

CHAPTER 57

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 09-044

BY SENATOR(S) Boyd;
also REPRESENTATIVE(S) Hullinghorst, Gerou, Pommer, Priola, Todd.**AN ACT****CONCERNING ADMINISTRATIVE PROCEDURES IN RELATION TO THE DEPARTMENT OF HUMAN SERVICES.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 26-1-106, Colorado Revised Statutes, is amended to read:

26-1-106. Final agency action - administrative law judge - authority of executive director. (1) (a) The executive director may appoint one or more persons to serve as administrative law judges for the state department pursuant to section 24-4-105, C.R.S., and pursuant to part 10 of article 30 of title 24, C.R.S., subject to appropriations made to the department of personnel. ~~Except as provided in subsection (2) of this section,~~ Hearings conducted by the administrative law judge shall be considered initial decisions of the state department which shall be reviewed by the executive director or a designee. In the event exceptions to the initial decision are filed pursuant to section 24-4-105 (14) (a) (I), C.R.S., such review shall be in accordance with section 24-4-105 (15), C.R.S.; EXCEPT THAT THE STATE DEPARTMENT MAY, AT ITS DISCRETION, PERMIT A PARTY TO FILE AN AUDIO RECORDING IN LIEU OF A WRITTEN TRANSCRIPT IF THE PARTY CANNOT AFFORD A WRITTEN TRANSCRIPT. THE STATE BOARD MAY ADOPT RULES DELINEATING THE CRITERIA AND PROCESS FOR FILING AN AUDIO RECORDING IN LIEU OF A WRITTEN TRANSCRIPT. In the absence of any exception filed pursuant to section 24-4-105 (14) (a) (I), C.R.S., the executive director shall review the initial decision in accordance with a procedure adopted by the state board. Such procedure shall be consistent with federal mandates concerning the single state agency requirement. Review by the executive director in accordance with section 24-4-105 (15), C.R.S., or the procedure adopted by the state board pursuant to this section shall constitute final agency action. The administrative law judge may conduct hearings on appeals from decisions of county departments brought by recipients of and applicants for

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

public assistance and welfare which are required by law in order for the state to qualify for federal funds, and may conduct other hearings for the state department. Notice of any such hearing shall be served at least ten days prior to such hearing.

(b) Repealed.

~~(c) The state department, in consultation with the office of administrative courts in the department of personnel, is directed by the general assembly to request any waivers from the appropriate federal authorities or agencies that have the authority to waive the single state agency requirement for the administration of a grant program with respect to the procedures for final agency action that are set forth in subsection (2) of this section. In developing the waiver as required under this section, the state department shall consult with any appropriate advisory committees and other interested parties regarding the contents of the waiver request.~~

(2) Hearings initiated by a licensed or certified provider of services shall be conducted by an administrative law judge for the state department and shall be considered final agency action and subject to judicial review in accordance with the provisions of section 24-4-106, C.R.S., for any party, including the state department, which shall be considered a person for such purposes.

(3) (Deleted by amendment, L. 91, p. 1883, § 1, effective May 24, 1991.)

SECTION 2. Repeal. 26-1-120 (10), Colorado Revised Statutes, is repealed as follows:

~~**26-1-120. Merit system.** (10) On January 1, 2001, the merit system council is abolished. The merit system council shall finalize as many appeals filed prior to January 1, 2001, as possible. Any appeals that are pending on January 1, 2001, shall be transferred to the executive director or his or her designee for final agency action pursuant to section 26-1-106 or 25.5-1-107, C.R.S., and shall be decided based upon the law and regulations in existence at the time the appealed action was taken. On and after January 1, 2001, or on and after the date upon which the county takes over responsibility for a successor merit system, whichever occurs first, the resolution of any personnel issues other than a pending appeal filed at the state level shall be handled by the county pursuant to the policies and standards adopted for the county's successor merit system.~~

SECTION 3. 26-1-107 (5), Colorado Revised Statutes, is amended to read:

26-1-107. State board of human services - rules. (5) (a) "Board rules" are rules promulgated by the state board governing:

~~(a)~~ (I) Program scope and content;

~~(b)~~ (II) Requirements, obligations, and rights of clients AND recipients;

(III) NON-EXECUTIVE DIRECTOR RULES CONCERNING vendors, providers, and other persons affected by acts of the state department.

(b) THE STATE BOARD SHALL HAVE AUTHORITY TO ADOPT "BOARD RULES" FOR

PROGRAMS ADMINISTERED AND SERVICES PROVIDED BY THE STATE DEPARTMENT AS SET FORTH IN THIS TITLE AND IN TITLE 27, C.R.S.

(c) ANY RULES ADOPTED BY THE EXECUTIVE DIRECTOR TO IMPLEMENT THE PROVISIONS OF THIS TITLE OR TITLE 27, C.R.S., PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 09-044, ENACTED IN 2009, WHOSE CONTENT MEETS THE DEFINITION OF "BOARD RULES" SHALL CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, OR REPEALED BY THE STATE BOARD.

(d) WHENEVER A STATUTORY GRANT OF RULE-MAKING AUTHORITY IN THIS TITLE OR IN TITLE 27, C.R.S., REFERS TO THE STATE DEPARTMENT OR THE DEPARTMENT OF HUMAN SERVICES, IT SHALL MEAN THE STATE DEPARTMENT ACTING THROUGH EITHER THE STATE BOARD OR THE EXECUTIVE DIRECTOR OR BOTH. WHEN EXERCISING RULE-MAKING AUTHORITY UNDER THIS TITLE OR TITLE 27, C.R.S., THE STATE DEPARTMENT, EITHER ACTING THROUGH THE STATE BOARD OR THE EXECUTIVE DIRECTOR, SHALL ESTABLISH RULES CONSISTENT WITH THE POWERS AND THE DISTINCTION BETWEEN "BOARD RULES" AS SET FORTH IN THIS SECTION AND "EXECUTIVE DIRECTOR RULES" AS SET FORTH IN SECTION 26-1-108.

SECTION 4. 26-1-108, Colorado Revised Statutes, is amended to read:

26-1-108. Powers and duties of the executive director - rules. (1) Executive director rules shall be solely within the province of the executive director and shall include the following:

(a) Rules governing matters of internal administration in the state department, including organization, staffing, records, reports, systems, and procedures, and also governing fiscal and personnel administration for the state department and establishing accounting and fiscal reporting rules ~~and regulations~~ for disbursement of federal funds, contingency funds, and proration of available appropriations except those determinations precluded by authority granted to the state board.

(b) (Deleted by amendment, L. 97, p. 1183, § 3, effective July 1, 1997.)

(c) (Deleted by amendment, L. 93, p. 1109, § 23, effective July 1, 1994.)

(1.5) (Deleted by amendment, L. 97, p. 1183, § 3, effective July 1, 1997.)

(1.7) (a) THE EXECUTIVE DIRECTOR SHALL HAVE AUTHORITY TO ADOPT "EXECUTIVE DIRECTOR RULES" FOR PROGRAMS ADMINISTERED AND SERVICES PROVIDED BY THE STATE DEPARTMENT AS SET FORTH IN THIS TITLE AND IN TITLE 27, C.R.S. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-103, C.R.S.

(b) ANY RULES ADOPTED BY THE STATE BOARD TO IMPLEMENT THE PROVISIONS OF THIS TITLE OR TITLE 27, C.R.S., PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 09-044, ENACTED IN 2009, WHOSE CONTENT MEETS THE DEFINITION OF "EXECUTIVE DIRECTOR RULES" SHALL CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, OR REPEALED BY THE EXECUTIVE DIRECTOR.

(1.8) WHENEVER A STATUTORY GRANT OF RULE-MAKING AUTHORITY IN THIS

TITLE OR TITLE 27, C.R.S., REFERS TO THE STATE DEPARTMENT OR THE DEPARTMENT OF HUMAN SERVICES, IT SHALL MEAN THE STATE DEPARTMENT ACTING THROUGH EITHER THE STATE BOARD OR THE EXECUTIVE DIRECTOR OR BOTH. WHEN EXERCISING RULE-MAKING AUTHORITY UNDER THIS TITLE OR TITLE 27, C.R.S., THE STATE DEPARTMENT, EITHER ACTING THROUGH THE STATE BOARD OR THE EXECUTIVE DIRECTOR, SHALL ESTABLISH RULES CONSISTENT WITH THE POWERS AND THE DISTINCTION BETWEEN "BOARD RULES" AS SET FORTH IN SECTION 26-1-107 AND "EXECUTIVE DIRECTOR RULES" AS SET FORTH IN THIS SECTION.

(2) ~~The rules and regulations issued by the executive director PERTAINING TO THIS TITLE shall be binding upon the several county departments, PROVIDERS, VENDORS, AND AGENTS OF THE STATE DEPARTMENT.~~ At any public hearing relating to a proposed rule making, interested persons shall have the right to present their data, views, or arguments orally. Proposed rules of the executive director shall be subject to the provisions of section 24-4-103, C.R.S.

(3) (Deleted by amendment, L. 93, p. 1109, § 23, effective July 1, 1994.)

SECTION 5. 27-1-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

27-1-103. Duties of executive director - governor acquire water rights - rules.

(4) (a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL HAVE AUTHORITY TO ADOPT "EXECUTIVE DIRECTOR RULES", AS DESCRIBED IN SECTION 26-1-108, C.R.S., FOR PROGRAMS ADMINISTERED AND SERVICES PROVIDED BY THE DEPARTMENT OF HUMAN SERVICES AS SET FORTH IN THIS TITLE. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-103, C.R.S.

(b) WHENEVER A STATUTORY GRANT OF RULE-MAKING AUTHORITY IN THIS TITLE REFERS TO THE STATE DEPARTMENT OR THE DEPARTMENT OF HUMAN SERVICES, IT SHALL MEAN THE DEPARTMENT OF HUMAN SERVICES ACTING THROUGH EITHER THE STATE BOARD OF HUMAN SERVICES OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES OR BOTH. WHEN EXERCISING RULE-MAKING AUTHORITY UNDER THIS TITLE, THE STATE DEPARTMENT, EITHER ACTING THROUGH THE STATE BOARD OR THE EXECUTIVE DIRECTOR, SHALL ESTABLISH RULES CONSISTENT WITH THE POWERS AND THE DISTINCTION BETWEEN "BOARD RULES" AS SET FORTH IN SECTION 27-1-103.5 AND "EXECUTIVE DIRECTOR RULES" AS SET FORTH IN THIS SECTION.

(c) ANY RULES ADOPTED BY THE STATE BOARD OF HUMAN SERVICES TO IMPLEMENT THE PROVISIONS OF THIS TITLE PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 09-044, ENACTED IN 2009, WHOSE CONTENT MEETS THE DEFINITION OF "EXECUTIVE DIRECTOR RULES" SHALL CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, OR REPEALED BY THE EXECUTIVE DIRECTOR.

SECTION 6. Part 1 of article 1 of title 27, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

27-1-103.5. State board of human services - rules. (1) THE STATE BOARD OF HUMAN SERVICES, CREATED IN SECTION 26-1-107, C.R.S., IS AUTHORIZED TO ADOPT

"BOARD RULES" AS NECESSARY TO IMPLEMENT THE PROGRAMS ADMINISTERED AND THE SERVICES PROVIDED BY THE DEPARTMENT OF HUMAN SERVICES AS PROVIDED IN THIS TITLE. SUCH RULES SHALL BE PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-103, C.R.S.

(2) "BOARD RULES" ARE RULES PROMULGATED BY THE STATE BOARD OF HUMAN SERVICES GOVERNING:

(a) PROGRAM SCOPE AND CONTENT;

(b) REQUIREMENTS, OBLIGATIONS, AND RIGHTS OF CLIENTS AND RECIPIENTS;

(c) NON-EXECUTIVE DIRECTOR RULES CONCERNING VENDORS, PROVIDERS, AND OTHER PERSONS AFFECTED BY ACTS OF THE DEPARTMENT OF HUMAN SERVICES.

(3) (a) ANY RULES ADOPTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES TO IMPLEMENT THE PROVISIONS OF THIS TITLE PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 09-044, ENACTED IN 2009, WHOSE CONTENT MEETS THE DEFINITION OF "BOARD RULES" SHALL CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, OR REPEALED BY THE STATE BOARD OF HUMAN SERVICES.

(b) ANY RULES ADOPTED BY THE STATE BOARD TO IMPLEMENT THE PROVISIONS OF THIS TITLE PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 09-044, ENACTED IN 2009, WHOSE CONTENT MEETS THE DEFINITION OF "EXECUTIVE DIRECTOR RULES" SHALL CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, OR REPEALED BY THE EXECUTIVE DIRECTOR.

(4) WHENEVER A STATUTORY GRANT OF RULE-MAKING AUTHORITY IN THIS TITLE REFERS TO THE DEPARTMENT OR THE DEPARTMENT OF HUMAN SERVICES, IT SHALL MEAN THE DEPARTMENT OF HUMAN SERVICES ACTING THROUGH EITHER THE STATE BOARD OF HUMAN SERVICES OR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES. WHEN EXERCISING RULE-MAKING AUTHORITY UNDER THIS TITLE, THE STATE DEPARTMENT, EITHER ACTING THROUGH THE STATE BOARD OR THE EXECUTIVE DIRECTOR, SHALL ESTABLISH RULES CONSISTENT WITH THE POWERS AND THE DISTINCTION BETWEEN "BOARD RULES" AS SET FORTH IN THIS SECTION AND "EXECUTIVE DIRECTOR RULES" AS SET FORTH IN SECTION 27-1-103.

SECTION 7. 27-1-109, Colorado Revised Statutes, is amended to read:

27-1-109. Rules for part 1 and certain provisions in title 19, C.R.S. Pursuant to section 24-4-103, C.R.S., ~~the executive director of~~ the department of human services shall promulgate such rules ~~and regulations~~ as are necessary to implement the provisions of this part 1 and the procedures specified in sections 19-2-508, 19-2-906, 19-2-922, 19-2-923, 19-3-403, 19-3-506, 19-3-507, and 19-3-508, C.R.S., regarding children who are in detention or who have or may have mental illness or developmental disabilities.

SECTION 8. 27-1-202, Colorado Revised Statutes, is amended to read:

27-1-202. Administration - rules. (1) The executive director of the department of human services has the ~~following powers and duties~~ POWER AND DUTY TO

ADMINISTER AND ENFORCE THE PROVISIONS OF THIS PART 2.

~~(a) To administer and enforce the provisions of this part 2:~~

~~(b) To~~ (2) THE DEPARTMENT OF HUMAN SERVICES MAY adopt reasonable and proper standards, rules and regulations to implement this part 2 in accordance with the provisions of section 24-4-103, C.R.S., AND CONSISTENT WITH SECTIONS 27-1-103 AND 27-1-103.5.

SECTION 9. 27-10.5-102 (15.5), Colorado Revised Statutes, is amended to read:

27-10.5-102. Definitions. As used in this article, unless the context otherwise requires:

(15.5) "Family caregiver" means a family member of the person with a developmental disability who provides care to the person with a developmental disability in the family home, who meets the requirements for a qualified family caregiver, as established by rule of the ~~executive director~~ DEPARTMENT, and who is working through a program-approved service agency, as established by rule of the ~~executive director~~ DEPARTMENT.

SECTION 10. The introductory portion to 27-10.5-103 (2), Colorado Revised Statutes, is amended to read:

27-10.5-103. Duties of the executive director - state board rule-making.

(2) The ~~executive director~~ DEPARTMENT shall adopt such rules, in accordance with section 24-4-103, C.R.S., as are necessary to carry out the provisions and purposes of this article, including but not limited to the following subjects:

SECTION 11. 27-10.5-104.5 (1), the introductory portion to 27-10.5-104.5 (3), and 27-10.5-104.5 (3) (b), Colorado Revised Statutes, are amended to read:

27-10.5-104.5. Service agencies - moneys - rules. (1) A service agency, including a community centered board when acting as a service agency, shall comply with the requirements set forth in this article and the rules ~~and regulations~~ promulgated thereunder.

(3) The ~~executive director~~ DEPARTMENT shall promulgate rules to implement the purchase of services and supports from a community centered board, service agency, or family caregiver. The rules shall include, but need not be limited to:

(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~~ DEPARTMENT to establish costs of services and supports and to ensure proper management of ~~funds~~ MONEYS received pursuant to section 27-10.5-104;

SECTION 12. 27-10.5-106 (1) (b), Colorado Revised Statutes, is amended to read:

27-10.5-106. Eligibility determination - individualized plan - periodic review

- **rules.** (1) (b) Pursuant to contract with the department, designated community centered boards shall determine whether a person is eligible to receive services and supports pursuant to this article, and, if so, shall develop an individualized plan for him or her. The ~~executive director~~ DEPARTMENT shall promulgate rules, pursuant to article 4 of title 24, C.R.S., setting forth the procedure and criteria for determination of eligibility. The procedure and criteria shall be uniform in nature and applied throughout the state in a consistent manner.

SECTION 13. The introductory portions to 27-10.5-107 (1) and (3) and 27-10.5-107 (3.5), Colorado Revised Statutes, are amended to read:

27-10.5-107. Procedure for resolving disputes over eligibility, modification of services or supports, and termination of services or supports. (1) Every state or local service agency receiving state ~~funds~~ MONEYS pursuant to section 27-10.5-104 shall adopt a procedure for the resolution of disputes arising between the service agency and any recipient of, or applicant for, services or supports authorized under section 27-10.5-104. Procedures for the resolution of disputes regarding early intervention services shall be in compliance with IDEA. The procedures shall be consistent with rules promulgated by the ~~executive director~~ DEPARTMENT pursuant to article 4 of title 24, C.R.S., and shall be applicable to the following disputes:

(3) The ~~executive director~~ DEPARTMENT shall promulgate rules ~~and regulations~~, pursuant to article 4 of title 24, C.R.S., setting forth procedures for the resolution of disputes specified in subsection (1) of this section ~~which~~ THAT shall:

(3.5) The resolution process need not conform to the requirements of section 24-4-105, C.R.S., as long as the rules ~~and regulations~~ adopted by the department include provisions specifically setting forth procedures, time frames, notice, an opportunity to be heard and to present evidence, and the opportunity for impartial review of the decision in dispute by the executive director or designee, if the resolution process has failed.

SECTION 14. 27-10.5-109 (3) and (5) and the introductory portion to 27-10.5-109 (6), Colorado Revised Statutes, are amended to read:

27-10.5-109. Community residential home - licenses - rules. (3) The department of public health and environment and the department of human services shall develop standards for the licensure and certification of community residential homes. Such standards shall include health, life, and fire safety, as well as standards to ensure the effective delivery of services and supports to residents; except that any community residential home must comply with local codes. These standards shall, as appropriate, be adopted in rule ~~and regulation~~ by the ~~executive director of the~~ department of human services or the state board of health and shall specify the responsibilities of each department in the program. Surveys undertaken to ensure compliance with these standards shall, as appropriate, be undertaken as joint surveys by the departments.

(5) The issuance, suspension, revocation, modification, renewal, or denial of a license or certification shall be governed by the provisions of section 24-4-104, C.R.S. The failure of a community residential home to comply with the provisions

of this article and the rules ~~and regulations~~ promulgated thereunder, or any local fire, safety, and health codes shall be sufficient grounds for the department of public health and environment or the department of human services to deny, suspend, revoke, or modify the community residential home's license or certification.

(6) The ~~executive director~~ DEPARTMENT OF HUMAN SERVICES and the state board of health shall promulgate such rules as are necessary to implement this section, pursuant to the provisions specified in article 4 of title 24, C.R.S. The rules shall include, but shall not be limited to, the following:

SECTION 15. 27-10.5-703 (2), Colorado Revised Statutes, is amended to read:

27-10.5-703. Administration - duties of department - state board of human services - rules. (2) The ~~executive director~~ DEPARTMENT shall promulgate rules, pursuant to section 27-10.5-103, as necessary for the implementation of this section and to ensure that all IDEA timelines and requirements are met, including but not limited to administrative remedies if the timelines and requirements are not met.

SECTION 16. 27-10.5-705 (1), Colorado Revised Statutes, is amended to read:

27-10.5-705. Authorized services - conditions of funding - purchases of services - rules. (1) The ~~executive director~~ DEPARTMENT shall promulgate rules as are necessary, in accordance with this part 7 and consistent with section 27-10.5-104.5, to implement the purchase of early intervention services directly or through community centered boards or certified early intervention service brokers.

SECTION 17. 12-38-125 (1) (i) (I), Colorado Revised Statutes, is amended to read:

12-38-125. Exclusions - repeal. (1) No provision of this article shall be construed to prohibit:

(i) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in section 27-10.5-103 (2) (k), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of ~~institutions~~ HUMAN SERVICES pursuant to section ~~27-10.5-104.5~~ 27-10.5-104, C.R.S.

SECTION 18. 19-2-922 (1) (b), Colorado Revised Statutes, is amended to read:

19-2-922. Juveniles committed to department of human services - evaluation and placement. (1) (b) Such evaluation and examination shall be conducted at a detention facility and shall be completed within thirty days. The ~~executive director of the~~ department of human services may, by rule, ~~and regulation~~, determine the extent and scope of the evaluation and examination. To the extent possible and relevant, the evidence, reports, examination, studies, and other materials utilized in a sentencing hearing conducted under section 19-2-906 shall also be utilized in evaluation and examination conducted under this section. The provisions of this paragraph (b) shall not apply to examination and evaluation conducted pursuant to section 19-2-923 (1).

SECTION 19. 39-22-530 (1) (b), Colorado Revised Statutes, is amended to read:

39-22-530. Credit for employers that hire persons with developmental disabilities - definitions. (1) As used in this section, unless the context otherwise requires:

(b) "Developmental disability" shall have the same meaning as set forth in section 27-10.5-102 (11) (a), C.R.S., and in the rules adopted by the ~~executive director of~~ the department of human services pursuant to section 27-10.5-103 (2), C.R.S.

SECTION 20. 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: March 25, 2009