

CHAPTER 54

LABOR AND INDUSTRY

SENATE BILL 16-093

BY SENATOR(S) Lambert, Grantham, Steadman, Cooke, Garcia, Heath, Hodge, Jahn, Kefalas, Lundberg, Martinez Humenik, Merrifield, Newell, Todd, Woods;
 also REPRESENTATIVE(S) Young, Hamner, Rankin, Danielson, Esgar, Fields, Garnett, Ginal, Kraft-Tharp, Lontine, Moreno, Primavera, Ryden, Tyler, Vigil.

AN ACT

CONCERNING TRANSFER OF THE OVERSIGHT OF INDEPENDENT LIVING SERVICES FROM THE DEPARTMENT OF HUMAN SERVICES TO THE DEPARTMENT OF LABOR AND EMPLOYMENT.

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

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** article 85 to title 8 as follows:

ARTICLE 85
Independent Living Services

8-85-101. [Formerly 26-8.1-101] Legislative declaration. The general assembly recognizes omissions in the delivery of independent living services to individuals with disabilities and desires to remedy such inadequacies in the delivery system through services at the community level. The general assembly finds that independent living centers pave the pathways to full participation in professional and community life for all individuals with disabilities. To advance and support the independence of individuals with disabilities and to assist those individuals to live outside of institutions, the general assembly hereby enacts this article.

8-85-102. [Formerly 26-8.1-102] Definitions. As used in this article, unless the context otherwise requires:

(1) "Base amount" means the equal amount of funding an independent living center would receive to provide the five independent living core services throughout its service catchment area, regardless of any other factors.

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

(2) "Cross-disability" means, with respect to an independent living center, that the center provides independent living services to individuals representing a range of disabilities.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT CREATED IN SECTION 24-21-121, C.R.S.

(4) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

~~(5)~~ (5) "Independent living center" means a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency that is designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and that:

(a) Is designed and operated within a local community by individuals with disabilities; and

(b) Provides required independent living core services and programs and an array of expanded services.

~~(6)~~ (6) "Independent living core services" means:

(a) Information and referral services;

(b) Independent living skills training;

(c) Peer counseling, including cross-disability peer counseling;

(d) Individual and systems advocacy; and

(e) Transition services or diversion from nursing homes and institutions to home- and community-based living, or upon leaving secondary education.

~~(7)~~ (7) "Independent living services" means:

(a) Independent living core services; and

(b) Other services and assistance as defined by federal regulations.

~~(8)~~ (8) "Individual with a disability" means an individual:

(a) With a physical or mental impairment that substantially limits one or more major life activities of such individual;

(b) With a record of such an impairment; or

(c) Regarded as having such an impairment.

(9) "OFFICE" MEANS THE OFFICE OF INDEPENDENT LIVING SERVICES CREATED PURSUANT TO SECTION 8-85-103 WITHIN THE DEPARTMENT.

8-85-103. [Formerly 26-8.1-103] Functions of office - functions of department - appropriations - rules. (1) THERE IS HEREBY CREATED WITHIN THE DEPARTMENT THE OFFICE OF INDEPENDENT LIVING SERVICES. THE PURPOSE OF THE OFFICE IS TO OVERSEE THE CONTRACTS WITH INDEPENDENT LIVING CENTERS PURSUANT TO THIS ARTICLE.

~~(1)~~ (2) (a) Subject to available appropriations, the ~~state department~~ OFFICE may contract with independent living centers for independent living core services.

(b) The executive director shall review expenditures in accordance with the standards for independent living services set by the ~~state department~~ OFFICE pursuant to section ~~26-8.1-105~~ 8-85-105 and the evaluation standards prescribed in section ~~26-8.1-107~~ 8-85-107. The ~~state department~~ OFFICE may withhold state funds if the executive director determines that the programs of such independent living centers do not comply with said standards.

~~(2)~~ (3) For purposes of allocating ~~moneys~~ MONEY under this article, each independent living center shall submit TO THE OFFICE a proposed budget, ~~to the state department which shall~~ WHICH MUST include proposed expenditures, including proposed expenditures for services that the center intends to provide.

~~(3)~~ (4) On or before July 1, 2016, the ~~state department~~ shall promulgate a rule for the block distribution of state ~~moneys~~ MONEY to independent living centers. The rule must include at least:

(a) A base amount of not less than six hundred thousand dollars; and

(b) Other factors agreed to by the independent living centers, which may include a per capita adjustment, a per county adjustment, or other adjustments.

~~(4)~~ (a) ~~The state department shall hire a facilitator to assist with the formulation of the rule to distribute moneys to independent living centers, as required by subsection (3) of this section.~~

~~(b) This subsection (4) is repealed, effective July 1, 2016.~~

~~(5) If a consensus is not reached on the factors described in paragraph (b) of subsection (3) of this section by January 1, 2016, then the formula required pursuant to subsection (3) of this section must consist of the base amount alone until such time as a consensus is reached on the other factors. If a consensus cannot be reached, the remainder of the factor formula funding shall be returned to the general fund and the state department shall submit a report to the joint budget committee on or before January 1, 2016, explaining that the independent living centers did not reach a consensus.~~

~~(6) The state department shall report to the health and human services committee of the senate and the public health care and human services committee of the house of representatives, or any successor committees, on or before March 1, 2016, regarding the rule promulgated pursuant to subsection (3) of this section.~~

8-85-104. [Formerly 26-8.1-104] Written plan - consumer choice. Each

independent living center shall maintain an individual consumer service record indicating the consumer's choice of services, including an individualized independent living plan regarding the consumer's choice of services or a written waiver of such plan.

8-85-105. [Formerly 26-8.1-105] Rules. The ~~state~~ department shall promulgate rules setting forth standards for levels and types of core services. ~~which shall be in compliance~~ THE RULES AND STANDARDS MUST COMPLY with federal rules as defined in Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended. The ~~state~~ department shall also adopt rules that set standards for certification of independent living centers and shall require that any center must be designated as an eligible agency under Title VII, section 725 of the federal "Rehabilitation Act of 1973", as amended, and must meet all federal requirements for independent living centers.

8-85-106. [Formerly 26-8.1-106] State plan. The statewide independent living council created pursuant to the federal "Rehabilitation Act of 1973", as amended, shall develop and revise the state plan for independent living to reflect the provisions of this article.

8-85-107. [Formerly 26-8.1-107] Approval of independent living centers - evaluation standards. (1) ~~The following requirements shall be met by~~ Each independent living center MUST MEET THE FOLLOWING REQUIREMENTS as a condition of the approval of its program:

(a) The program ~~shall~~ MUST be under the control and direction of a board of directors or trustees of a nonprofit corporation. The members ~~of which shall~~ MUST be persons with a demonstrated interest in programs for persons with disabilities and fifty-one percent or more of the members of the board ~~shall~~ MUST be persons with disabilities.

(b) The independent living center ~~shall~~ MUST be staffed with fifty-one percent or more of persons with disabilities.

(c) The independent living center ~~shall~~ MUST comply with all of the provisions of this article and the rules promulgated thereunder.

(2) In addition to the requirements of subsection (1) of this section, each independent living center, as a condition of approval of its program by the state department, ~~shall~~ MUST agree to comply with the following evaluation standards:

(a) **Philosophy.** The independent living center shall promote and practice the independent living philosophy of:

(I) Consumer control of the center regarding decision-making, service delivery, management, and establishment of the policy and direction of the center;

(II) Self-help and self-advocacy;

(III) Development of peer relationships and peer role models;

(IV) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(V) Promoting equal access of individuals with all types of significant disabilities to all services, programs, activities, resources, and facilities in the community, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) **Provision of services.** The independent living center shall provide independent living services to individuals with a range of significant disabilities. The independent living center shall provide independent living services on a cross-disability basis. The independent living center shall determine eligibility for independent living services and shall not exclude eligibility on the presence of any one specific significant disability.

(c) **Independent living goals.** The independent living center shall facilitate the development and achievement of independent living goals selected by individuals with significant disabilities who seek assistance in the development and achievement of independent living goals from the center.

(d) **Community options.** The independent living center shall conduct outreach and activities to increase the availability and improve the quality of community options for independent living to facilitate the development and achievement of independent living goals by individuals with significant disabilities.

(e) **Independent living core services.** The independent living center shall provide independent living core services and, as appropriate, a combination of any of the other independent living services referred to in Title VII, section 725, standards and assurances, of the federal "Rehabilitation Act of 1973", as amended.

(f) **Activities to increase community capacity.** The independent living center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) **Resource development activities.** The independent living center shall conduct resource development activities to obtain funding from sources other than federal and state sources.

(3) The independent living center shall submit annually to the ~~state department~~ OFFICE a performance report that provides evidence that the center has met the evaluation standards set forth in subsection (2) of this section.

8-85-108 [Formerly 26-8.1-108] Acceptance of federal grants. The executive director is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. As indicated in the general appropriations act, the executive director, with the approval of the governor, has the power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which given.

8-85-109. Transfer of functions - transition plan - report. (1) ON AND AFTER JULY 1, 2016, THE RIGHTS, POWERS, DUTIES, AND FUNCTIONS REGARDING INDEPENDENT LIVING SERVICES VESTED IN THE DEPARTMENT OF HUMAN SERVICES PRIOR TO THAT DATE ARE TRANSFERRED FROM THE DEPARTMENT OF HUMAN SERVICES TO THE DEPARTMENT OF LABOR AND EMPLOYMENT BY A **TYPE 2** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(2) ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL PREPARE TO EXECUTE, ADMINISTER, PERFORM, AND ENFORCE THE RIGHTS, POWERS, DUTIES, FUNCTIONS, AND OBLIGATIONS REGARDING INDEPENDENT LIVING SERVICES THAT ARE TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THIS ARTICLE.

(3) EFFECTIVE JULY 1, 2016, THE OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF HUMAN SERVICES WHOSE DUTIES AND FUNCTIONS PRIOR TO THAT DATE CONCERNED THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THIS ARTICLE AND WHOSE EMPLOYMENT IN THE DEPARTMENT OF LABOR AND EMPLOYMENT IS DEEMED NECESSARY BY THE EXECUTIVE DIRECTOR TO CARRY OUT THE PURPOSES OF THIS ARTICLE ARE TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT AND BECOME EMPLOYEES OF THE DEPARTMENT OF LABOR AND EMPLOYMENT. THE EMPLOYEES RETAIN ALL RIGHTS TO THE PERSONNEL SYSTEM AND RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THIS STATE, AND THEIR SERVICES ARE DEEMED TO BE CONTINUOUS. ALL TRANSFERS AND ANY ABOLISHMENT OF POSITIONS IN THE STATE PERSONNEL SYSTEM SHALL BE MADE AND PROCESSED IN ACCORDANCE WITH STATE PERSONNEL SYSTEM LAWS AND REGULATIONS.

(4) EFFECTIVE JULY 1, 2016, ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, AND RECORDS OF THE DEPARTMENT OF HUMAN SERVICES PRIOR TO THAT DATE PERTAINING TO THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THIS ARTICLE ARE TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT AND BECOME THE PROPERTY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(5) (a) ON AND AFTER JULY 1, 2016, WHENEVER THE FUNCTIONS OF THE DEPARTMENT OF HUMAN SERVICES RELATING TO INDEPENDENT LIVING SERVICES IS REFERRED TO OR DESIGNATED BY A CONTRACT OR OTHER DOCUMENT IN CONNECTION WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THIS ARTICLE, THE REFERENCE OR DESIGNATION IS DEEMED TO APPLY TO THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(b) ALL CONTRACTS ENTERED INTO BY THE DEPARTMENT OF HUMAN SERVICES PRIOR TO JULY 1, 2016, IN CONNECTION WITH THE DUTIES AND FUNCTIONS TRANSFERRED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO THIS ARTICLE ARE HEREBY VALIDATED, WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT SUCCEEDING TO ALL THE RIGHTS AND OBLIGATIONS OF THE CONTRACTS. ANY APPROPRIATIONS OF FUNDS FROM PRIOR FISCAL YEARS OPEN TO SATISFY OBLIGATIONS INCURRED PURSUANT TO THOSE CONTRACTS ARE

TRANSFERRED AND APPROPRIATED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR THE PAYMENT OF THOSE OBLIGATIONS.

(c) ALL RULES ADOPTED BY THE DEPARTMENT OF HUMAN SERVICES PRIOR TO JULY 1, 2016, CONCERNING INDEPENDENT LIVING SERVICES CONTINUE TO BE EFFECTIVE UNTIL REVISED, AMENDED, OR NULLIFIED PURSUANT TO LAW.

SECTION 2. In Colorado Revised Statutes, 24-1-121, **add** (3) (i) as follows:

24-1-121. Department of labor and employment - creation. (3) The department of labor and employment consists of the following divisions and programs:

(i) THE POWERS, DUTIES, AND FUNCTIONS RELATING TO THE OVERSIGHT OF INDEPENDENT LIVING SERVICES PURSUANT TO ARTICLE 85 OF TITLE 8, C.R.S., ARE TRANSFERRED BY A **TYPE 2** TRANSFER.

SECTION 3. Repeal of relocated provisions in this act. In Colorado Revised Statutes, **repeal** article 8.1 of title 26.

SECTION 4. In Colorado Revised Statutes, 25.5-6-303, **amend** (21) as follows:

25.5-6-303. Definitions. As used in this part 3 and part 5 of this article, unless the context otherwise requires:

(21) "Transition coordination service agency" means an agency that is certified by the state department, as specified in rule by the state board, and provides independent living core services as defined in section ~~26-8.1-102 (4)~~ 8-85-102 (6), C.R.S., and community transition services.

SECTION 5. In Colorado Revised Statutes, 25.5-6-1202, **amend** (5) as follows:

25.5-6-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(5) "In-home support service agency" means an agency that is certified by the state department and provides independent living core services as defined in section ~~26-8.1-102 (4)~~ 8-85-102 (6), C.R.S., and in-home support services.

SECTION 6. Effective date. This act takes effect upon passage; except that sections 3, 4, and 5 take effect July 1, 2016.

SECTION 7. 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 23, 2016