

CHAPTER 433

HUMAN SERVICES - SOCIAL SERVICES

HOUSE BILL 08-1220

BY REPRESENTATIVE(S) Buescher, Pommer, White, Gallegos, Kerr A., Liston, Massey, Merrifield, Todd, Gardner B., Labuda, Solano, and Soper;
 also SENATOR(S) Keller, Morse, Johnson, Boyd, Gibbs, Groff, Romer, Sandoval, Schwartz, Shaffer, Tapia, Tochtrop, Tupa, Ward, Williams, and Windels.

AN ACT

CONCERNING CHANGES TO THE COLORADO STATUTES TO COMPLY WITH FEDERAL WAIVER REQUIREMENTS ASSOCIATED WITH PERSONS WITH DEVELOPMENTAL DISABILITIES.

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

SECTION 1. 27-10.5-104, Colorado Revised Statutes, is amended to read:

27-10.5-104. Authorized services and supports - conditions of funding - purchase of services and supports - boards of county commissioners - appropriation. (1) Subject to annual appropriations by the general assembly, the department of human services shall provide or purchase, pursuant to subsection (4) of this section, authorized services and supports ~~through the~~ FROM community centered boards OR SERVICE AGENCIES for persons who have been determined to be eligible for such services and supports pursuant to section 27-10.5-106, and as specified in the eligible person's individualized plan. Those services and supports may include, but are not limited to, the following:

(a) Family support services, including an array of supportive services provided to the person receiving services and the person's family ~~which~~ THAT enable the family to maintain such person in the family home, thereby preventing or delaying the need for out-of-home placement ~~which~~ THAT is unwanted by the person or the family, pursuant to section 27-10.5-401;

(b) Early intervention services and supports ~~which~~ THAT offer infants and toddlers and their families services and supports to enhance child development in the areas of cognition, speech, communication, physical, motor, vision, hearing, social-emotional development, and self-help skills; parent-child or family

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

interaction; and early identification, screening, and assessment services ~~which~~ THAT are provided:

(I) To families at no cost or through the application of a sliding fee schedule;

(II) For families to enable them to coordinate and advocate for the appropriate services and supports;

(III) In conformity with an individualized plan as specified by the department; and

(IV) In collaboration with a local school district, if the child is three years of age or older;

(c) Case management services;

(d) Respite care services, ~~which include~~ INCLUDING temporary care of a person with a developmental disability ~~in order~~ to offer relief to the person's family or caregiver, or to allow the family or caregiver to deal with emergency situations or to engage in personal, social, or routine activities and tasks that otherwise may be neglected, postponed, or curtailed due to the demands of caring for a person who has a developmental disability;

(e) Day services and supports ~~which~~ THAT offer opportunities for persons with developmental disabilities to experience and actively participate in valued adult roles in the community. These services and supports will enable persons receiving services to access and participate in community activities, such as work, recreation, higher education, and senior citizen activities. Day services and supports, including early intervention services, may also include the administration of nutrition or fluids through gastrostomy tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k) and supervised by a licensed nurse or physician.

(f) Residential services and supports, ~~which include~~ INCLUDING an array of training, learning, experiential, and support activities provided in living alternatives designed to meet the individual needs of persons receiving services and may include the administration of nutrition or fluids through gastrostomy tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k) and supervised by a licensed nurse or physician;

(g) Ancillary services, ~~which include~~ INCLUDING activities that are secondary but integral to the provision of the services and supports specified in this subsection (1).

(2) Service agencies receiving funds pursuant to subsection (1) of this section shall comply with all of the provisions of this article and the rules and regulations promulgated thereunder.

(3) Service and support coordination shall be purchased from the community centered board designated pursuant to section 27-10.5-105, except pursuant to subsection (4) of this section.

(4) (a) The department of human services may, DIRECTLY OR IN COORDINATION

WITH THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, purchase services and supports, including service and support coordination, directly from service agencies ~~under the following conditions~~ IF:

~~(I) The executive director requests the provision of an authorized service or support for which a need has been identified in at least one designated service area and funds are available to purchase such service or support, and the community centered board has failed to purchase such service or support from a service agency or failed to provide it directly; or~~ REQUIRED BY THE FEDERAL REQUIREMENTS FOR THE STATE TO QUALIFY FOR FEDERAL FUNDS UNDER TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, INCLUDING PROGRAMS AUTHORIZED PURSUANT TO PART 4 OF ARTICLE 6 OF TITLE 25.5, C.R.S.; OR

~~(II) A designated community centered board has declined to participate in a pilot program authorized by the executive director or has declined to provide or purchase a service or support deemed critical by the executive director based on the following findings:~~

~~(A) The service or support is consistent with local, regional, and state needs;~~

~~(B) The service or support is needed immediately to ensure the health or safety of a person receiving services; and~~

~~(C) The service or support, or service and support coordination, is an innovative service which may lead to increased cost savings or efficiencies in a designated service area; or~~

(III) The executive director has determined that a service or support provided or purchased by a designated community centered board does not meet established standards and the continuation of purchase of the service or support through the community centered board is not in the best interests of the persons receiving the services.

(a.5) THE DEPARTMENT SHALL ONLY PURCHASE SERVICES AND SUPPORTS DIRECTLY FROM THOSE COMMUNITY CENTERED BOARDS OR SERVICE AGENCIES THAT MEET ESTABLISHED STANDARDS.

~~(b) Prior to entering into a contract to purchase services or supports directly from a service agency, the executive director shall consider objections presented by the affected community centered board.~~

(c) Nothing in this section shall be construed to prohibit the provision of services and supports, including case management services, directly by the department through regional centers, for persons receiving services in regional centers.

(d) Nothing in this section shall be construed to require the provision of services and supports, including case management services, directly by the department.

(5) Governmental units, including but not limited to counties, municipalities, school districts, health service districts, and state institutions of higher education, are authorized at their own expense to furnish money, materials, or services and

supports to persons with developmental disabilities, or to purchase services and supports for such persons through designated community centered boards or service agencies, so long as no conditions or requirements imposed as a result of ~~such~~ THE provision or purchase through a community centered board or service agency are in conflict with the provisions of this article or the rules ~~and regulations~~ promulgated thereunder.

(6) Boards of county commissioners may levy up to one mill for the purpose of purchasing services and supports for persons with developmental disabilities. TO THE EXTENT AUTHORIZED BY FEDERAL LAW, AND SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, AND PURSUANT TO RULES ESTABLISHED BY THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, A COUNTY MAY TRANSFER THE REVENUE RAISED PURSUANT TO THE MILL LEVY TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING OR THE DEPARTMENT OF HUMAN SERVICES TO RECEIVE MATCHING FEDERAL FUNDS TO PROVIDE MEDICAID-APPROVED WAIVER SERVICES TO PERSONS WITH DEVELOPMENTAL DISABILITIES.

(7) (a) Each year the general assembly shall appropriate funds to the department of human services to provide or purchase services and supports for persons with developmental disabilities pursuant to this section. Unless specifically provided otherwise, services and supports shall be purchased on the basis of ~~five percent local funding to be matched by ninety-five percent~~ state funding less any federal or cash funds received for general operating expenses from any other state or federal source, less funds available to a person receiving residential services or supports after such person receives an allowance for personal needs or for meeting other obligations imposed by federal or state law, and less the required local school district funds specified in paragraph (b) of this subsection (7). The yearly appropriation, when combined with all other sources of funds, shall in no case exceed one hundred percent of the approved program costs as determined by the general assembly. Funds received for capital construction shall not be considered in the calculation for the distribution of funds under the provisions of this section.

(b) Each school district shall pay to the community centered board providing programs attended by a student with a developmental disability, who is domiciled in the school district and may be counted in the district's pupil enrollment, an amount at least equal to the district's per pupil operating revenues as determined pursuant to the "Public School Finance Act of 1994", article 54 of title 22, C.R.S. This subsection (7) shall apply to students who are less than twenty-two years of age.

(c) The department is authorized to use up to three percent of the appropriation allocated for early intervention services and supports for training and technical assistance to assure that the latest developments for early intervention services and supports are rapidly integrated into service provision throughout the state.

SECTION 2. 27-10.5-104.5 (3), Colorado Revised Statutes, is amended to read:

27-10.5-104.5. Service agencies - funds - rules. (3) The executive director shall promulgate such rules ~~and regulations~~ as are necessary to implement the purchase of services and supports directly or through community centered boards.

Such rules ~~and regulations~~ shall include, but need not be limited to, the following:

- (a) Terms and conditions ~~which are~~ necessary to promote the effective delivery of services and supports;
- (b) Procedures for obtaining an annual audit of designated community centered boards and service agencies not affiliated with a designated community centered board to provide financial information deemed necessary by the executive director to establish costs of services and supports and to ensure proper management of funds received pursuant to section 27-10.5-104;
- (c) Delineation of a system to resolve contractual disputes between the department and designated community centered boards or service agencies and between designated community centered boards and service agencies, including the contesting of any rates that the designated community centered boards charge to service agencies based upon a percentage of the rates that service agencies charge for services and supports;
- (d) Specification of what services and supports are to be reimbursed by the department of human services and secondarily by the community centered board, the source of reimbursement, actual service or support costs, incentives, and program service objectives ~~which~~ THAT affect reimbursement;
- (e) The methods of coordinating the purchase of services and supports, including, but not limited to, service and support coordination, with other federal, state, and local programs ~~which~~ THAT provide funding for authorized services and supports;
- (f) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)
- (g) ~~Criteria to be used by designated community centered boards for the awarding of contracts to purchase services and supports to service agencies;~~
- (h) ~~Criteria to be used by designated community centered boards for maintaining contracts and providing payment to purchase services and supports with service agencies;~~
- (i) Criteria for and limitations on any rates that designated community centered boards charge to service agencies based upon a percentage of the rates that service agencies charge for services and supports.

SECTION 3. 27-10.5-105 (2), Colorado Revised Statutes, is amended to read:

27-10.5-105. Community centered boards - designation - purchase of services and supports by community centered boards. (2) Once a community centered board has been designated pursuant to this section, it shall, subject to available appropriations:

- (a) Be under the control and direction of a board of directors or trustees comprised of one or more persons from each of the following categories:
 - (I) Interested persons representing the community at large;

(II) Family members of persons with developmental disabilities who are receiving services or supports; and

(III) Persons with developmental disabilities who are receiving services or supports;

(b) Adopt bylaw provisions to ensure that:

(I) Members of the governing board are prohibited from voting on issues in which they have a conflict of interest;

(II) Staff members of the community centered board and employees or board members of service agencies ~~within the designated service area~~ shall not serve on the governing board;

(III) Staff members of the community centered board and employees or board members of service agencies ~~within the designated service area~~ are prohibited from voting in elections for members of the governing board; and

(IV) Board meetings shall be scheduled after adequate notice and shall be open to the public; except that, by vote of a two-thirds majority of members present, the board may elect to address the following matters in executive session:

(A) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest;

(B) Conferences with an attorney for the purpose of receiving legal advice on specific legal questions;

(C) Matters required to be kept confidential by federal or state law or rules or regulations;

(D) Specialized details of security arrangements or investigations;

(E) Determining positions relative to matters that may be subject to negotiations;

(F) Developing strategy for negotiations and instructing negotiators; and

(G) Personnel matters;

(c) Determine the needs of eligible persons within the community centered board designated service area and prepare and implement a long-range plan and annual updates to that plan for the development and coordination of services and supports to address those needs. The needs determination and designated service area plans or annual update shall be submitted to the department.

(d) Determine eligibility, based in part upon information received concerning the screening and evaluation performed by the administrative units pursuant to section 22-20-118, C.R.S., for a child with disabilities who is less than three years of age, and develop individualized plans for persons with developmental disabilities who are eligible for ~~such~~ services and supports pursuant to section 27-10.5-106. An

individualized plan for a child with disabilities who is less than three years of age shall be developed in collaboration with a representative from the administrative unit who participated in the child's screening and evaluation performed pursuant to section 22-20-118, C.R.S. The representative shall participate in the initial meeting for the development of the child's individualized plan.

(e) Provide case management services, including service and support coordination and periodic reviews, for persons receiving services and families with children with developmental disabilities;

(f) Establish a referral and placement committee, in conformance with department rules, ~~and regulations~~, to provide recommendations on placement for persons receiving services and access to programs based on identified eligibility criteria;

(g) Obtain or provide early intervention services and supports including:

(I) Service and support coordination with families of eligible infants and toddlers. The purpose of service and support coordination is to enable families to utilize service systems to meet their needs in an effective manner and increase their confidence and competence. Service and support coordination is to be rendered in an interagency context ~~which~~ THAT emphasizes interagency collaboration. Families shall have, to the extent possible, a choice as to who shall perform certain facets of service and support coordination as established in the family's individualized plan.

(II) Coordination of early intervention services and supports with local agencies and other community resources at the local level to avoid duplication and fragmentation of the early intervention program. The community centered board shall:

(A) Coordinate with the local interagency effort regarding outreach, identification, screening, and multidisciplinary assessment, and eligibility determination for families served by the community centered boards who request such services;

(B) Coordinate with the local family support services program;

(C) Coordinate with appropriate state agencies providing programs for infants and toddlers;

(h) Take steps to notify eligible persons, and their families as appropriate, regarding the availability of services and supports;

(i) Establish a human rights committee. ~~Such~~ THE HUMAN RIGHTS committee shall, to the extent possible, be comprised of two professional persons trained in the application of behavior development techniques and three representatives of persons receiving services, their parents, legal guardians, or authorized representatives. No employee or board member of a service agency within the community centered board's designated service area shall serve as a member of the human rights committee.

(j) Pursuant to section 27-10.5-103, collaborate with the department as it

develops and implements a statewide plan for public education outreach and awareness efforts related to part C child find and the availability of early intervention services.

SECTION 4. 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 5, 2008