

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0805.01 Brita Darling x2241

SENATE BILL 12-159

SENATE SPONSORSHIP

Hudak, Aguilar, Nicholson, Shaffer B., Williams S.

HOUSE SPONSORSHIP

Kerr J., Massey, Schafer S., Peniston, Summers

Senate Committees

Health and Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE EVALUATION OF HOME- AND COMMUNITY-BASED**
102 **SERVICES FOR CHILDREN WITH AUTISM UNDER THE MEDICAID**
103 **WAIVER PROGRAM.**

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://www.leg.state.co.us/billsummaries>.)

The bill clarifies that evaluation of children receiving long-term care services and supports through the medicaid autism waiver program (program) must occur at the time the child begins receiving services and when services terminate, as well as regularly during the course of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

services. The evaluations must include norm-referenced and standardized assessment of the child's expressive and receptive communication, the child's adaptive skills, including self-help skills, and the child's maladaptive behavior, including self-injurious and aggressive behavior.

The department of health care policy and financing (department) shall annually review the balance in the Colorado autism treatment fund (fund) to determine whether additional eligible children may receive services and supports under the program.

As part of its regular review of medicaid waivers, the department shall review the waiver to determine if the program eligibility criteria are sufficient to ensure that services and supports under the program are being directed toward children with significant intellectual or adaptive impairment in addition to a diagnosis of autism.

The department shall conduct an evaluation of the program and the children served through the program that must include information about the improvement in communication and adaptive behavior of children receiving services and supports. The department may contract with an independent program evaluator to review individual treatment evaluations.

The bill clarifies that moneys in the fund may be used for the evaluation of children receiving services through the program, as well as for the evaluation of the program.

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

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

4 (a) Since the enactment of the "Home- and Community-based
5 Services for Children with Autism Act", there has been a rise in the
6 diagnosis of autism spectrum disorders;

7 (b) The current fiscal environment has placed a significant strain
8 on the financial resources needed to provide adequate and appropriate
9 services to vulnerable children through the state's medicaid program;

10 (c) In order to continue providing necessary home- and
11 community-based services to children with autism at risk of
12 institutionalization and with a high level of need, the state department
13 should review the waiver program at the time of federal reauthorization

1 and revise the waiver program to ensure the most effective and efficient
2 implementation of the program and to ensure that the eligibility criteria
3 address the needs of those children most vulnerable for
4 institutionalization without the home- and community-based services
5 provided pursuant to the program;

6 (d) Redefining the level of need for children served under the
7 program in the future will ensure that the program provides the maximum
8 number of children most vulnerable to institutionalization with necessary
9 home- and community-based services and that the program retains the
10 level of service contemplated at the time the program was enacted;

11 (e) Further, the department of health care policy and financing
12 should provide more structure and clarity to the evaluation process, as
13 required by existing law, to ensure that the home- and community-based
14 services provided to eligible children pursuant to the program are
15 effective and appropriate to the child's level of need during the entire
16 period of time the child is receiving services under the program; and

17 (f) Moreover, the state department should determine if additional
18 eligible children who are on the wait list to receive services may be
19 served under the waiver program based upon existing federal
20 authorization and the moneys available in the Colorado autism treatment
21 fund.

22 **SECTION 2.** In Colorado Revised Statutes, 25.5-6-804, **amend**
23 (8); and **add** (9) as follows:

24 **25.5-6-804. Services - duties of the state department - rules.**

25 (8) (a) The state board shall adopt rules necessary to implement and
26 administer the provisions of this part 8, including but not limited to
27 requiring an ongoing evaluation process for each eligible child and the

1 use of an external evaluation contractor for this purpose.

2 (b) AN ELIGIBLE CHILD PARTICIPATING IN SERVICES PURSUANT TO
3 THIS PART 8 SHALL BE EVALUATED AT ENTRY INTO THE PROGRAM, AT
4 LEAST EVERY SIX MONTHS DURING THE COURSE OF SERVICES, AND AT THE
5 TERMINATION OF SERVICES PURSUANT TO THIS PART 8. THE EVALUATIONS
6 SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

7 (I) AN ASSESSMENT OF THE ELIGIBLE CHILD'S EXPRESSIVE AND
8 RECEPTIVE COMMUNICATION THROUGH THE USE OF A STANDARDIZED AND
9 NORM-REFERENCED ASSESSMENT AS DETERMINED BY THE STATE
10 DEPARTMENT THROUGH RULE;

11 (II) AN ASSESSMENT OF THE ELIGIBLE CHILD'S ADAPTIVE SKILLS
12 INCLUDING SELF-HELP SKILLS THROUGH THE USE OF A NORM-REFERENCED
13 AND STANDARDIZED ASSESSMENT AS DETERMINED BY THE STATE
14 DEPARTMENT THROUGH RULE; AND

15 (III) AN ASSESSMENT OF THE SEVERITY OF THE ELIGIBLE CHILD'S
16 MALADAPTIVE BEHAVIOR, INCLUDING SELF-INJURIOUS OR AGGRESSIVE
17 BEHAVIORS OR TANTRUMS, THROUGH THE USE OF A NORM-REFERENCED
18 AND STANDARDIZED ASSESSMENT AS DETERMINED BY THE STATE
19 DEPARTMENT THROUGH RULE.

20 (c) THE EVALUATIONS SHALL BE CONDUCTED PURSUANT TO THE
21 PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (8) BY AN
22 EVALUATOR WHO IS NOT A MEMBER OF THE ELIGIBLE CHILD'S ONGOING
23 TREATMENT TEAM OR BY THE ELIGIBLE CHILD'S LEAD THERAPIST.

24 (d) THE EVALUATOR SHALL PROVIDE A COPY OF THE EVALUATION,
25 INCLUDING ANY SUPPORTING DATA, TO THE ELIGIBLE CHILD'S PARENT OR
26 LEGAL GUARDIAN AND TO THE AGENCY RESPONSIBLE FOR THE ELIGIBLE
27 CHILD'S CARE PLANNING. THE AGENCY RESPONSIBLE FOR THE ELIGIBLE

1 CHILD'S CARE PLANNING SHALL RETAIN A COPY OF THE ELIGIBLE CHILD'S
2 EVALUATION AND SUPPORTING DATA.

3 (e) ANY COSTS ASSOCIATED WITH THE EVALUATIONS REQUIRED
4 PURSUANT TO THIS SUBSECTION (8) SHALL BE INCLUDED WITHIN THE
5 ANNUAL COST LIMITATION ON SERVICES SET FORTH IN SUBSECTION (2) OF
6 THIS SECTION. EVALUATIONS OF AN ELIGIBLE CHILD MAY BE CONDUCTED
7 THROUGH THE ELIGIBLE CHILD'S SCHOOL OR WITH OTHER RESOURCES THAT
8 ARE NOT PART OF THE SERVICES PROVIDED PURSUANT TO THIS PART 8, SO
9 LONG AS THE EVALUATIONS ARE CONSISTENT WITH THE PROVISIONS OF
10 PARAGRAPH (b) OF THIS SUBSECTION (8).

11 (9) THE STATE DEPARTMENT SHALL ANNUALLY REVIEW THE
12 AVAILABLE BALANCE IN THE COLORADO AUTISM TREATMENT FUND,
13 CREATED PURSUANT TO SECTION 25.5-6-805, TO DETERMINE WHETHER
14 ADDITIONAL ELIGIBLE CHILDREN MAY BE PROVIDED SERVICES PURSUANT
15 TO THIS PART 8 CONSISTENT WITH EXISTING FEDERAL AUTHORIZATION.

16 **SECTION 3.** In Colorado Revised Statutes, 25.5-6-805, **amend**
17 (1) as follows:

18 **25.5-6-805. Colorado autism treatment fund.** (1) The Colorado
19 autism treatment fund is hereby created and established in the state
20 treasury for the purpose of paying for services provided to eligible
21 children AND FOR PARTICIPANT AND PROGRAM EVALUATIONS pursuant to
22 this part 8. Such fund shall be comprised of tobacco settlement moneys
23 allocated to such fund. Moneys in the fund shall be subject to annual
24 appropriation by the general assembly for the purposes of this part 8. At
25 the end of any fiscal year, all unexpended and unencumbered moneys in
26 the fund shall remain therein and shall not be credited or transferred to the
27 general fund or any other fund. Any moneys in the fund not expended for

1 the purpose of this part 8 may be invested by the state treasurer as
2 provided by law. All interest and income derived from the investment and
3 deposit of moneys in the fund shall be credited to the fund.

4 **SECTION 4.** In Colorado Revised Statutes, **add** 25.5-6-806 as
5 follows:

6 **25.5-6-806. State department review of autism waiver -**
7 **program evaluation.** (1) AS PART OF ITS REGULAR WAIVER REVIEW
8 PROCESS, AND IN CONJUNCTION WITH A REQUEST FOR FEDERAL
9 REAUTHORIZATION OF THE AUTISM WAIVER PROGRAM OR FOR FEDERAL
10 AUTHORIZATION TO PROVIDE HOME- AND COMMUNITY-BASED SERVICES
11 FOR CHILDREN WITH AUTISM AS PART OF ANOTHER WAIVER PROGRAM, THE
12 STATE DEPARTMENT SHALL DESIGN PROGRAM ELIGIBILITY CRITERIA THAT
13 ENSURE THAT SERVICES PROVIDED PURSUANT TO THIS PART 8 ARE
14 AVAILABLE TO THOSE CHILDREN WHO ARE MOST VULNERABLE TO
15 INSTITUTIONALIZATION WITHOUT HOME- AND COMMUNITY-BASED
16 SERVICES. IN ADDITION TO A DIAGNOSIS OF AUTISM, THE STATE
17 DEPARTMENT'S ELIGIBILITY CRITERIA FOR A CHILD RECEIVING SERVICES
18 UNDER THE PROGRAM SHALL INCLUDE SIGNIFICANT IMPAIRMENT IN THE
19 CHILD'S INTELLECTUAL ABILITY OR SIGNIFICANT IMPAIRMENT IN THE
20 CHILD'S ADAPTIVE BEHAVIOR.

21 (2) (a) ON OR BEFORE JUNE 1, 2014, THE STATE DEPARTMENT
22 SHALL SUBMIT A WRITTEN PROGRAM EVALUATION TO THE HEALTH AND
23 ENVIRONMENT COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY
24 SUCCESSOR COMMITTEE, AND TO THE HEALTH AND HUMAN SERVICES
25 COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEE,
26 CONCERNING HOME- AND COMMUNITY-BASED SERVICES PROVIDED TO
27 CHILDREN WITH AUTISM PURSUANT TO THIS PART 8. THE STATE

1 DEPARTMENT SHALL DETERMINE THE APPROPRIATE PROCESS AND
2 PROCEDURES FOR CONDUCTING THE EVALUATION, INCLUDING PROCEDURES
3 TO PROTECT A PROGRAM PARTICIPANT'S INDIVIDUALLY IDENTIFYING
4 INFORMATION.

5 (b) THE PROGRAM EVALUATION SHALL INCLUDE, BUT NEED NOT BE
6 LIMITED TO:

7 (I) INFORMATION CONCERNING:

8 (A) THE NUMBER OF ELIGIBLE CHILDREN RECEIVING SERVICES OR
9 WHO HAVE RECEIVED SERVICES UNDER THE WAIVER PROGRAM;

10 (B) THE AVERAGE AND MEDIAN AGE OF ELIGIBLE CHILDREN WHEN
11 THEY BEGIN RECEIVING SERVICES AND THE AVERAGE LENGTH OF TIME
12 THAT CHILDREN RECEIVE SERVICES; AND

13 (C) THE AVERAGE COST OF SERVICES PROVIDED TO AN ELIGIBLE
14 CHILD; AND

15 (II) AN EVALUATION OF ELIGIBLE CHILDREN'S CARE PLANS AND
16 EVALUATIONS CONDUCTED AT THE BEGINNING AND ENDING OF SERVICES,
17 AS WELL AS EVALUATIONS DURING THE COURSE OF SERVICES, TO
18 DETERMINE WHETHER HOME- AND COMMUNITY-BASED SERVICES
19 PROVIDED PURSUANT TO THIS PART 8 ARE EFFECTIVE IN MEETING THE
20 GOALS OF THE WAIVER PROGRAM INCLUDING, BUT NOT LIMITED TO:

21 (A) SERVING THE CHILDREN MOST VULNERABLE TO
22 INSTITUTIONALIZATION WITHOUT THE SERVICES PROVIDED PURSUANT TO
23 THIS PART 8;

24 (B) KEEPING CHILDREN OUT OF INSTITUTIONS; AND

25 (C) DEMONSTRATING IMPROVEMENT IN THE CHILD'S EXPRESSIVE
26 AND RECEPTIVE COMMUNICATION, ADAPTIVE SKILLS, SUCH AS DRESSING
27 AND TOILETING, AND A REDUCTION IN THE SEVERITY OF THE CHILD'S

1 MALADAPTIVE BEHAVIOR, INCLUDING SELF-INJURIOUS OR AGGRESSIVE
2 BEHAVIOR AND TANTRUMS, THROUGH THE USE OF STANDARDIZED AND
3 NORM-REFERENCED ASSESSMENTS.

4 (c) THE STATE DEPARTMENT MAY CONTRACT WITH AN
5 INDEPENDENT PROGRAM EVALUATOR WITH EXPERTISE IN REVIEWING
6 TREATMENT PROGRESS REPORTS, INDIVIDUAL EVALUATIONS, AND MEDICAL
7 RECORDS FOR PURPOSES OF CONDUCTING THE EVALUATION PURSUANT TO
8 SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (2)
9 CONCERNING THE EFFECTIVENESS OF THE HOME- AND COMMUNITY-BASED
10 SERVICES PROVIDED PURSUANT TO THIS PART 8.

11 **SECTION 5. Effective date.** This act takes effect July 1, 2012.

12 **SECTION 6. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.