

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0829.02 Brita Darling x2241

SENATE BILL 21-278

SENATE SPONSORSHIP

Moreno, Hansen, Rankin, Bridges, Buckner, Coram, Danielson, Fields, Ginal, Gonzales, Jaquez Lewis, Kirkmeyer, Kolker, Liston, Pettersen, Priola, Smallwood, Story, Winter, Woodward, Zenzinger

HOUSE SPONSORSHIP

Herod, McCluskie

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING REIMBURSEMENT FOR PLACEMENT OF CHILDREN IN**
102 **OUT-OF-HOME PLACEMENT, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

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/>.)

Joint Budget Committee. The bill makes several changes to the current child welfare system, including:

- Ensuring that out-of-home placements in the division of youth services align with the requirements of the federal "Family First Prevention Services Act" to qualify for Title

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.*

SENATE
3rd Reading Unamended
May 27, 2021

SENATE
2nd Reading Unamended
May 26, 2021

- IV-E reimbursement for such placements;
- Ensuring appropriate capacity for out-of-home placements in Colorado;
- Authorizing a county to negotiate rates above the base anchor rates established by the state department with licensed out-of-home placement providers serving children in higher acuity cases;
- Requiring the department of human services (department) to contract with a vendor to update the existing actuarial analysis to include division of youth services out-of-home placement providers and new out-of-home placement provider options under federal law, and to update and fully implement the existing rate methodology with the updated provider rates by September 30, 2021;
- Commencing with the 2022-23 fiscal year, requiring the department to contract with an independent vendor every 3 years to conduct a new actuarial analysis of all provider rates for licensed out-of-home placement providers, including the division of youth services providers, to update the rate-setting methodology to reflect the new actuarial analysis, and to implement any adjusted provider rates by July 1, 2024, and by July 1 of each fiscal year immediately following the fiscal year in which a new actuarial analysis results in adjusted rates; and
- Requiring the use of a portion of the federal "Family First Transition and Support Act" funding to be used to support the transition of current providers to a placement option that meets the needs of the child or youth and maximizes federal Title IV-E and medicaid reimbursements.

The bill appropriates \$250,000 to the department for use by the child welfare division for provider rate actuarial services.

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

2 **SECTION 1.** In Colorado Revised Statutes, 19-1-115, **amend**
 3 (4)(e) introductory portion and (4)(h) introductory portion as follows:

4 **19-1-115. Legal custody - guardianship - placement out of the**
 5 **home - petition for review for need of placement.** (4) (e) ~~Within sixty~~
 6 ~~days after a placement of a child, juvenile, or youth in a qualified~~
 7 ~~residential treatment program, or within thirty days after a placement~~

1 ~~when the qualified individual does not support the qualified residential~~
2 ~~treatment program level of care or the child, juvenile, or youth, guardian~~
3 ~~ad litem, or any party objects to the placement, a juvenile court or the~~
4 ~~administrative review division of the state department when a juvenile has~~
5 ~~been committed to the division of youth services and the court no longer~~
6 ~~has ongoing jurisdiction, shall:~~ WHEN A CHILD, JUVENILE, OR YOUTH HAS
7 BEEN COMMITTED TO THE DIVISION OF YOUTH SERVICES AND THE COURT
8 NO LONGER HAS ONGOING JURISDICTION, THE ADMINISTRATIVE REVIEW
9 DIVISION SHALL REVIEW THE PLACEMENT OF THAT CHILD, JUVENILE, OR
10 YOUTH IN A QUALIFIED RESIDENTIAL TREATMENT PROGRAM WITHIN SIXTY
11 DAYS AFTER PLACEMENT. WHEN THE CHILD, JUVENILE, OR YOUTH HAS NOT
12 BEEN COMMITTED TO THE DIVISION OF YOUTH SERVICES AND THE COURT
13 HAS ONGOING JURISDICTION, WITHIN SIXTY DAYS AFTER A PLACEMENT OF
14 THAT CHILD, JUVENILE, OR YOUTH IN A QUALIFIED RESIDENTIAL
15 TREATMENT PROGRAM, OR WITHIN THIRTY DAYS AFTER A PLACEMENT
16 WHEN THE QUALIFIED INDIVIDUAL DOES NOT SUPPORT THE QUALIFIED
17 RESIDENTIAL TREATMENT PROGRAM LEVEL OF CARE OR THE CHILD,
18 JUVENILE, YOUTH, GUARDIAN AD LITEM, OR ANY PARTY OBJECTS TO THE
19 PLACEMENT, A JUVENILE COURT SHALL REVIEW THAT PLACEMENT. IN BOTH
20 INSTANCES, THE JUVENILE COURT OR THE ADMINISTRATIVE REVIEW
21 DIVISION OF THE STATE DEPARTMENT SHALL:

22 (h) In making a decision as to proper placement in a qualified
23 residential treatment program, the court or the administrative review
24 division shall consider the assessment provided by the qualified
25 individual and the most recent assessment, as described in subsection
26 (4)(e) of this section, and shall give great weight to the recommendation
27 in the assessment when making a qualified residential treatment program

1 placement decision. An assessment prepared by the qualified individual
2 must identify whether a qualified residential treatment program is the
3 most effective, appropriate, and least restrictive placement for the child
4 or youth. The assessment must also identify child- or youth-specific short-
5 and long-term goals for the child or youth and the family. If the court or
6 administrative review division deviates from the qualified individual's
7 assessment and recommendation, the court OR THE ADMINISTRATIVE
8 REVIEW DIVISION shall make specific findings of fact regarding the most
9 effective, appropriate, and least restrictive placement for the child or
10 youth and whether the placement is consistent with child- or
11 youth-specific short- and long-term goals for the child or youth and the
12 family. When making such findings of fact, the court OR ADMINISTRATIVE
13 REVIEW DIVISION shall consider all relevant information, including:

14 **SECTION 2.** In Colorado Revised Statutes, 19-3-208, **add**
15 (2)(d.5) and (2)(d.7) as follows:

16 **19-3-208. Services - county required to provide - out-of-home**
17 **placement options - rules - definitions.** (2) (d.5) ON OR BEFORE
18 JANUARY 1, 2022, THE DEPARTMENT OF HUMAN SERVICES, IN
19 COOPERATION WITH COUNTY DEPARTMENTS OF HUMAN OR SOCIAL
20 SERVICES, SHALL ANALYZE NECESSARY DATA TO ASSESS AND DETERMINE
21 THE NUMBER OF PLACEMENTS NECESSARY FOR EACH LEVEL OF CARE FOR
22 CHILDREN OR YOUTH WHO ARE IN OUT-OF-HOME PLACEMENTS.

23 (d.7) ON OR BEFORE JULY 1, 2022, THE DEPARTMENT OF HUMAN
24 SERVICES, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH CARE
25 POLICY AND FINANCING, SHALL DEVELOP AND IMPLEMENT A PLAN TO
26 BUILD CAPACITY AND DEVELOP APPROPRIATE AND AVAILABLE
27 OUT-OF-HOME PLACEMENT OPTIONS FOR EACH NECESSARY LEVEL OF CARE

1 IN THE STATE IN ORDER TO SERVE THE NUMBER OF CHILDREN AND YOUTH
2 WHO REQUIRE A GIVEN LEVEL OF CARE.

3 **SECTION 3.** In Colorado Revised Statutes, 26-5-102, **amend** (2)
4 introductory portion and (2)(b) as follows:

5 **26-5-102. Provision of child welfare services - system reform**
6 **goals - out-of-home placements for children and youth with**
7 **intellectual and developmental disabilities - rules - definition.**

8 (2) Reforms in child welfare and related delivery systems ~~shall~~ **MUST** be
9 directed at the following objectives:

10 (b) Increased flexibility and collaboration across multiple agencies
11 and funding streams to ~~more appropriately meet consumer needs and~~
12 ~~avoid cost shifting between systems~~ **ENSURE THE DELIVERY OF SERVICES**
13 **BASED ON THE NEEDS OF THE CHILD OR YOUTH;**

14 **SECTION 4.** In Colorado Revised Statutes, 26-5-104, **amend**
15 (6)(a), (6)(g), (6.2) introductory portion, and (6.2)(c); and **add** (6)(i) and
16 (6.7) as follows:

17 **26-5-104. Funding of child welfare services provider contracts**
18 **- funding mechanism review - fund - report - rules - definitions -**
19 **repeal. (6) County negotiations with providers.** (a) Subject to rules
20 promulgated by the state department pursuant to subsection (6)(b) of this
21 section and the methodology adopted pursuant to subsections (6)(e) to
22 (6)(h) of this section, for each child or youth placed in an out-of-home
23 placement setting, a county is authorized to negotiate rates related to
24 services and outcomes with licensed out-of-home placement providers;
25 except that a county may not negotiate rates below the base anchor rates
26 established by the state department. ~~Counties with an approved alternative~~
27 ~~methodology shall use a request for proposal process to solicit bids from~~

1 ~~licensed out-of-home placement providers that allows for adequate~~
2 ~~private competition and provides opportunities for competitive~~
3 ~~negotiations~~ A COUNTY IS AUTHORIZED TO NEGOTIATE RATES ABOVE THE
4 BASE ANCHOR RATES ESTABLISHED BY THE STATE DEPARTMENT WITH
5 LICENSED OUT-OF-HOME PLACEMENT PROVIDERS SERVING CHILDREN IN
6 HIGHER ACUITY CASES.

7 (g) (I) Subject to available appropriations, the methodology must
8 be implemented on or before July 1, 2018, except for those rates that must
9 be approved by CMS. Rates that must be approved by CMS must be
10 implemented upon approval. In the event that the representatives
11 identified in subsection (6)(e) of this section do not agree on the
12 rate-setting methodology on or before February 1, 2018, the state
13 department, the county representatives, and the licensed out-of-home
14 placement providers shall submit alternatives to the joint budget
15 committee. The joint budget committee shall then select a methodology
16 prior to the start of the succeeding state fiscal year. It is the intent of the
17 general assembly that the rate methodology developed pursuant to this
18 subsection (6) be fully implemented on or before June 30, 2022, through
19 incremental rate increases established by the state department. For fiscal
20 year 2019-20 through fiscal year 2021-22, the state department is
21 encouraged to submit, as a part of the annual budget process, a request for
22 increased appropriations to fund the increased rates required by the
23 methodology.

24 (II) (A) EXCEPT FOR THOSE RATES THAT MUST BE APPROVED BY
25 CMS, ON OR BEFORE SEPTEMBER 30, 2021, THE STATE DEPARTMENT
26 SHALL FULLY IMPLEMENT ADJUSTED RATES FOR LICENSED OUT-OF-HOME
27 PLACEMENT PROVIDERS USING THE EXISTING RATE METHODOLOGY

1 ESTABLISHED PURSUANT TO SUBSECTION (6)(g)(I) OF THIS SECTION. THE
2 STATE DEPARTMENT SHALL IMPLEMENT RATES THAT MUST BE APPROVED
3 BY CMS UPON APPROVAL BY CMS. THE FULL IMPLEMENTATION OF THE
4 UPDATED RATE METHODOLOGY ADJUSTMENTS MUST INCLUDE RATES FOR
5 DIVISION OF YOUTH SERVICES OUT-OF-HOME PLACEMENT PROVIDERS AND
6 FOR NEW OUT-OF-HOME PLACEMENT PROVIDER OPTIONS REQUIRED
7 PURSUANT TO THE FEDERAL "FAMILY FIRST PREVENTION SERVICES ACT
8 OF 2018", AS DEFINED IN SECTION 26-5-101, AND AS INFORMED BY AN
9 UPDATED ACTUARIAL ANALYSIS OF THE COSTS ASSOCIATED WITH SUCH
10 NEW PROVIDER OPTIONS, WITH THE EXCEPTION OF THERAPEUTIC FOSTER
11 CARE AND TREATMENT FOSTER CARE, CONDUCTED PURSUANT TO
12 SUBSECTION (6)(g)(II)(B) OF THIS SECTION.

13 (B) FOR PURPOSES OF SUBSECTION (6)(g)(II)(A) OF THIS SECTION,
14 THE STATE DEPARTMENT SHALL CONTRACT WITH AN INDEPENDENT
15 VENDOR TO UPDATE THE ACTUARIAL ANALYSIS CONDUCTED PURSUANT TO
16 SUBSECTION (6)(e)(II) OF THIS SECTION TO ADD AN ANALYSIS OF THE
17 COSTS NECESSARY TO PROVIDE SERVICES BY DIVISION OF YOUTH SERVICES
18 OUT-OF-HOME PLACEMENT PROVIDERS AND LICENSED OUT-OF-HOME
19 PLACEMENT PROVIDER OPTIONS INCLUDED IN THE FEDERAL "FAMILY FIRST
20 PREVENTION SERVICES ACT OF 2018", AS DEFINED IN SECTION 26-5-101,
21 THAT ARE NOT INCLUDED IN THE ORIGINAL ACTUARIAL ANALYSIS, WITH
22 THE EXCEPTION OF THERAPEUTIC FOSTER CARE AND TREATMENT FOSTER
23 CARE. THE VENDOR SHALL COMPLETE THE UPDATED ACTUARIAL ANALYSIS
24 ON OR BEFORE SEPTEMBER 1, 2021.

25 (i) (I) AT THE BEGINNING OF THE 2022-23 FISCAL YEAR, AND AT
26 THE BEGINNING OF EVERY THIRD FISCAL YEAR THEREAFTER, THE STATE
27 DEPARTMENT SHALL CONTRACT WITH AN INDEPENDENT VENDOR TO

1 CONDUCT A NEW ACTUARIAL ANALYSIS OF ALL PROVIDER RATES FOR
2 LICENSED OUT-OF-HOME PLACEMENT PROVIDERS, INCLUDING THE DIVISION
3 OF YOUTH SERVICES OUT-OF-HOME PLACEMENT PROVIDERS, THAT
4 ANALYZES THE COSTS NECESSARY TO PROVIDE SERVICES AT A LEVEL
5 REQUIRED BY STATE STATUTE, DEPARTMENT RULE, OR FEDERAL RULES
6 AND REGULATIONS, AS APPROPRIATE FOR THE CHILD OR YOUTH. THE
7 VENDOR SHALL DETERMINE WHETHER THE SALARY SURVEY PERFORMED
8 PURSUANT TO SECTION (6)(e)(I) OF THIS SECTION IS SUFFICIENT FOR THE
9 ACTUARIAL ANALYSIS REQUIRED PURSUANT TO THIS SUBSECTION (6)(i)(I)
10 OR WHETHER TO UPDATE THE SALARY SURVEY. THE VENDOR SHALL
11 COMPLETE THE ACTUARIAL ANALYSIS BY SEPTEMBER 1, 2023, AND BY
12 SEPTEMBER 1 OF EACH YEAR IN WHICH AN ACTUARIAL ANALYSIS IS
13 CONDUCTED PURSUANT TO THIS SUBSECTION (6)(i)(I).

14 (II) THE STATE DEPARTMENT SHALL UPDATE THE RATE-SETTING
15 METHODOLOGY FOR LICENSED OUT-OF-HOME PLACEMENT PROVIDERS,
16 INCLUDING THE DIVISION OF YOUTH SERVICES OUT-OF-HOME PLACEMENT
17 PROVIDERS, TO REFLECT THE NEW ACTUARIAL ANALYSIS BY JULY 1, 2024,
18 AND BY JULY 1 OF EACH FISCAL YEAR IMMEDIATELY FOLLOWING THE
19 FISCAL YEAR IN WHICH A NEW ACTUARIAL ANALYSIS RESULTS IN ADJUSTED
20 RATES.

21 (III) SUBJECT TO AVAILABLE APPROPRIATIONS, EXCEPT FOR THOSE
22 RATES THAT MUST BE APPROVED BY CMS, THE STATE DEPARTMENT SHALL
23 IMPLEMENT ANY ADJUSTED RATES REQUIRED BY THE RATE-SETTING
24 METHODOLOGY BY JULY 1, 2024, AND BY JULY 1 OF EACH FISCAL YEAR
25 IMMEDIATELY FOLLOWING THE FISCAL YEAR IN WHICH A NEW ACTUARIAL
26 ANALYSIS RESULTS IN ADJUSTED RATES. THE UPDATED RATE-SETTING
27 METHODOLOGY MAY INCLUDE TIERED PROVIDER RATES BASED ON ACUITY.

1 (IV) THE STATE DEPARTMENT IS ENCOURAGED TO SUBMIT FOR
2 CONSIDERATION DURING THE ANNUAL BUDGET PROCESS A REQUEST FOR
3 ADJUSTED APPROPRIATIONS TO FUND THE RATES REQUIRED BY THE
4 UPDATED METHODOLOGY.

5 (V) THE STATE DEPARTMENT SHALL SUBMIT A REPORT TO THE
6 JOINT BUDGET COMMITTEE NO LATER THAN DECEMBER 30, 2022, AND NO
7 LATER THAN DECEMBER 30 OF EACH YEAR THEREAFTER IN WHICH AN
8 ACTUARIAL ANALYSIS IS CONDUCTED. THE REPORT MUST INCLUDE A
9 SUMMARY OF THE ACTUARIAL ANALYSIS AND THE RESULTING
10 ADJUSTMENTS TO THE RATE-SETTING METHODOLOGY.

11 (6.2) ~~For the purposes of~~ AS USED IN this section, unless the
12 context otherwise requires:

13 (c) "Licensed out-of-home placement provider" means a licensed
14 residential child care facility, a child placement agency, ~~or~~ a secure
15 residential treatment center, A PSYCHIATRIC RESIDENTIAL TREATMENT
16 FACILITY, A QUALIFIED RESIDENTIAL TREATMENT PROGRAM, OR
17 THERAPEUTIC FOSTER CARE, as defined in section 26-6-102.

18 (6.7) BEGINNING IN THE STATE FISCAL YEAR 2021-22 AND
19 THROUGH STATE FISCAL YEAR 2022-23, THE STATE DEPARTMENT SHALL
20 ASSIST RESIDENTIAL PLACEMENT PROVIDERS IN THE TRANSITION TO A
21 BUSINESS MODEL THAT ENSURES THAT OUT-OF-HOME PLACEMENTS WITH
22 THE PROVIDER ARE ELIGIBLE FOR REIMBURSEMENT UNDER TITLE IV-E OF
23 THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, AND ENSURES THAT
24 A MEDICAID-ELIGIBLE CHILD OR YOUTH PLACED WITH THE PROVIDER
25 MAINTAINS ELIGIBILITY FOR ENROLLMENT IN THE STATE'S MEDICAL
26 ASSISTANCE PROGRAM. ASSISTANCE PROVIDED BY THE STATE
27 DEPARTMENT INCLUDES GRANTS FROM NOT LESS THAN FIFTEEN PERCENT

1 OF THE FUNDING RECEIVED FROM THE FEDERAL "FAMILY FIRST
2 TRANSITION AND SUPPORT ACT OF 2019". THE STATE DEPARTMENT SHALL
3 MAKE GRANTS AVAILABLE TO PROVIDERS NO LATER THAN SEPTEMBER 1,
4 2021, AND SHALL CONTINUE TO MAKE GRANTS AVAILABLE AND AWARD
5 GRANTS UNTIL JANUARY 1, 2023. FEDERAL FUNDING THAT HAS NOT BEEN
6 AWARDED AS GRANTS TO PROVIDERS BY JANUARY 1, 2023, MUST BE USED
7 FOR OTHER PURPOSES RELATED TO THE IMPLEMENTATION OF THE FEDERAL
8 "FAMILY FIRST PREVENTION SERVICES ACT OF 2018".

9 **SECTION 5.** In Colorado Revised Statutes, 26-1-132, **amend** (1)
10 introductory portion as follows:

11 **26-1-132. Department of human services - rate setting -**
12 **residential treatment service providers - monitoring and auditing -**
13 **report.** (1) In conjunction with the group of representatives convened by
14 the state department pursuant to section 26-5-104 (6)(e), **(6)(g)**, AND **(6)(i)**
15 to review the rate-setting process for child welfare services, the state
16 department shall develop a rate-setting process consistent with medicaid
17 requirements for providers of residential treatment services in Colorado.
18 The department of health care policy and financing shall approve the
19 rate-setting process for rates funded by medicaid. The rate-setting process
20 developed pursuant to this section may include:

21 **SECTION 6. Appropriation.** For the 2021-22 state fiscal year,
22 \$250,000 is appropriated to the department of human services for use by
23 the division of child welfare. This appropriation is from the general fund.
24 To implement this act, the division may use this appropriation for the
25 provider rate actuarial analysis.

26 **SECTION 7. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.