

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0305.01 Shelby Ross x4510

HOUSE BILL 22-1260

HOUSE SPONSORSHIP

Froelich,

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Simpson,

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ENSURING STUDENTS HAVE REASONABLE ACCESS TO
102 MEDICALLY NECESSARY SERVICES IN SCHOOLS.

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>.)

Under the bill, a student who has a medical diagnosis and presents an accompanying prescription from a qualified health-care professional to an administrative unit must receive reasonable accommodations, as determined by a collaborative care team, to allow the student to receive medically necessary services in the school setting.

The bill prohibits an administrative unit from prohibiting a

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

functional health-care specialist from providing medically necessary services to a student during school hours.

The bill authorizes an administrative unit to utilize onsite therapists when selecting a functional health-care specialist to provide the medically necessary services to the student. If the administrative unit does not have an appropriate specialist available on site, the bill requires the administrative unit to allow a community-based specialist to provide the medically necessary services in the school setting. The administrative unit is also required to consider selecting specialists who provide frequent and regular therapy to the student outside of the school setting to provide the medically necessary service to the student in the school setting in order to maintain continuity of care.

The bill does not increase, alter, or reduce an administrative unit's obligation to provide required services pursuant to the federal "Individuals with Disabilities Education Act" or section 504 of the federal "Rehabilitation Act of 1974".

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Colorado has a strong recent history of passing legislation that
5 has significantly improved access to medically necessary behavioral
6 health treatments for children, resulting in great strides in service access
7 across many settings. Unfortunately, access to medically necessary
8 services in the school setting has lagged.

9 (b) Applied behavioral analysis (ABA) is one critical example of
10 a medically necessary service that, when prescribed by a physician or
11 other qualified health-care provider, may need to be delivered within a
12 school setting for children with an autism spectrum disorder (ASD)
13 diagnosis. ASD is a global developmental disorder typically involving
14 difficulty in acquiring and generalizing functional skills across
15 environments. Generally accepted standards of care for this population
16 require that ABA therapy is provided across settings, including schools,

1 in accordance with a child's clinical needs. It is in the interest of the child,
2 the child's family, and the state that a child who is diagnosed with ASD
3 receive proper care and treatment in order to have the opportunity to be
4 a fully functioning individual in society.

5 (c) The lack of access to medically necessary services in schools
6 has detrimental effects on the children who are unable to achieve
7 maximum long-term functioning, as well as significant social costs,
8 including lost productivity and increased costs of care. Over the course
9 of a child's lifetime, inadequate access to treatment during the child's
10 school-aged years may result in millions of dollars of therapies and
11 supports needed later in life, as well as lost economic and employment
12 opportunities over time.

13 (d) While schools provide special education and related services,
14 many children have unmet medical needs in their school setting. These
15 needs can be met by allowing access to services funded by third parties.
16 Funding for medically necessary services for these children is appropriate
17 and available through medicaid's early and periodic screening, diagnostic,
18 and treatment program or through a family's private health insurance plan,
19 thereby placing no greater financial burden on the state's public schools.

20 (e) Currently, access to medically necessary services in the school
21 setting is too often restricted, causing damage to Colorado children and
22 the state, which ultimately bears the cost when medically necessary
23 services are not provided. No family should have to choose between a
24 child attending public school or receiving access to medically necessary
25 services. Ensuring that children have access to these services will also
26 improve the efficacy of their treatment and their integration into the
27 community, as well as reduce long-term costs to the state.

1 **SECTION 2.** In Colorado Revised Statutes, **add** 22-20-121 as
2 follows:

3 **22-20-121. Medically necessary services in school setting -**
4 **communications therapist - feeding therapist - not prohibited -**
5 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
6 OTHERWISE REQUIRES:

7 (a) "AUGMENTATIVE AND ALTERNATIVE COMMUNICATION
8 SPECIALIST" MEANS A PERSON WHO IS CERTIFIED AS A SPEECH-LANGUAGE
9 PATHOLOGIST PURSUANT TO ARTICLE 305 OF TITLE 12 OR IS A SCHOOL
10 SPEECH-LANGUAGE PATHOLOGIST LICENSED BY THE DEPARTMENT
11 PURSUANT TO ARTICLE 60.5 OF THIS TITLE 22, AND WHO IS QUALIFIED IN
12 THE SPECIALTY CLINICAL PRACTICE AREA OF AUGMENTATIVE AND
13 ALTERNATIVE COMMUNICATION, WHICH ASSISTS INDIVIDUALS WITH
14 EXPRESSIVE COMMUNICATION DISORDERS.

15 (b) "BEHAVIOR ANALYST" MEANS A PERSON WHO IS NATIONALLY
16 CERTIFIED AS A BOARD-CERTIFIED BEHAVIOR ANALYST, OR AS A
17 BOARD-CERTIFIED ASSISTANT BEHAVIOR ANALYST, WHO MAY OVERSEE A
18 REGISTERED BEHAVIOR TECHNICIAN DURING THE NORMAL COURSE OF THE
19 BEHAVIOR ANALYST'S PROFESSIONAL DUTIES.

20 (c) "BEHAVIOR TECHNICIAN" MEANS A PERSON WHO IS SUPERVISED
21 BY A BEHAVIOR ANALYST AND MEETS THE QUALIFICATIONS SET FORTH IN
22 MEDICAID OR PRIVATE INSURANCE RULES.

23 (d) "COLLABORATIVE CARE TEAM" MEANS A TEAM FORMED TO
24 MANAGE THE IMPLEMENTATION OF A STUDENT'S MEDICALLY NECESSARY
25 CARE IN THE SCHOOL SETTING AND CONSISTS OF THE CHILD WITH A
26 DISABILITY, TO THE EXTENT APPROPRIATE; THE CHILD'S PARENT OR LEGAL
27 GUARDIAN, OR A REPRESENTATIVE OF THE CHILD'S PARENT OR LEGAL

1 GUARDIAN; SCHOOL PERSONNEL DESIGNATED BY THE ADMINISTRATIVE
2 UNIT; THE CHILD'S FUNCTIONAL HEALTH-CARE SPECIALIST; AND A MEDICAL
3 REPRESENTATIVE OF THE ADMINISTRATIVE UNIT WHO MAY BE A SCHOOL
4 NURSE, SCHOOL PSYCHOLOGIST, OR OTHER APPROPRIATE HEALTH-CARE
5 PROFESSIONAL AUTHORIZED TO PRACTICE MEDICINE PURSUANT TO
6 COLORADO LAW.

7 (e) "FEEDING THERAPIST" MEANS A PERSON WHO IS AN
8 OCCUPATIONAL THERAPIST LICENSED PURSUANT TO ARTICLE 270 OF TITLE
9 12, A SPEECH-LANGUAGE PATHOLOGIST CERTIFIED PURSUANT TO ARTICLE
10 305 OF TITLE 12, OR A BEHAVIOR ANALYST, AND IS QUALIFIED IN THE
11 SPECIALTY CLINICAL PRACTICE AREA OF FEEDING AND SWALLOWING
12 DISORDERS.

13 (f) "FUNCTIONAL HEALTH-CARE SPECIALIST" MEANS AN
14 AUGMENTATIVE AND ALTERNATIVE COMMUNICATION SPECIALIST, A
15 BEHAVIOR ANALYST, A BEHAVIOR TECHNICIAN, A FEEDING THERAPIST, AN
16 OCCUPATIONAL THERAPIST LICENSED PURSUANT TO ARTICLE 270 OF TITLE
17 12, A SPEECH-LANGUAGE PATHOLOGIST CERTIFIED PURSUANT TO ARTICLE
18 305 OF TITLE 12, OR A SCHOOL SPEECH-LANGUAGE PATHOLOGIST LICENSED
19 BY THE DEPARTMENT PURSUANT TO ARTICLE 60.5 OF THIS TITLE 22.

20 (g) "MEDICALLY NECESSARY" MEANS CARE DETERMINED TO BE
21 MEDICALLY NECESSARY BY A QUALIFIED HEALTH-CARE PROFESSIONAL
22 ACTING WITHIN THE SCOPE OF THE PROFESSIONAL'S AUTHORIZED PRACTICE
23 CONSISTENT WITH APPLICABLE STANDARDS OF MEDICAL NECESSITY USED
24 BY MEDICAID OR PRIVATE INSURANCE OR AS DEFINED BY THE AMERICAN
25 MEDICAL ASSOCIATION.

26 (h) "REASONABLE ACCOMMODATION" HAS THE SAME MEANING AS
27 SET FORTH IN SECTION 501 OF THE FEDERAL "REHABILITATION ACT OF

1 1973", 29 U.S.C. SEC. 794, AS AMENDED.

2 (2) AN ADMINISTRATIVE UNIT SHALL ALLOW REASONABLE
3 ACCOMMODATIONS, AS DETERMINED BY A STUDENT'S COLLABORATIVE
4 CARE TEAM PURSUANT TO SUBSECTION (3) OF THIS SECTION, TO A STUDENT
5 WHO HAS A MEDICAL DIAGNOSIS AND PRESENTS AN ACCOMPANYING
6 PRESCRIPTION FROM A QUALIFIED HEALTH-CARE PROFESSIONAL, TO ALLOW
7 THE STUDENT TO ACCESS MEDICALLY NECESSARY SERVICES IN THE SCHOOL
8 SETTING.

9 (3) A COLLABORATIVE CARE TEAM SHALL BE FORMED WITHIN
10 THIRTY DAYS AFTER THE ADMINISTRATIVE UNIT RECEIVES THE STUDENT'S
11 PRESCRIPTION PURSUANT TO SUBSECTION (2) OF THIS SECTION. NO LATER
12 THAN THIRTY DAYS AFTER THE COLLABORATIVE CARE TEAM IS FORMED,
13 THE COLLABORATIVE CARE TEAM SHALL DETERMINE THE REASONABLE
14 ACCOMMODATIONS NEEDED FOR A STUDENT DESCRIBED IN SUBSECTION (2)
15 OF THIS SECTION.

16 (4) AN ADMINISTRATIVE UNIT SHALL NOT PROHIBIT A FUNCTIONAL
17 HEALTH-CARE SPECIALIST, OR A PERSON ACTING UNDER THE SPECIALIST'S
18 DIRECTION IN ACCORDANCE WITH THE SPECIALIST'S CREDENTIAL OR
19 LICENSE, FROM PROVIDING MEDICALLY NECESSARY SERVICES AS PROVIDED
20 IN THIS SECTION TO A STUDENT DURING SCHOOL HOURS.

21 (5) (a) AN ADMINISTRATIVE UNIT MAY USE ONSITE SPECIALISTS
22 WHEN SELECTING A FUNCTIONAL HEALTH-CARE SPECIALIST TO PROVIDE
23 MEDICALLY NECESSARY SERVICES TO A STUDENT PURSUANT TO THIS
24 SECTION. IF THE ADMINISTRATIVE UNIT DOES NOT HAVE AN APPROPRIATE
25 FUNCTIONAL HEALTH-CARE SPECIALIST AVAILABLE ON SITE, THE
26 ADMINISTRATIVE UNIT SHALL ALLOW A COMMUNITY-BASED FUNCTIONAL
27 HEALTH-CARE SPECIALIST TO PROVIDE THE MEDICALLY NECESSARY

1 SERVICES TO THE STUDENT IN THE SCHOOL SETTING.

2 (b) IF A COMMUNITY-BASED FUNCTIONAL HEALTH-CARE
3 SPECIALIST IS USED, AND IF THE STUDENT RECEIVES FREQUENT AND
4 REGULAR THERAPY OUTSIDE OF THE SCHOOL SETTING, THE
5 ADMINISTRATIVE UNIT SHALL CONSIDER SELECTING THE FUNCTIONAL
6 HEALTH-CARE SPECIALIST WHO PROVIDES SUCH THERAPY TO THE STUDENT
7 TO PROVIDE THE MEDICALLY NECESSARY SERVICES TO THE STUDENT IN
8 THE SCHOOL SETTING IN ORDER TO MAINTAIN CONTINUITY OF CARE.

9 (6) NOTHING IN THIS SECTION IS INTENDED TO INCREASE, ALTER,
10 OR REDUCE AN ADMINISTRATIVE UNIT'S OBLIGATION TO PROVIDE
11 REQUIRED SERVICES PURSUANT TO IDEA OR SECTION 504 OF THE FEDERAL
12 "REHABILITATION ACT OF 1973", 29 U.S.C. SEC. 794, AS AMENDED. ANY
13 MEDICALLY NECESSARY SERVICES REQUESTED, ACCOMMODATED, AND
14 PROVIDED PURSUANT TO THIS SECTION ARE INDEPENDENT OF IDEA.
15 ALLOWING ACCESS TO MEDICALLY NECESSARY SERVICES PURSUANT TO
16 THIS SECTION IS NOT EVIDENCE OF, NOR DOES IT GIVE RISE TO ANY
17 INFERENCE OF, AN ADMINISTRATIVE UNIT'S COMPLIANCE WITH OR FAILURE
18 TO COMPLY WITH THE REQUIREMENTS OF IDEA WITH RESPECT TO THE
19 SERVICES AT ISSUE.

20 **SECTION 3. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly; except
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V
24 of the state constitution against this act or an item, section, or part of this
25 act within such period, then the act, item, section, or part will not take
26 effect unless approved by the people at the general election to be held in

1 November 2022 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.