

# An Act

HOUSE BILL 22-1260

BY REPRESENTATIVE(S) Froelich, Bernett, Boesenecker, Caraveo, Cutter, Duran, Exum, Herod, Hooton, Jodeh, Kipp, Lindsay, Lontine, Michaelson Jenet, Mullica, Ortiz, Pico, Ricks, Titone, Valdez A., Young; also SENATOR(S) Simpson and Fields, Buckner, Coram, Danielson, Donovan, Ginal, Gonzales, Holbert, Kolker, Lee, Liston, Moreno, Pettersen, Priola, Rankin, Rodriguez, Scott, Sonnenberg, Winter, Fenberg.

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

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

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

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

(b) Applied behavioral analysis (ABA) is one critical example of a

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*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.*

medically necessary service that, when prescribed by a physician or other qualified health-care provider, may need to be delivered within a school setting for children with an autism spectrum disorder (ASD) diagnosis. ASD is a global developmental disorder typically involving difficulty in acquiring and generalizing functional skills across environments. Generally accepted standards of care for this population require that ABA therapy is provided across settings, including schools, in accordance with a child's clinical needs. It is in the interest of the child, the child's family, and the state that a child who is diagnosed with ASD receive proper care and treatment in order to have the opportunity to be a fully functioning individual in society.

(c) The Colorado health insurance mandate to cover ASD requires state-regulated health insurance plans to cover all specified medically necessary treatment for ASD, including treatment in school settings;

(d) Pursuant to 42 U.S.C. sec. 1396 and sec. 1396d (r)(5), Colorado's medicaid program is required to cover all medically necessary treatment, whether or not included in the current medicaid state plan, to correct or ameliorate defects, illnesses, or conditions in medicaid-eligible children under twenty-one years of age, including treatment in school settings;

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

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

(g) Currently, access to medically necessary services in the school

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

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

**22-20-121. Medically necessary treatment in school setting - policy - report - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MEDICALLY NECESSARY TREATMENT" MEANS TREATMENT RECOMMENDED OR ORDERED BY A COLORADO LICENSED HEALTH-CARE PROVIDER ACTING WITHIN THE SCOPE OF THE HEALTH-CARE PROVIDER'S LICENSE.

(b) "PRIVATE HEALTH-CARE SPECIALIST" MEANS A HEALTH-CARE PROVIDER WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH-CARE SERVICES IN COLORADO, INCLUDING PEDIATRIC BEHAVIORAL HEALTH TREATMENT PROVIDERS PURSUANT TO THE STATE MEDICAL ASSISTANCE PROGRAM, ARTICLES 4, 5, AND 6 OF TITLE 25.5, AND AUTISM SERVICES PROVIDERS WHO PROVIDE TREATMENT PURSUANT TO SECTION 10-16-104 (1.4).

(2) (a) NO LATER THAN JULY 1, 2023, EACH ADMINISTRATIVE UNIT SHALL ADOPT A POLICY THAT ADDRESSES HOW A STUDENT WHO HAS A PRESCRIPTION FROM A QUALIFIED HEALTH-CARE PROVIDER FOR MEDICALLY NECESSARY TREATMENT RECEIVES SUCH TREATMENT IN THE SCHOOL SETTING AS REQUIRED BY APPLICABLE FEDERAL AND STATE LAWS, INCLUDING SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF 1973", 29 U.S.C. SEC. 794, AS AMENDED, AND TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990".

(b) THE POLICY DEVELOPED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION MUST:

(I) INCLUDE A NOTICE TO THE PARENT OR LEGAL GUARDIAN OF THE STUDENT THAT SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF 1973", 29 U.S.C. SEC. 794, AS AMENDED, AND TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990" PROVIDE RIGHTS AND PROTECTIONS TO STUDENTS TO ACCESS MEDICALLY NECESSARY TREATMENT REQUIRED BY THE STUDENT TO HAVE MEANINGFUL ACCESS TO THE BENEFITS OF A PUBLIC EDUCATION, OR TO ATTEND SCHOOL WITHOUT RISKS TO THE STUDENT'S HEALTH OR SAFETY DUE TO THE STUDENT'S DISABLING MEDICAL CONDITION;

(II) ADDRESS THE PROCESS IN WHICH A PRIVATE HEALTH-CARE SPECIALIST MAY OBSERVE THE STUDENT IN THE SCHOOL SETTING, COLLABORATE WITH INSTRUCTIONAL PERSONNEL IN THE SCHOOL SETTING, AND PROVIDE MEDICALLY NECESSARY TREATMENT IN THE SCHOOL SETTING AS REQUIRED BY SECTION 504 OF THE FEDERAL "REHABILITATION ACT OF 1973", 29 U.S.C. SEC. 794, AS AMENDED, AND TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990"; AND

(III) PROVIDE NOTICE OF A STUDENT'S RIGHT TO APPEAL THE DECISION OF AN ADMINISTRATIVE UNIT CONCERNING ACCESS TO MEDICALLY NECESSARY TREATMENT IN THE SCHOOL SETTING.

(3) EACH ADMINISTRATIVE UNIT SHALL MAKE THE POLICY DEVELOPED PURSUANT TO SUBSECTION (2) OF THIS SECTION PUBLICLY AVAILABLE ON THE ADMINISTRATIVE UNIT'S WEBSITE AND AVAILABLE TO THE PARENT OR LEGAL GUARDIAN OF THE STUDENT, UPON REQUEST.

(4) (a) BEGINNING JULY 1, 2024, AND EACH JULY 1 THEREAFTER, EACH ADMINISTRATIVE UNIT SHALL COMPILE AND PROVIDE TO THE DEPARTMENT OF EDUCATION THE TOTAL NUMBER OF REQUESTS FOR ACCESS TO A STUDENT BY A PRIVATE HEALTH-CARE SPECIALIST PURSUANT TO THIS SECTION AND WHETHER THE ACCESS WAS AUTHORIZED OR DENIED.

(b) BEGINNING JANUARY 2025, AND EACH JANUARY THEREAFTER, THE DEPARTMENT OF EDUCATION SHALL MAKE THE INFORMATION REPORTED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION AVAILABLE ON THE DEPARTMENT'S WEBSITE AND REPORT THE INFORMATION TO THE HOUSE OF REPRESENTATIVES EDUCATION COMMITTEE AND THE SENATE EDUCATION COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, AS PART OF THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT

(SMART) GOVERNMENT ACT" PRESENTATION REQUIRED BY PART 2 OF ARTICLE 7 OF TITLE 2.

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

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

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Alec Garnett  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Steve Fenberg  
PRESIDENT OF  
THE SENATE

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Robin Jones  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_  
(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO