

**NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

SENATE BILL 12-159

BY SENATOR(S) Hudak, Aguilar, Nicholson, Shaffer B., Williams S., Boyd, Foster, Guzman, Heath, Hodge, Jahn, King S., Newell, Schwartz, Steadman, Tochtrop;  
also REPRESENTATIVE(S) Kerr J., Massey, Schafer S., Peniston, Summers, Casso, Fields, Fischer, Gardner B., Labuda, Pabon, Pace, Singer, Todd, Tyler, Vigil, Williams A., Young.

CONCERNING THE EVALUATION OF HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM UNDER THE MEDICAID WAIVER PROGRAM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

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

(b) The current fiscal environment has placed a significant strain on the financial resources needed to provide adequate and appropriate services

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

to vulnerable children through the state's medicaid program;

(c) In order to continue providing necessary home- and community-based services to children with autism at risk of institutionalization and with a high level of need, the state department should review the waiver program at the time of federal reauthorization and revise the waiver program to ensure the most effective and efficient implementation of the program and to ensure that the eligibility criteria address the needs of those children most vulnerable for institutionalization without the home- and community-based services provided pursuant to the program;

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

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

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

**SECTION 2.** In Colorado Revised Statutes, 25.5-6-804, **amend** (8); and **add** (9) and (10) as follows:

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

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

(b) AN ELIGIBLE CHILD PARTICIPATING IN SERVICES PURSUANT TO

THIS PART 8 SHALL BE EVALUATED AT ENTRY INTO THE PROGRAM, AT LEAST EVERY SIX MONTHS DURING THE COURSE OF SERVICES, AND AT THE TERMINATION OF SERVICES PURSUANT TO THIS PART 8. THE EVALUATIONS SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

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

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

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

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

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

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

PARAGRAPH (b) OF THIS SUBSECTION (8).

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

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

(10) SO LONG AS CHILDREN WHO ARE DETERMINED ELIGIBLE FOR THE AUTISM WAIVER PROGRAM ARE ON A WAIT LIST TO RECEIVE SERVICES, THE STATE DEPARTMENT'S PRIORITY SHALL BE TO MOVE OFF OF THE WAIT LIST AND INTO THE AUTISM WAIVER PROGRAM THOSE CHILDREN WHO ARE DETERMINED TO HAVE AN IMMINENT NEED FOR SERVICES AS DETERMINED THROUGH AN OBJECTIVE ASSESSMENT PROCESS. THE STATE DEPARTMENT'S OBJECTIVE ASSESSMENT PROCESS FOR DETERMINING IMMINENT NEED FOR SERVICES UNDER THE AUTISM WAIVER PROGRAM SHALL INCORPORATE NORM-REFERENCED AUTISM ASSESSMENT FINDINGS AND PRIORITIZE CHILDREN BASED ON THE SEVERITY OF THE CHILD'S ASSESSED CONDITION. THIS SUBSECTION (10) SHALL APPLY ONLY UPON THE APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES THAT IT IS CONSISTENT WITH FEDERAL LAW.

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

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

derived from the investment and deposit of moneys in the fund shall be credited to the fund.

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

**25.5-6-806. Autism waiver - program evaluation.** (1) AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT SHALL SUBMIT WRITTEN PROGRAM EVALUATIONS TO THE HEALTH AND ENVIRONMENT COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEE, AND TO THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEE, CONCERNING HOME- AND COMMUNITY-BASED SERVICES PROVIDED TO CHILDREN WITH AUTISM PURSUANT TO THIS PART 8. THE STATE DEPARTMENT SHALL DETERMINE THE APPROPRIATE PROCESS AND PROCEDURES FOR CONDUCTING THE EVALUATION, INCLUDING PROCEDURES TO PROTECT A PROGRAM PARTICIPANT'S INDIVIDUALLY IDENTIFYING INFORMATION.

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

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

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

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

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

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

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

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

(B) KEEPING CHILDREN OUT OF INSTITUTIONS; AND

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

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

**SECTION 5. Appropriation.** In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, for the fiscal year beginning July 1, 2012, the sum of \$6,925, or so much thereof as may be necessary, for allocation to medical service premiums, medical and long-term care services for medicaid eligible individuals, for the implementation of this act. Of said sum, \$3,463 is from the Colorado autism treatment fund created in section 25.5-6-805 (1), Colorado Revised Statutes, and \$3,462 is anticipated to be received from federal funds. Although the federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

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

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

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

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Frank McNulty  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO