

CHAPTER 377

HUMAN SERVICES - BEHAVIORAL HEALTH

HOUSE BILL 23-1269

BY REPRESENTATIVE(S) Michaelson Jenet and Gonzales-Gutierrez, Amabile, Bacon, Boesenecker, Brown, Dickson, English, Froelich, Hamrick, Herod, Jodeh, Kipp, Lieder, Lindsay, Mabrey, Ortiz, Ricks, Sharbini, Sirota, Titone, Velasco, Willford, Woodrow, Young;

also SENATOR(S) Bridges and Gardner, Buckner, Coleman, Cutter, Exum, Fields, Ginal, Gonzales, Hansen, Hinrichsen, Kirkmeyer, Kolker, Lundeen, Moreno, Mullica, Pelton B., Pelton R., Priola, Roberts, Smallwood, Will, Zenzinger, Fenberg.

AN ACT

CONCERNING EFFORTS TO PROMOTE CLINICAL STABILIZATION FOR YOUTH INVOLVED IN THE BEHAVIORAL HEALTH SYSTEM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add 25.5-4-430** as follows:

25.5-4-430. Increasing access to behavioral health care for children and youth - directed payment authority - fee schedule rates. (1) (a) THE STATE DEPARTMENT SHALL ANALYZE HOW DIRECTED PAYMENT AUTHORITY CAN BE USED AS PART OF A COMPREHENSIVE PLAN TO FACILITATE AN ADEQUATE NETWORK OF SERVICES FOR CHILDREN AND YOUTH WITH BEHAVIORAL HEALTH NEEDS WHO ARE UNDER TWENTY-ONE YEARS OF AGE AND RECEIVE MEDICAID BENEFITS BY REQUIRING EACH MANAGED CARE ENTITY TO PAY NO LESS THAN STATE DEPARTMENT-ESTABLISHED FEE SCHEDULE RATES TO INCREASE ACCESS TO CARE FOR SERVICES NEEDED TO PROMOTE CLINICAL STABILIZATION. THE STATE DEPARTMENT SHALL ANALYZE HOW DIRECTED PAYMENT AUTHORITY MAY BE APPLIED TO CLINICAL STABILIZATION SERVICES, INCLUDING, BUT NOT LIMITED TO, RESIDENTIAL TREATMENT SERVICES, MULTISYSTEMIC THERAPY, FUNCTIONAL FAMILY THERAPY, AND PSYCHOTHERAPY SERVICES FOR CHILDREN AND YOUTH.

(b) IN ANALYZING DIRECTED PAYMENT AUTHORITY AND ESTABLISHING FEE SCHEDULE RATES, THE STATE DEPARTMENT SHALL CONSIDER WHETHER THE RATES SHOULD INCREASE BASED ON THE ACUITY OF THE CHILD OR YOUTH.

(2) NO LATER THAN OCTOBER 1, 2023, THE STATE DEPARTMENT SHALL REPORT

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

TO THE HOUSE OF REPRESENTATIVES PUBLIC AND BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE AND THE SENATE HEALTH AND HUMAN SERVICES COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, AND THE JOINT BUDGET COMMITTEE WHETHER DIRECTED PAYMENT AUTHORITY SHOULD BE PURSUED AND WHETHER FUNDING SHOULD BE REQUESTED TO EXPAND ACCESS TO RESIDENTIAL TREATMENT SERVICES, MULTISYSTEMIC THERAPY, FUNCTIONAL FAMILY THERAPY, AND PSYCHOTHERAPY SERVICES. IF THE STATE DEPARTMENT DETERMINES THAT DIRECTED PAYMENTS ARE NOT APPROPRIATE TO EXPAND ACCESS TO SUCH SERVICES, THE STATE DEPARTMENT SHALL PRESENT AN ALTERNATIVE PLAN TO EXPANDING ACCESS TO THE SERVICES.

SECTION 2. In Colorado Revised Statutes, 26-5-104, **add** (7.5) as follows:

26-5-104. Funding of child welfare services provider contracts - funding mechanism review - fund - report - rules - definitions - repeal.

(7.5) High-acuity treatment and services cash fund. (a) THERE IS CREATED IN THE STATE TREASURY THE HIGH-ACUITY TREATMENT AND SERVICES CASH FUND, REFERRED TO IN THIS SUBSECTION (7.5) AS THE "HIGH-ACUITY CASH FUND".

(b) THE STATE DEPARTMENT SHALL RETAIN ANY UNSPENT MONEY APPROPRIATED IN FISCAL YEAR 2022-23 AND 2023-24 FROM THE GENERAL FUND TO COUNTIES DURING THE INITIAL ALLOCATIONS FOR THE ADMINISTRATION OF CHILD WELFARE SERVICES, CORE SERVICES, OR CHILD WELFARE STAFFING. UNSPENT GENERAL FUND MONEY INCLUDES MONEY REMAINING AFTER TRANSFERS TO THE PREVENTION AND INTERVENTION SERVICES CASH FUND CREATED IN SUBSECTION (7)(a)(I) OF THIS SECTION.

(c) ON JUNE 30, 2023 AND JUNE 30, 2024, THE STATE TREASURER SHALL TRANSFER ANY MONEY RETAINED PURSUANT TO SUBSECTION (7.5)(b) OF THIS SECTION TO THE HIGH-ACUITY CASH FUND. THE MONEY TRANSFERRED PURSUANT TO THIS SUBSECTION (7.5)(c) IS AVAILABLE FOR EXPENDITURE THROUGH JUNE 30, 2025.

(d) (I) THE STATE DEPARTMENT SHALL EXPEND MONEY FROM THE HIGH-ACUITY CASH FUND TO PROVIDE ADDITIONAL RESOURCES TO LICENSED PROVIDERS TO HELP REMOVE BARRIERS THAT PROVIDERS FACE IN SERVING CHILDREN AND YOUTH WHOSE BEHAVIORAL OR MENTAL HEALTH NEEDS REQUIRE SERVICES AND TREATMENT THAT EXCEED CAPACITY OF THE ESTABLISHED DAILY RATES, INCLUDING FOR THE SAME PURPOSES IDENTIFIED IN SECTION 26-5-117 (2).

(II) ANY LICENSED PROVIDER WHO RECEIVES MONEY PURSUANT TO SUBSECTION (7)(d)(I) SHALL MEET THE REQUIREMENTS OF A QUALIFIED RESIDENTIAL TREATMENT PROGRAM, AS DEFINED IN SECTION 26-5.4-102, A PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, AS DEFINED IN SECTION 25.5-4-103 (19.5), OR THERAPEUTIC FOSTER CARE, AS DEFINED IN SECTION 26-6-903 (35).

(e) THIS SUBSECTION (7.5) IS REPEALED, EFFECTIVE JULY 1, 2025. ANY MONEY REMAINING IN THE HIGH-ACUITY CASH FUND AT THE END OF THE 2024-25 FISCAL YEAR REVERTS TO THE GENERAL FUND.

SECTION 3. In Colorado Revised Statutes, 26-5-117, **add** (2)(a.5) as follows:

26-5-117. Out-of-home placement for children and youth with mental or behavioral needs - funding - report - rules - legislative declaration - definitions - repeal.

(2) (a.5) (I) NO LATER THAN JULY 1, 2023, THE STATE DEPARTMENT, IN COLLABORATION WITH THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING AND OTHER RELEVANT STAKEHOLDERS, INCLUDING STAKEHOLDERS THAT REPRESENT INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, SHALL FORM A WORKING GROUP TO MAKE RECOMMENDATIONS ABOUT DEVELOPING AN INCENTIVE FUNDING POOL PILOT PROGRAM TO INCENTIVIZE RESIDENTIAL TREATMENT PROVIDERS TO ACCEPT AND TREAT CHILDREN AND YOUTH WHO ARE UNDER TWENTY-ONE YEARS OF AGE AND HAVE HIGH-ACUITY BEHAVIORAL HEALTH NEEDS OR OTHER COMMON BARRIERS TO APPROPRIATE TREATMENT AND PLACEMENT, INCLUDING THE PRESENCE OF CO-OCCURRING DISABILITIES.

(II) IN DEVELOPING THE INCENTIVE FUNDING POOL, THE STATE DEPARTMENT MAY CONSIDER PROVIDING AN ENHANCED PAYMENT, IN ADDITION TO ANY DAILY BED RATE AUTHORIZED AND PAID FOR BY PUBLIC FUNDING, AND AUTHORIZING THE FUNDING POOL TO BE USED TO EXTEND AND EXPAND ACCESS TO CARE PURSUANT TO SUBSECTION (2)(b)(I) OF THIS SECTION.

(III) NO LATER THAN OCTOBER 1, 2023, THE WORKING GROUP SHALL SUBMIT ITS RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE.

SECTION 4. In Colorado Revised Statutes, 27-50-101, **add** (8.5) and (13.5) as follows:

27-50-101. Definitions. As used in this article 50, unless the context otherwise requires:

(8.5) "BOARDING" MEANS WHEN A CHILD OR YOUTH UNDER TWENTY-ONE YEARS OF AGE HAS BEEN WAITING LONGER THAN TWELVE HOURS TO BE PLACED IN AN APPROPRIATE TREATMENT SETTING AFTER BEING CLINICALLY ASSESSED AND DETERMINED TO BE IN NEED OF INPATIENT PSYCHIATRIC TREATMENT AND RECEIVED A DETERMINATION FROM A LICENSED PROVIDER OF MEDICAL STABILITY WITHOUT THE NEED FOR URGENT MEDICAL ASSESSMENT OR HOSPITALIZATION FOR A PHYSICAL CONDITION.

(13.5) "EXTENDED STAY" MEANS WHEN A CHILD OR YOUTH UNDER TWENTY-ONE YEARS OF AGE HAS BEEN WAITING LONGER THAN SEVENTY-TWO HOURS TO BE DISCHARGED FROM AN ACUTE LEVEL OF INPATIENT PSYCHIATRIC CARE TO A LESS INTENSIVE OR LESS RESTRICTIVE CLINICALLY APPROPRIATE LEVEL OF PSYCHIATRIC CARE, INCLUDING A DISCHARGE HOME OR TO A HOME-LIKE SETTING WITH BEHAVIORAL HEALTH SUPPORTS.

SECTION 5. In Colorado Revised Statutes, 27-50-201, **add** (3.5) and (3.7) as follows:

27-50-201. Behavioral health system monitoring - capacity - safety net performance. (3.5) (a) IN SETTING MINIMUM PERFORMANCE STANDARDS FOR CHILDREN AND YOUTH UNDER TWENTY-ONE YEARS OF AGE, THE BHA SHALL CONSULT WITH A WORKING GROUP, INCLUDING MEMBERS FROM THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE DEPARTMENT OF HUMAN SERVICES,

COUNTY DEPARTMENTS OF HUMAN OR SOCIAL SERVICES, MANAGED CARE ENTITIES, HOSPITALS, AND OTHER RELEVANT STAKEHOLDERS, INCLUDING STAKEHOLDERS WHO REPRESENT INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, TO HELP DEVELOP THE PERFORMANCE MONITORING SYSTEM FRAMEWORK THAT ADDRESSES THE MINIMUM PERFORMANCE STANDARDS FOR TREATMENT OF CHILDREN AND YOUTH PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE FRAMEWORK MUST CONSIDER MEASURES OF ACCOUNTABILITY FOR CHILDREN AND YOUTH WHO ARE BOARDING OR IN EXTENDED STAY.

(b) THE WORKING GROUP MAY, THROUGH GIFTS, GRANTS, OR DONATIONS, ENTER INTO AN AGREEMENT WITH A THIRD-PARTY CONTRACTOR THAT HAS EXPERTISE IN CHILD WELFARE AND YOUTH MENTAL HEALTH RESEARCH, INCLUDING OUTCOME MEASUREMENT AND IMPACT ANALYSIS, TO ASSIST IN DEVELOPING THE FRAMEWORK.

(c) NO LATER THAN APRIL 1, 2024, THE WORKING GROUP SHALL SUBMIT THE FRAMEWORK TO THE BHA TO INFORM THE PERFORMANCE MONITORING SYSTEM. THE BHA SHALL MAKE THE FRAMEWORK PUBLICLY AVAILABLE ON THE BHA'S WEBSITE.

(3.7) (a) (I) BEGINNING SEPTEMBER 1, 2023, AND EACH QUARTER THEREAFTER UNTIL OCTOBER 1, 2024, EACH HOSPITAL SHALL REPORT INFORMATION TO THE BHA THAT ARE CONSISTENT WITH FEDERAL PRIVACY LAWS IN A FORM AND MANNER SPECIFIED BY THE BHA ON THE TOTAL NUMBER OF CHILDREN AND YOUTH PATIENTS WHO WERE BOARDING OR HAD EXTENDED STAYS IN THE PREVIOUS QUARTER; IF KNOWN, HOW MANY CHILDREN AND YOUTH WHO WERE BOARDING OR HAD EXTENDED STAYS AND WERE IN COUNTY CUSTODY AT THE TIME THEY WERE BOARDING OR HAD EXTENDED STAYS; AND, TO THE EXTENT POSSIBLE, FOR PATIENTS WHO WERE ULTIMATELY DISCHARGED DURING THE QUARTER, WHERE THE PATIENTS WERE DISCHARGED TO.

(II) BEGINNING SEPTEMBER 1, 2023, AND EACH QUARTER THEREAFTER UNTIL OCTOBER 1, 2024, THE DEPARTMENT OF HUMAN SERVICES, IN CONSULTATION WITH COUNTY DEPARTMENTS OF HUMAN OR SOCIAL SERVICES, SHALL REPORT INFORMATION TO THE BHA IN A FORM AND MANNER SPECIFIED BY THE BHA THAT ARE CONSISTENT WITH FEDERAL PRIVACY LAWS ON THE TOTAL NUMBER OF CHILDREN AND YOUTH IN THE CUSTODY OF, OR WHO HAD INVOLVEMENT WITH, A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES WHO SPENT TIME AT LEAST OVERNIGHT IN A HOTEL OR A COUNTY DEPARTMENT OF HUMAN OR SOCIAL SERVICES OFFICE AS A STOPGAP SETTING.

(b) (I) NO LATER THAN SEPTEMBER 1, 2023, AND EACH QUARTER THEREAFTER UNTIL OCTOBER 1, 2024, THE BHA SHALL REPORT AGGREGATED AND DE-IDENTIFIED INFORMATION SUBMITTED TO THE BHA PURSUANT TO SUBSECTION (3.7)(a) OF THIS SECTION TO THE WORKING GROUP. THE BHA SHALL MAKE THE DE-IDENTIFIED AND AGGREGATED DATA PUBLICLY AVAILABLE ON THE BHA'S WEBSITE.

(II) IF THE INFORMATION REPORTED PURSUANT TO THIS SUBSECTION (3.7)(b) IS NOT ABLE TO BE AGGREGATED AND DE-IDENTIFIED IN COMPLIANCE WITH THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, 42 U.S.C. SECS. 1320d TO 1320d-9, THE BHA SHALL NOT REPORT THE INFORMATION UNTIL THE POPULATION IS LARGE ENOUGH TO BE REPORTED IN COMPLIANCE WITH THE FEDERAL LAW.

SECTION 6. In Colorado Revised Statutes, 26-1-132, **add** (5) as follows:

26-1-132. Department of human services - rate setting - residential treatment service providers - monitoring and auditing - report. (5) THE STATE DEPARTMENT, IN COLLABORATION WITH THE BEHAVIORAL HEALTH ADMINISTRATION AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, SHALL DEVELOP A CAPACITY PLAN FOR WHENEVER A RESIDENTIAL TREATMENT FACILITY FOR CHILDREN AND YOUTH THAT IS LICENSED BY THE STATE DEPARTMENT CLOSSES OR HAS A SUBSTANTIVE CHANGE IN OPERATION. THE STATE DEPARTMENT SHALL INCLUDE UPDATES ON THE CAPACITY PLAN DURING THE STATE DEPARTMENT'S "SMART ACT" HEARING.

SECTION 7. Appropriation. For the 2023-24 state fiscal year, \$5,900,000 is appropriated to the department of human services for use by the division of child welfare. This appropriation is from the high-acuity treatment and services cash fund created in section 26-5-104 (7.5)(a), C.R.S. To implement this act, the division may use this appropriation for high-acuity treatment and services. Any money appropriated in this section not expended prior to July 1, 2024, is further appropriated to the department for the 2024-25 state fiscal year for the same purpose.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 5, 2023