

CHAPTER 248

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 18-1407

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also SENATOR(S) Lambert and Moreno, Lundberg, Aguilar, Crowder, Donovan, Fenberg, Fields, Guzman, Jahn, Jones, Kagan, Kefalas, Kerr, Marble, Martinez Humenik, Merrifield, Neville T., Priola, Scott, Smallwood, Tate, Todd, Zenzinger, Grantham.

AN ACT

CONCERNING INCREASING ACCESS TO SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES THAT ARE PROVIDED BY A STABLE WORKFORCE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Thousands of Coloradans with intellectual and developmental disabilities spend years and even decades waiting for comprehensive services provided by the home- and community-based services for developmental disabilities (HCBS-DD) waiver;

(b) Reducing and eliminating the waiting list for HCBS-DD waiver services is a longstanding goal of the general assembly and the intellectual and developmental disability community;

(c) Many persons on the waiting list for HCBS-DD waiver services must experience a crisis before being offered services on an emergency basis, creating undue hardship and strain on the person, his or her caregivers, and the service system;

(d) In order to best serve these persons and others receiving waiver services, Colorado must have a stable direct support workforce;

(e) Colorado and the nation are experiencing a shortage of direct support

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

professionals who provide support to persons with intellectual and developmental disabilities in the community; and

(f) A stable direct support workforce is critical to ensuring continuity of support and positive outcomes for persons with intellectual and developmental disabilities.

(2) Therefore, the general assembly declares that a significant investment is needed to ensure a stable workforce and access to services for Coloradans with intellectual and developmental disabilities.

SECTION 2. In Colorado Revised Statutes, **amend 25.5-6-406** as follows:

25.5-6-406. Appropriations - reimbursement for services - direct support professionals - legislative declaration - definitions. (1) To carry out duties and obligations pursuant to this part 4 and for the administration and provision of services to eligible persons, all medicaid funds appropriated pursuant to Title XIX of the federal "Social Security Act", as amended, for the provision of care for persons with developmental disabilities and all other funds otherwise appropriated by the general assembly as additional sources of program funding ~~shall be~~ ARE available for the placement of eligible ~~individuals~~ PERSONS either in intermediate care facilities for ~~individuals~~ PERSONS with intellectual disabilities or alternatives to such placements.

(2) (a) (I) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(A) COLORADO'S SYSTEM OF HOME- AND COMMUNITY-BASED SERVICES THAT SUPPORTS COLORADANS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES HAS GROWN TO SERVE MORE THAN TWELVE THOUSAND PERSONS AND THEIR FAMILIES;

(B) COSTS ASSOCIATED WITH PROVIDING THESE SERVICES CONTINUE TO RISE WITH GROWTH IN DEMAND, INFLATION, INCREASED REGULATION, RISING MINIMUM WAGES, RISING HEALTH CARE COSTS, AND OTHER ECONOMIC FACTORS;

(C) REIMBURSEMENT RATES HAVE NOT KEPT PACE WITH THESE RISING COSTS, RESULTING IN REDUCED ACCESS TO SERVICES FOR COLORADANS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(D) COLORADO NEEDS SIGNIFICANT INITIAL INVESTMENTS TO ADDRESS THE MOST URGENT ISSUES CONCERNING SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, AS WELL AS FUTURE LONG-TERM PLANNING TO ADDRESS THE GROWING STRAIN ON THE SYSTEM;

(E) ONE OF THE MOST URGENT ISSUES IS THE WORKFORCE CRISIS AMONG DIRECT SUPPORT PROFESSIONALS, CHARACTERIZED BY CHRONICALLY LOW WAGES, LIMITED BENEFITS, AND LACK OF CAREER ADVANCEMENT OPPORTUNITIES FOR THESE CRITICAL WORKERS;

(F) COLORADO IS EXPERIENCING A WORKFORCE CRISIS AMONG DIRECT SUPPORT PROFESSIONALS BECAUSE REIMBURSEMENT RATES CANNOT SUPPORT THE COMPENSATION NEEDED TO MATCH THE HIGH LEVEL OF RESPONSIBILITY REQUIRED

IN THESE JOBS;

(G) AGENCIES THAT SERVE PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES INCREASINGLY STRUGGLE TO RECRUIT AND RETAIN DIRECT SUPPORT PROFESSIONALS TO MEET THE DEMAND FOR SERVICES; AND

(H) HIGH TURNOVER AMONG DIRECT SUPPORT PROFESSIONALS RESULTS IN REDUCED CONTINUITY OF SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(II) THEREFORE, AS AN INITIAL INVESTMENT, COLORADO'S REIMBURSEMENT RATES SHOULD BE INCREASED TO ALLOW FOR DIRECT SUPPORT PROFESSIONAL COMPENSATION THAT BETTER REFLECTS MARKET REALITIES AND THE HIGH LEVEL OF RESPONSIBILITY REQUIRED IN THESE JOBS.

(b) AS USED IN THIS SUBSECTION (2), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "COMPENSATION" MEANS ANY FORM OF MONETARY PAYMENT, INCLUDING BONUSES, EMPLOYER-PAID HEALTH AND OTHER INSURANCE PROGRAMS, PAID TIME OFF, PAYROLL TAXES, AND ALL OTHER FIXED AND VARIABLE BENEFITS CONFERRED ON OR RECEIVED BY A DIRECT SUPPORT PROFESSIONAL.

(II) "DIRECT SUPPORT PROFESSIONAL" MEANS A WORKER WHO ASSISTS OR SUPERVISES A WORKER TO ASSIST A PERSON WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES TO LEAD A FULFILLING LIFE IN THE COMMUNITY THROUGH A DIVERSE RANGE OF SERVICES, INCLUDING HELPING THE PERSON GET READY IN THE MORNING, TAKE MEDICATION, GO TO WORK OR FIND WORK, AND PARTICIPATE IN SOCIAL ACTIVITIES. "DIRECT SUPPORT PROFESSIONAL" INCLUDES ALL WORKERS CATEGORIZED AS PROGRAM DIRECT SUPPORT PROFESSIONALS AND EXCLUDES WORKERS CATEGORIZED AS ADMINISTRATIVE, AS DEFINED IN STANDARDS ESTABLISHED BY THE FINANCIAL ACCOUNTING STANDARDS BOARD.

(c) THE STATE DEPARTMENT SHALL IMMEDIATELY SEEK A SIX AND ONE-HALF PERCENT INCREASE IN THE REIMBURSEMENT RATE FOR THE FOLLOWING SERVICES DELIVERED THROUGH THE HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, SUPPORTED LIVING SERVICES, AND CHILDREN'S EXTENSIVE SUPPORTS WAIVERS:

(I) GROUP RESIDENTIAL SERVICES AND SUPPORTS;

(II) INDIVIDUAL RESIDENTIAL SERVICES AND SUPPORTS;

(III) SPECIALIZED HABILITATION;

(IV) RESPITE;

(V) HOMEMAKER BASIC;

(VI) HOMEMAKER ENHANCED;

(VII) PERSONAL CARE;

- (VIII) PREVOCATIONAL SERVICES;
- (IX) BEHAVIORAL LINE STAFF;
- (X) COMMUNITY CONNECTOR;
- (XI) SUPPORTED COMMUNITY CONNECTIONS;
- (XII) MENTORSHIP;
- (XIII) SUPPORTED EMPLOYMENT-JOB DEVELOPMENT; AND
- (XIV) SUPPORTED EMPLOYMENT-JOB COACHING.

(d) THE STATE DEPARTMENT SHALL IMPLEMENT A CORRESPONDING INCREASE IN SERVICE PLAN AUTHORIZATION LIMITS TO ACCOUNT FOR THIS INCREASE IN REIMBURSEMENT RATES.

(e) SERVICE AGENCIES SHALL USE ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION TO INCREASE COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS ABOVE THE RATE OF COMPENSATION THAT DIRECT SUPPORT PROFESSIONALS ARE RECEIVING AS OF JUNE 30, 2018. THIS REQUIREMENT APPLIES TO FUNDS BILLED BY COMMUNITY-CENTERED BOARDS IN THEIR ROLE AS ORGANIZED HEALTH CARE DELIVERY SYSTEMS. SERVICE AGENCIES SHALL NOT USE FUNDING RESULTING FROM THE REIMBURSEMENT RATE INCREASE FOR GENERAL AND ADMINISTRATIVE EXPENSES, SUCH AS CHIEF EXECUTIVE OFFICER SALARIES, HUMAN RESOURCES, INFORMATION TECHNOLOGY, OVERSIGHT, BUSINESS MANAGEMENT, GENERAL RECORD KEEPING, BUDGETING AND FINANCE, AND OTHER ACTIVITIES NOT IDENTIFIABLE TO A SINGLE PROGRAM.

(f) (I) SERVICE AGENCIES SHALL TRACK AND REPORT HOW THEY USED THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION USING A REPORTING TOOL DEVELOPED BY THE STATE DEPARTMENT IN COLLABORATION WITH SERVICE AGENCIES. ON OR BEFORE DECEMBER 31, 2019, SERVICE AGENCIES SHALL SUBMIT THE REPORT TO THE STATE DEPARTMENT DEMONSTRATING HOW THE FUNDING WAS USED TO INCREASE DIRECT SUPPORT PROFESSIONAL COMPENSATION FOR THE 2018-19 FISCAL YEAR. ON OR BEFORE DECEMBER 31, 2020, AND DECEMBER 31, 2021, SERVICE AGENCIES SHALL REPORT TO THE STATE DEPARTMENT HOW THEY MAINTAINED INCREASES IN COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS FOR THE 2019-20 AND 2020-21 FISCAL YEARS RESPECTIVELY. THE STATE DEPARTMENT SHALL HAVE ONGOING DISCRETION TO REQUEST INFORMATION FROM SERVICE AGENCIES DEMONSTRATING HOW THEY MAINTAINED INCREASES IN COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS BEYOND THE THREE-YEAR REPORTING PERIOD.

(II) SERVICE AGENCIES SHALL MAINTAIN ALL BOOKS, DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE REQUIRED TO SUPPORT THE REPORTING OF PAYROLL INFORMATION FOR INCREASED COMPENSATION TO DIRECT SUPPORT PROFESSIONALS PURSUANT TO SUBSECTION (2)(f)(I) OF THIS SECTION FOR AT LEAST THREE YEARS FROM THE REPORTING DEADLINES DESCRIBED IN SUBSECTION

(2)(f)(I) OF THIS SECTION FOR EACH RESPECTIVE FISCAL YEAR. SERVICE AGENCIES SHALL MAKE THE INFORMATION AND MATERIALS AVAILABLE FOR INSPECTION BY THE STATE DEPARTMENT OR ITS DESIGNEES AT ALL REASONABLE TIMES.

(g) IF A SERVICE AGENCY DOES NOT USE ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION TO INCREASE COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS, THE STATE DEPARTMENT MAY RECOUP PART OR ALL OF THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE.

(h) IF THE STATE DEPARTMENT DETERMINES THAT THE SERVICE AGENCY DID NOT USE THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION AS REQUIRED, WITHIN ONE YEAR AFTER THE CLOSE OF EACH REPORTING PERIOD DESCRIBED IN SUBSECTION (2)(f)(I) OF THIS SECTION, THE STATE DEPARTMENT SHALL NOTIFY THE SERVICE AGENCY IN WRITING OF THE STATE DEPARTMENT'S INTENTION TO RECOUP FUNDS PURSUANT TO SUBSECTION (2)(g) OF THIS SECTION.

(i) THE SERVICE AGENCY HAS FORTY-FIVE DAYS AFTER RECEIVING NOTICE OF THE DETERMINATION UNDER SUBSECTION (2)(h) OF THIS SECTION TO:

(I) CHALLENGE THE DETERMINATION OF THE STATE DEPARTMENT;

(II) PROVIDE ADDITIONAL INFORMATION TO THE STATE DEPARTMENT DEMONSTRATING COMPLIANCE; OR

(III) SUBMIT A PLAN OF CORRECTION TO THE STATE DEPARTMENT.

(j) THE STATE DEPARTMENT SHALL NOTIFY THE SERVICE AGENCY IN WRITING OF ITS FINAL DETERMINATION AFTER AFFORDING THE SERVICE AGENCY THE OPPORTUNITY TO TAKE THE ACTIONS SPECIFIED IN SUBSECTION (2)(i) OF THIS SECTION.

(k) THE STATE DEPARTMENT SHALL RECOUP FROM A SERVICE AGENCY ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION THAT THE SERVICE AGENCY RECEIVED BUT DID NOT USE FOR COMPENSATION FOR DIRECT SUPPORT PROFESSIONALS IF:

(I) THE SERVICE AGENCY FAILS TO RESPOND TO A NOTICE OF DETERMINATION OF THE STATE DEPARTMENT WITHIN THE TIME PROVIDED IN SUBSECTION (2)(i) OF THIS SECTION;

(II) THE SERVICE AGENCY IS UNABLE TO PROVIDE DOCUMENTATION OF COMPLIANCE; OR

(III) THE STATE DEPARTMENT DOES NOT ACCEPT THE PLAN OF CORRECTION SUBMITTED BY THE SERVICE AGENCY PURSUANT TO SUBSECTION (2)(i) OF THIS SECTION.

(l) THE STATE DEPARTMENT SHALL PARTICIPATE IN THE NATIONAL CORE

INDICATORS STAFF STABILITY SURVEY.

(m) ONCE THE STATE DEPARTMENT DETERMINES THAT A SUFFICIENT QUANTITY AND QUALITY OF DATA EXISTS TO DETERMINE THE IMPACT AND OUTCOMES, IF ANY, ATTRIBUTED TO THE INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION ON PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, THE STATE DEPARTMENT SHALL INCLUDE IN ITS ANNUAL REPORT CONCERNING THE WAITING LIST FOR SERVICES AND SUPPORTS FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, REQUIRED PURSUANT TO SECTION 25.5-10-207.5, INFORMATION FROM THE NATIONAL CORE INDICATORS DATA, OR ANOTHER COMPARABLE SOURCE, CONCERNING IN WHAT WAYS OUTCOMES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES CHANGED AS A RESULT OF THE INCREASE IN REIMBURSEMENT RATES PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION. THE REPORT MUST INCLUDE, IF AVAILABLE, MULTIYEAR PERSONAL OUTCOME DATA SPECIFIC TO COLORADO AND COMPARISONS TO OTHER STATES, AS APPROPRIATE, AS WELL AS DATA FROM THE NATIONAL CORE INDICATORS STAFF STABILITY SURVEY.

SECTION 3. In Colorado Revised Statutes, 25.5-10-207.5, **amend** (1)(a)(IV); and **add** (1)(a)(VI), (1)(a)(VII), (1)(a)(VIII), (6), (7), and (8) as follows:

25.5-10-207.5. Strategic plan for services and supports - joint hearing - appropriation - reporting - legislative declaration - rules. (1) (a) The general assembly finds that:

(IV) The presence of a waiting list as long as fifteen years for essential services and supports contradicts Colorado's commitment to supporting persons in the least restrictive environment of their choosing; ~~and~~

(VI) THE WAITING LIST INCLUDES PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES WHO ARE AT RISK OF EXPERIENCING A CRISIS DUE TO THE ADVANCED AGE, REDUCED CAPACITY, AND ILLNESS OF THEIR CAREGIVERS;

(VII) AFTER A LIFETIME OF PROVIDING CONTINUOUS SUPPORT, THESE CAREGIVERS DESERVE THE COMFORT OF KNOWING THAT THEIR LOVED ONE WILL HAVE NEEDED SERVICES AND SUPPORTS; AND

(VIII) PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AND THEIR CAREGIVERS SHOULD NOT HAVE TO EXPERIENCE A CRISIS BEFORE GETTING NEEDED ASSISTANCE, AS EACH CRISIS PUTS UNDUE HARDSHIP AND STRAIN ON THE PERSON AND CAREGIVER, AND THE SERVICES SYSTEM.

(6) (a) SUBJECT TO THE AVAILABILITY OF RESERVE CAPACITY ENROLLMENT, A PERSON WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY WHO IS ON THE WAITING LIST FOR SERVICES AND WHO IS AT RISK OF EXPERIENCING AN EMERGENCY DUE TO ANY OF THE CRITERIA INCLUDED IN SUBSECTION (6)(b) OF THIS SECTION AND WHO MEETS OTHER APPLICABLE CRITERIA FOR ENROLLMENT ESTABLISHED BY THE STATE BOARD SHALL BE OFFERED ENROLLMENT INTO THE HOME- AND COMMUNITY-BASED SERVICES DEVELOPMENTAL DISABILITIES WAIVER USING A PERSON-CENTERED TRANSITION PROCESS.

(b) NO LATER THAN JUNE 1, 2019, THE STATE BOARD SHALL PROMULGATE RULES REGARDING THE CRITERIA FOR RESERVE CAPACITY ENROLLMENTS FOR THOSE PERSONS DESCRIBED IN SUBSECTION (6)(a) OF THIS SECTION, WHICH CRITERIA MUST INCLUDE BUT IS NOT LIMITED TO:

(I) THE AGE OF THE CUSTODIAL PARENT OR CAREGIVER;

(II) THE LOSS OF THE CUSTODIAL PARENT OR CAREGIVER;

(III) INCAPACITATION OF THE CUSTODIAL PARENT OR CAREGIVER;

(IV) ANY LIFE-THREATENING OR SERIOUS PERSISTENT ILLNESS OF THE CUSTODIAL PARENT OR CAREGIVER; AND

(V) A THREAT TO HEALTH OR SAFETY THAT THE CUSTODIAL PARENT OR CAREGIVER PLACES ON THE PERSON WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(c) AS PART OF THE RULE-MAKING PROCESS FOR RESERVE CAPACITY ENROLLMENT PURSUANT TO SUBSECTION (6)(b) OF THIS SECTION, THE STATE BOARD SHALL SOLICIT FEEDBACK FROM PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AND FAMILY MEMBERS OF PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(7) DURING THE STATE FISCAL YEAR BEGINNING JULY 1, 2018, THE STATE DEPARTMENT SHALL INITIATE THREE HUNDRED NONEMERGENCY ENROLLMENTS FROM THE WAITING LIST FOR THE HOME- AND COMMUNITY-BASED SERVICES DEVELOPMENTAL DISABILITIES WAIVER.

(8) BEGINNING JULY 2018, AND CONTINUING MONTHLY THEREAFTER, THE STATE DEPARTMENT SHALL INCLUDE IN ITS MONTHLY PREMIUMS, EXPENDITURES, AND CASELOAD REPORT THE NUMBER OF PERSONS WHO WERE MOVED OFF THE DEVELOPMENTAL DISABILITIES WAITING LIST, SPECIFYING THE ENROLLMENTS INITIATED UNDER THE ORDER OF SELECTION AND THE ENROLLMENTS INITIATED UNDER THE RESERVE CAPACITY CRITERIA.

SECTION 4. Appropriation. (1) For the 2018-19 state fiscal year, \$12,185,446 is appropriated to the department of health care policy and financing. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$88,063 for use by the executive director's office for personal services, which amount is based on an assumption that the office will require an additional 2.7 FTE;

(b) \$8,337 for use by the executive director's office for operating expenses;

(c) \$37,500 for use by the executive director's office for general professional services and special projects;

(d) \$107,750 for use by the executive director's office for medicaid management information systems maintenance and projects, which amount is subject to the "(M)"

notation as defined in the annual general appropriation act for the same fiscal year;

(e) \$34,536 for medical and long-term care services for medicaid eligible individuals, which amount is subject to the "(M)" notation as defined in the annual general appropriations act for the same fiscal year;

(f) \$24,301 for behavioral health capitation payments, which amount is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year;

(g) \$419,455 for use by the office of community living for children's extensive support services;

(h) \$1,315,607 for use by the office of community living for supported living services;

(i) \$10,052,893 for use by the office of community living for adult comprehensive services; and

(j) \$97,004 for use by the office of community living for targeted case management.

(2) For the 2018-19 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$12,400,935 in federal funds to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) \$88,062 for use by the executive director's office for personal services;

(b) \$8,337 for use by the executive director's office for operating expenses;

(c) \$37,500 for use by the executive director's office for general professional services and special projects;

(d) \$323,250 for use by the executive director's office for medicaid management information systems maintenance and projects;

(e) \$34,534 for medical and long-term care services for medicaid eligible individuals;

(f) \$24,300 for behavioral health capitation payments;

(g) \$419,453 for use by the office of community living for children's extensive support services;

(h) \$1,315,605 for use by the office of community living for supported living services;

(i) \$10,052,891 for use by the office of community living for adult comprehensive services; and

(j) \$97,003 for use by the office of community living for targeted case management.

SECTION 5. 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: May 24, 2018