

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

ENGROSSED

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

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
Appropriations

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, AND, IN CONNECTION THEREWITH, MAKING**
104 **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://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

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.

SENATE
Amended 2nd Reading
April 23, 2012

(program) must occur at the time the child begins receiving services and when services terminate, as well as regularly during the course of 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

1 institutionalization and with a high level of need, the state department
2 should review the waiver program at the time of federal reauthorization
3 and revise the waiver program to ensure the most effective and efficient
4 implementation of the program and to ensure that the eligibility criteria
5 address the needs of those children most vulnerable for
6 institutionalization without the home- and community-based services
7 provided pursuant to the program;

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

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

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

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

26 **25.5-6-804. Services - duties of the state department - rules.**

27 (8) (a) The state board shall adopt rules necessary to implement and

1 administer the provisions of this part 8, including but not limited to
2 requiring an ongoing evaluation process for each eligible child and the
3 use of an external evaluation contractor for this purpose.

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

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

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

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

22 (c) THE EVALUATIONS SHALL BE CONDUCTED PURSUANT TO THE
23 PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (8) BY THE CHILD'S
24 LEAD THERAPIST OR OTHER TRAINED PROFESSIONALS AS DESIGNATED BY
25 THE DEPARTMENT.

26 (d) THE EVALUATOR SHALL PROVIDE A COPY OF THE EVALUATION,
27 INCLUDING ANY SUPPORTING DATA, TO THE ELIGIBLE CHILD'S PARENT OR

1 LEGAL GUARDIAN AND TO THE AGENCY RESPONSIBLE FOR THE ELIGIBLE
2 CHILD'S CARE PLANNING. THE AGENCY RESPONSIBLE FOR THE ELIGIBLE
3 CHILD'S CARE PLANNING SHALL RETAIN A COPY OF THE ELIGIBLE CHILD'S
4 EVALUATION AND SUPPORTING DATA.

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

13 (f) THE ON-GOING EVALUATION OF CHILDREN RECEIVING SERVICES
14 UNDER THE PROGRAM PURSUANT TO THIS SUBSECTION (8) SHALL NOT BE
15 USED TO ALTER A CHILD'S ELIGIBILITY TO PARTICIPATE IN THE PROGRAM.

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

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

23 **25.5-6-805. Colorado autism treatment fund.** (1) The Colorado
24 autism treatment fund is hereby created and established in the state
25 treasury for the purpose of paying for services provided to eligible
26 children AND FOR PARTICIPANT AND PROGRAM EVALUATIONS pursuant to
27 this part 8. Such fund shall be comprised of tobacco settlement moneys

1 allocated to such fund. Moneys in the fund shall be subject to annual
2 appropriation by the general assembly for the purposes of this part 8. At
3 the end of any fiscal year, all unexpended and unencumbered moneys in
4 the fund shall remain therein and shall not be credited or transferred to the
5 general fund or any other fund. Any moneys in the fund not expended for
6 the purpose of this part 8 may be invested by the state treasurer as
7 provided by law. All interest and income derived from the investment and
8 deposit of moneys in the fund shall be credited to the fund.

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

11 **25.5-6-806. State department review of autism waiver -**
12 **program evaluation.** (1) AS PART OF ITS REGULAR WAIVER REVIEW
13 PROCESS, AND IN CONJUNCTION WITH A REQUEST FOR FEDERAL
14 REAUTHORIZATION OF THE AUTISM WAIVER PROGRAM, THE STATE
15 DEPARTMENT SHALL CONSULT WITH STAKEHOLDERS AND THE CENTER FOR
16 MEDICARE AND MEDICAID SERVICES TO DESIGN PROGRAM ELIGIBILITY
17 CRITERIA THAT ARE CONSISTENT WITH FEDERAL LAW AND THAT ENSURE
18 THAT SERVICES PROVIDED PURSUANT TO THIS PART 8 ARE AVAILABLE TO
19 THOSE CHILDREN WHO ARE MOST VULNERABLE TO INSTITUTIONALIZATION
20 WITHOUT HOME- AND COMMUNITY-BASED SERVICES. SO LONG AS
21 CHILDREN WHO ARE DETERMINED ELIGIBLE FOR THE AUTISM WAIVER
22 PROGRAM ARE ON A WAIT LIST TO RECEIVE SERVICES, THE STATE
23 DEPARTMENT'S PRIORITY SHALL BE TO MOVE OFF OF THE WAIT LIST THOSE
24 CHILDREN WHO HAVE SIGNIFICANT IMPAIRMENT IN INTELLECTUAL ABILITY
25 OR SIGNIFICANT IMPAIRMENT IN ADAPTIVE BEHAVIOR IN ADDITION TO A
26 DIAGNOSIS OF AUTISM. ___

27 (2) AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, THE STATE

1 DEPARTMENT SHALL SUBMIT WRITTEN PROGRAM EVALUATIONS TO THE
2 HEALTH AND ENVIRONMENT COMMITTEE OF THE HOUSE OF
3 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEE, AND TO THE HEALTH
4 AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY SUCCESSOR
5 COMMITTEE, CONCERNING HOME- AND COMMUNITY-BASED SERVICES
6 PROVIDED TO CHILDREN WITH AUTISM PURSUANT TO THIS PART 8. THE
7 STATE DEPARTMENT SHALL DETERMINE THE APPROPRIATE PROCESS AND
8 PROCEDURES FOR CONDUCTING THE EVALUATION, INCLUDING PROCEDURES
9 TO PROTECT A PROGRAM PARTICIPANT'S INDIVIDUALLY IDENTIFYING
10 INFORMATION.

11 (3) (a) ON OR BEFORE JUNE 1, 2013, THE STATE DEPARTMENT'S
12 EVALUATION SHALL INCLUDE, AT A MINIMUM, INFORMATION CONCERNING:

13 (I) THE NUMBER OF ELIGIBLE CHILDREN RECEIVING SERVICES OR
14 WHO HAVE RECEIVED SERVICES UNDER THE WAIVER PROGRAM;

15 (II) THE AVERAGE AND MEDIAN AGE OF ELIGIBLE CHILDREN WHEN
16 THEY BEGIN RECEIVING SERVICES AND THE AVERAGE LENGTH OF TIME
17 THAT CHILDREN RECEIVE SERVICES; AND

18 (III) THE AVERAGE COST OF SERVICES PROVIDED TO AN ELIGIBLE
19 CHILD.

20 (b) ON OR BEFORE JUNE 1, 2014, THE STATE DEPARTMENT'S
21 EVALUATION SHALL INCLUDE, AT A MINIMUM, INFORMATION CONCERNING
22 THE DESIGN AND IMPLEMENTATION OF THE ON-GOING EVALUATION
23 PROCESS PURSUANT TO SECTION 25.5-6-804 (8).

24 (c) (I) ON OR BEFORE JUNE 1, 2015, THE STATE DEPARTMENT'S
25 EVALUATION SHALL INCLUDE AN EVALUATION OF ELIGIBLE CHILDREN'S
26 CARE PLANS AND EVALUATIONS CONDUCTED AT THE BEGINNING AND
27 ENDING OF SERVICES, AS WELL AS ON-GOING EVALUATIONS DURING THE

1 COURSE OF SERVICES, TO DETERMINE WHETHER HOME- AND
2 COMMUNITY-BASED SERVICES PROVIDED PURSUANT TO THIS PART 8 ARE
3 EFFECTIVE IN MEETING THE GOALS OF THE WAIVER PROGRAM, WHICH
4 GOALS INCLUDE, BUT ARE NOT LIMITED TO:

5 (A) SERVING THE CHILDREN MOST VULNERABLE TO
6 INSTITUTIONALIZATION WITHOUT THE SERVICES PROVIDED PURSUANT TO
7 THIS PART 8;

8 (B) KEEPING CHILDREN OUT OF INSTITUTIONS; AND

9 (C) DEMONSTRATING IMPROVEMENT IN THE CHILD'S EXPRESSIVE
10 AND RECEPTIVE COMMUNICATION, ADAPTIVE SKILLS, SUCH AS DRESSING
11 AND TOILETING, AND A REDUCTION IN THE SEVERITY OF THE CHILD'S
12 MALADAPTIVE BEHAVIOR, INCLUDING SELF-INJURIOUS OR AGGRESSIVE
13 BEHAVIOR AND TANTRUMS, THROUGH THE USE OF STANDARDIZED AND
14 NORM-REFERENCED ASSESSMENTS.

15 (II) THE STATE DEPARTMENT MAY CONTRACT WITH AN
16 INDEPENDENT PROGRAM EVALUATOR WITH EXPERTISE IN REVIEWING
17 TREATMENT PROGRESS REPORTS, INDIVIDUAL EVALUATIONS, AND MEDICAL
18 RECORDS FOR PURPOSES OF CONDUCTING THE EVALUATION PURSUANT TO
19 THIS PARAGRAPH (C) CONCERNING THE EFFECTIVENESS OF THE HOME- AND
20 COMMUNITY-BASED SERVICES PROVIDED PURSUANT TO THIS PART 8.

21 _____

22 **SECTION 5. Appropriation.** In addition to any other
23 appropriation, there is hereby appropriated, to the department of health
24 care policy and financing, for the fiscal year beginning July 1, 2012, the
25 sum of \$6,925, or so much thereof as may be necessary, for allocation to
26 medical service premiums, medical and long-term care services for
27 medicaid eligible individuals, for the implementation of this act. Of said

1 sum, \$3,463 is from the Colorado autism treatment fund created in
2 section 25.5-6-805 (1), Colorado Revised Statutes, and \$3,462 is
3 anticipated to be received from federal funds. Although the federal funds
4 are not appropriated in this act, they are noted for the purpose of
5 indicating the assumptions used relative to these funds.

6 **SECTION 6. Effective date.** This act takes effect July 1, 2012.

7 **SECTION 7. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.