHILD PURSUANT TO THIS SECTION, WHETHER THE CHILD IS CATEGORICALLY ELIGIBLE FOR MEDICAID UNDER THE CAPITATED MENTAL HEALTH SYSTEM DESCRIBED IN SECTION 26-4-123, C.R.S., OR WHETHER THE PARENT BELIEVES HIS OR HER CHILD IS A CHILD AT RISK OF OUT-OF-HOME PLACEMENT AS DEFINED IN SECTION 27-10.3-103 (1). IN SUCH CIRCUMSTANCES, IT SHALL BE THE RESPONSIBILITY OF THE MENTAL HEALTH AGENCY TO EVALUATE THE CHILD AND TO CLINICALLY ASSESS THE CHILD'S NEED FOR MENTAL HEALTH SERVICES AND, WHEN WARRANTED, TO PROVIDE TREATMENT SERVICES AS MAY BE NECESSARY AND IN THE BEST INTERESTS OF THE CHILD AND THE CHILD'S FAMILY. SUBJECT TO AVAILABLE STATE APPROPRIATIONS, THE MENTAL HEALTH AGENCY SHALL BE RESPONSIBLE FOR PROVIDING THE TREATMENT SERVICES, INCLUDING ANY IN-HOME FAMILY MENTAL HEALTH TREATMENT, OTHER FAMILY PRESERVATION SERVICES, RESIDENTIAL TREATMENT, OR ANY POST-RESIDENTIAL FOLLOW-UP SERVICES THAT MAY BE APPROPRIATE FOR THE CHILD'S OR FAMILY'S NEEDS. 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.

(b) AT THE TIME OF THE ASSESSMENT BY THE MENTAL HEALTH AGENCY, IF RESIDENTIAL SERVICES ARE DENIED, 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 SHOULD THE MENTAL HEALTH AGENCY DENY REQUESTED RESIDENTIAL SERVICES. WITHIN FIVE WORKING DAYS AFTER THE MENTAL HEALTH AGENCY'S FINAL DENIAL, 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 27-10-102 (11) TO REVIEW THE ACTION OF THE MENTAL HEALTH AGENCY. SUCH REVIEW SHALL OCCUR WITHIN THREE WORKING DAYS OF THE PARENT'S OR GUARDIAN'S REQUEST.

(2) IN ASSESSING THE MINOR CHILD, IF 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 HAS BEEN SUBJECTED TO ABUSE OR NEGLECT, THEN THE MENTAL HEALTH AGENCY SHALL IMMEDIATELY CONTACT THE APPROPRIATE COUNTY DEPARTMENT. WITHIN TEN DAYS AFTER THE REFERRAL TO THE COUNTY DEPARTMENT, THE MENTAL HEALTH AGENCY SHALL MEET WITH THE COUNTY DEPARTMENT AND THE FAMILY. UPON REFERRAL TO THE COUNTY DEPARTMENT, THE COUNTY DEPARTMENT SHALL PROCEED WITH AN 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 PHYSICAL WELL-BEING HAS OCCURRED WARRANTING A DEPENDENCY OR NEGLECT ACTION.

27-10.3-105. Monitoring - report. (1) ON OR BEFORE SEPTEMBER 1, 2002, EACH MENTAL HEALTH AGENCY SHALL REPORT TO THE STATE DEPARTMENT THE FOLLOWING INFORMATION:

(a) THE NUMBER OF CHILDREN, BOTH THOSE CHILDREN WHO ARE CATEGORICALLY ELIGIBLE FOR MEDICAID UNDER THE CAPITATED MENTAL HEALTH SYSTEM DESCRIBED IN SECTION 26-4-123, C.R.S. AND THOSE CHILDREN WHO ARE AT RISK OF

OUT-OF-HOME PLACEMENT AS DEFINED IN SECTION 27-10.3-103 (1), TO WHOM THE FOLLOWING SERVICES WERE PROVIDED:

(I) IN-HOME FAMILY MENTAL HEALTH TREATMENT;

(II) FAMILY PRESERVATION SERVICES;

(III) RESIDENTIAL TREATMENT; AND

(IV) POST-RESIDENTIAL FOLLOW-UP SERVICES;

(b) THE NUMBER OF CHILDREN, BOTH THOSE CHILDREN WHO ARE CATEGORICALLY ELIGIBLE FOR MEDICAID UNDER THE CAPITATED MENTAL HEALTH SYSTEM DESCRIBED IN SECTION 26-4-123, C.R.S. AND THOSE CHILDREN WHO ARE AT RISK OF OUT-OF-HOME PLACEMENT AS DEFINED IN SECTION 27-10.3-103 (1), REFERRED TO THE COUNTY DEPARTMENT FOR A DEPENDENCY OR NEGLECT INVESTIGATION PURSUANT TO SECTION 27-10.3-104 (2), AND THE REASONS THEREFORE;

(c) THE COSTS ASSOCIATED WITH THE PROVISION OF THE MENTAL HEALTH TREATMENT SERVICES;

(d) THE PROFILES OF THE CHILDREN AND FAMILIES SERVED;

(e) IF RESIDENTIAL SERVICES WERE PROVIDED, THE LENGTH OF STAY; AND

(f) THE AGGREGATE NUMBER OF COMPLAINTS SUBMITTED PURSUANT TO THE DISPUTE RESOLUTION PROCESS DESCRIBED IN SECTION 27-10.3-107, THE NATURE OF THE COMPLAINTS, AND THE GENERAL DISPOSITION OF SUCH CASES.

(2) ON OR BEFORE DECEMBER 1, 2002, THE STATE DEPARTMENT SHALL REPORT THE AGGREGATE, STATEWIDE INFORMATION RECEIVED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE MEMBERS OF THE GENERAL ASSEMBLY.

27-10.3-106. Funding - rules. (1) IN ORDER TO MAKE MENTAL HEALTH TREATMENT AVAILABLE, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT MENTAL HEALTH TREATMENT PROVIDED PURSUANT TO THIS ARTICLE TO EACH CHILD DESCRIBED IN SECTION 27-10.3-103 (1) WHO IS ELIGIBLE FOR MEDICAID BASED ON THE CHILD'S PLACEMENT IN A RESIDENTIAL CHILD CARE FACILITY PURSUANT TO SECTION 26-4-527, C.R.S., AND WHO IS DETERMINED TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BY THE FEDERAL SOCIAL SECURITY ADMINISTRATION, BE PROVIDED BY MENTAL HEALTH AGENCIES.

(2) IF NEITHER THE FAMILY'S PRIVATE INSURANCE NOR FEDERAL MEDICAID FUNDING COVER ALL OF THE COSTS ASSOCIATED WITH THE SERVICES PROVIDED TO A CHILD AT RISK OF OUT-OF-HOME PLACEMENT PURSUANT TO THIS ARTICLE, THEN THE FAMILY SHALL BE RESPONSIBLE FOR PAYING THAT PORTION THAT IS NOT COVERED BY PRIVATE INSURANCE OR FEDERAL MEDICAID FUNDING ON A SLIDING SCALE BASIS AS SET FORTH IN SUBSECTION (3) OF THIS SECTION. ANY REMAINING PORTION OF THE SERVICES NOT COVERED BY PRIVATE INSURANCE, FEDERAL MEDICAID FUNDING, OR THE FAMILY'S SHARE, SHALL BE PAID FOR FROM GENERAL FUND MONEYS, SUBJECT TO AVAILABLE APPROPRIATIONS.

(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.

27-10.3-107. Dispute resolution - rules. (1) THE STATE DEPARTMENT SHALL UTILIZE, WHEN APPROPRIATE, ESTABLISHED GRIEVANCE AND DISPUTE RESOLUTION PROCESSES IN ORDER TO ASSURE THAT PARENTS HAVE ACCESS TO MENTAL HEALTH SERVICES ON BEHALF OF THEIR CHILDREN.

(2) THE STATE BOARD OF HUMAN SERVICES SHALL PROMULGATE RULES TO ASSURE THAT A GRIEVANCE PROCESS IS AVAILABLE TO PARENTS CONCERNING THE PROVISION OF MENTAL HEALTH SERVICES AND TO ASSURE THAT A DISPUTE RESOLUTION PROCESS IS AVAILABLE FOR DISPUTES BETWEEN THE COUNTY DEPARTMENTS AND MENTAL HEALTH AGENCIES.

27-10.3-108. Repeal. THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2003.

SECTION 2. 19-3-308, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - child protection team. (1.5) (a) UPON REFERRAL TO THE COUNTY DEPARTMENT, THE COUNTY DEPARTMENT SHALL ASSESS THE POSSIBILITY OF ABUSE OR NEGLECT.

(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 27-10.3-104, C.R.S., MAY BE MORE APPROPRIATE, THE COUNTY DEPARTMENT SHALL CONTACT THE MENTAL HEALTH AGENCY, AS THAT TERM IS DEFINED IN SECTION 27-10.3-103 (4), 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 27-10.3-104, C.R.S., OR WHETHER THE PROVISION OF SERVICES THROUGH THE COUNTY DEPARTMENT IS MORE APPROPRIATE.

SECTION 3. Part 5 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-509.5. Child mental health treatment and family support program. (1) THE GENERAL ASSEMBLY FINDS THAT MANY PARENTS IN COLORADO WHO HAVE

EXPERIENCED CHALLENGING CIRCUMSTANCES BECAUSE THEIR CHILDREN HAVE SIGNIFICANT MENTAL HEALTH NEEDS AND WHO HAVE ATTEMPTED TO CARE FOR THEIR CHILDREN OR SEEK SERVICES ON THEIR BEHALF OFTEN ARE BURDENED WITH THE EXCESSIVE FINANCIAL AND PERSONAL COSTS OF PROVIDING SUCH CARE. PRIVATE INSURANCE COMPANIES MAY NOT COVER MENTAL HEALTH SERVICES AND RARELY COVER RESIDENTIAL MENTAL HEALTH TREATMENT SERVICES; THOSE THAT DO SELDOM COVER A SUFFICIENT PERCENTAGE OF THE EXPENSE TO MAKE SUCH MENTAL HEALTH TREATMENT A VIABLE OPTION FOR MANY FAMILIES IN NEED. THE RESULT IS THAT MANY FAMILIES DO NOT HAVE THE ABILITY TO OBTAIN THE MENTAL HEALTH SERVICES THAT THEY FEEL THEIR CHILDREN DESPERATELY NEED. THE GENERAL ASSEMBLY FINDS THAT IT IS IN THE BEST INTERESTS OF THESE FAMILIES AND THE CITIZENS OF THE STATE TO ENCOURAGE THE PRESERVATION OF FAMILY UNITS BY MAKING MENTAL HEALTH TREATMENT AVAILABLE TO THESE CHILDREN PURSUANT TO ARTICLE 10.3 OF TITLE 27, C.R.S.

(2) IN ORDER TO MAKE MENTAL HEALTH TREATMENT AVAILABLE, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT EACH MEDICAID-ELIGIBLE CHILD WHO IS DIAGNOSED AS A MENTALLY ILL PERSON, AS THAT TERM IS DEFINED IN SECTION 27-10-102 (7), C.R.S., SHALL RECEIVE MENTAL HEALTH TREATMENT, WHICH MAY INCLUDE IN-HOME FAMILY MENTAL HEALTH TREATMENT, OTHER FAMILY PRESERVATION SERVICES, RESIDENTIAL TREATMENT, OR ANY POST-RESIDENTIAL FOLLOW-UP SERVICES, THAT SHALL BE PAID FOR THROUGH FEDERAL MEDICAID FUNDING.

SECTION 4. 26-4-527 (1), Colorado Revised Statutes, is amended to read:

26-4-527. Residential child health care - waiver - program. (1) The department of health care policy and financing, in cooperation with the department of human services, shall implement a program concerning residential child health care under this article to provide services to medicaid-eligible children residing in residential child care facilities PURSUANT TO ARTICLE 10.3 OF TITLE 27, C.R.S., and children placed through county departments of social services in licensed or certified out-of-home placement facilities. ~~in addition to residential child care facilities.~~ Children with developmental disabilities, as defined in section 27-10.5-102 (11), C.R.S., who are placed in such facilities shall meet the out-of-home placement criteria described in section 19-1-107, C.R.S., and shall be neglected or dependent as described in section 19-3-102, C.R.S. The medical services board shall establish the type of rehabilitative or medical assistance services to be provided under the program as described in subsection (3) of this section, to the extent such services are cost-efficient, and the recipient eligibility criteria that may include, but are not limited to, a medical necessity determination and a financial eligibility determination.

SECTION 5. Appropriation - adjustment in 1999 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of human services, for the fiscal year beginning July 1, 1999, the sum of two hundred twenty-six thousand five hundred forty-five dollars (\$226,545), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 1999, shall be adjusted as

follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by two hundred twenty-six thousand five hundred forty-five dollars (\$226,545).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by two hundred twenty-six thousand five hundred forty-five dollars (\$226,545).

SECTION 6. 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: May 29, 1999

Editor's note: This act is not shown in the order that it was signed by the Governor, because it was delivered for printing out of the signing sequence order.