

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REVISED

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

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

Health and Environment

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.

HOUSE
Am ended 2nd Reading
May 8, 2012

SENATE
3rd Reading Unam ended
April 24, 2012

SENATE
Am ended 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) and (10) 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 (10) SO LONG AS CHILDREN WHO ARE DETERMINED ELIGIBLE FOR
22 THE AUTISM WAIVER PROGRAM ARE ON A WAIT LIST TO RECEIVE SERVICES,
23 THE STATE DEPARTMENT'S PRIORITY SHALL BE TO MOVE OFF OF THE WAIT
24 LIST AND INTO THE AUTISM WAIVER PROGRAM THOSE CHILDREN WHO ARE
25 DETERMINED TO HAVE AN IMMINENT NEED FOR SERVICES AS DETERMINED
26 THROUGH AN OBJECTIVE ASSESSMENT PROCESS. THE STATE DEPARTMENT'S
27 OBJECTIVE ASSESSMENT PROCESS FOR DETERMINING IMMINENT NEED FOR

1 SERVICES UNDER THE AUTISM WAIVER PROGRAM SHALL INCORPORATE
2 NORM-REFERENCED AUTISM ASSESSMENT FINDINGS AND PRIORITIZE
3 CHILDREN BASED ON THE SEVERITY OF THE CHILD'S ASSESSED CONDITION.
4 THIS SUBSECTION (10) SHALL APPLY ONLY UPON THE APPROVAL BY THE
5 CENTERS FOR MEDICARE AND MEDICAID SERVICES THAT IT IS CONSISTENT
6 WITH FEDERAL LAW.

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

9 **25.5-6-805. Colorado autism treatment fund.** (1) The Colorado
10 autism treatment fund is hereby created and established in the state
11 treasury for the purpose of paying for services provided to eligible
12 children AND FOR PARTICIPANT AND PROGRAM EVALUATIONS pursuant to
13 this part 8. Such fund shall be comprised of tobacco settlement moneys
14 allocated to such fund. Moneys in the fund shall be subject to annual
15 appropriation by the general assembly for the purposes of this part 8. At
16 the end of any fiscal year, all unexpended and unencumbered moneys in
17 the fund shall remain therein and shall not be credited or transferred to the
18 general fund or any other fund. Any moneys in the fund not expended for
19 the purpose of this part 8 may be invested by the state treasurer as
20 provided by law. All interest and income derived from the investment and
21 deposit of moneys in the fund shall be credited to the fund.

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

24 **25.5-6-806. Autism waiver - program evaluation.** (1) As
25 PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT
26 SHALL SUBMIT WRITTEN PROGRAM EVALUATIONS TO THE HEALTH AND
27 ENVIRONMENT COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY

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

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

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

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

16 (III) THE AVERAGE COST OF SERVICES PROVIDED TO AN ELIGIBLE
17 CHILD.

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

22 (c) (I) ON OR BEFORE JUNE 1, 2015, THE STATE DEPARTMENT'S
23 EVALUATION SHALL INCLUDE AN EVALUATION OF ELIGIBLE CHILDREN'S
24 CARE PLANS AND EVALUATIONS CONDUCTED AT THE BEGINNING AND
25 ENDING OF SERVICES, AS WELL AS ON-GOING EVALUATIONS DURING THE
26 COURSE OF SERVICES, TO DETERMINE WHETHER HOME- AND
27 COMMUNITY-BASED SERVICES PROVIDED PURSUANT TO THIS PART 8 ARE

1 EFFECTIVE IN MEETING THE GOALS OF THE WAIVER PROGRAM, WHICH
2 GOALS INCLUDE, BUT ARE NOT LIMITED TO:

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

6 (B) KEEPING CHILDREN OUT OF INSTITUTIONS; AND

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

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

19 _____

20 **SECTION 5. Appropriation.** In addition to any other
21 appropriation, there is hereby appropriated, to the department of health
22 care policy and financing, for the fiscal year beginning July 1, 2012, the
23 sum of \$6,925, or so much thereof as may be necessary, for allocation to
24 medical service premiums, medical and long-term care services for
25 medicaid eligible individuals, for the implementation of this act. Of said
26 sum, \$3,463 is from the Colorado autism treatment fund created in
27 section 25.5-6-805 (1), Colorado Revised Statutes, and \$3,462 is

1 anticipated to be received from federal funds. Although the federal funds
2 are not appropriated in this act, they are noted for the purpose of
3 indicating the assumptions used relative to these funds.

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

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