

LEGISLATIVE BILL 333

Approved by the Governor May 23, 2017

Introduced by Riepe, 12; at the request of the Governor.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 83-1202, 83-1209, 83-1212.01, and 83-1216, Reissue Revised Statutes of Nebraska, and sections 71-1107, 71-1108.01, and 83-1201, Revised Statutes Cumulative Supplement, 2016; to provide, change, and eliminate definitions for the Developmental Disabilities Court-Ordered Custody Act; to restate legislative intent; to change powers and duties of the Director of Developmental Disabilities of the Division of Developmental Disabilities, of such division, and the Advisory Committee on Developmental Disabilities; to change the membership of the advisory committee; to change provisions relating to eligibility for services and funding for services under the Developmental Disabilities Services Act; to provide for a quality management and improvement plan; to eliminate quality review teams; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 71-1113 and 83-1213, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 71-1107, Revised Statutes Cumulative Supplement, 2016, is amended to read:

71-1107 Developmental disability means a severe, chronic disability, including an intellectual disability, other than mental illness, which: an intellectual disability or a severe chronic cognitive impairment, other than mental illness, that is manifested before the age of twenty-two years and is likely to continue indefinitely.

(1) Is attributable to a mental or physical impairment unless the impairment is solely attributable to a severe emotional disturbance or persistent mental illness;

(2) Is manifested before the age of twenty-two years;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one of each of the following areas of adaptive functioning:

(a) Conceptual skills, including language, literacy, money, time, number concepts, and self-direction;

(b) Social skills, including interpersonal skills, social responsibility, self-esteem, gullibility, wariness, social problem solving, and the ability to follow laws and rules and to avoid being victimized; and

(c) Practical skills, including activities of daily living, personal care, occupational skills, health care, mobility, and the capacity for independent living; and

(5) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized support, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth through the age of nine years who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without manifesting substantial functional limitations in three or more of the areas of adaptive functioning described in subdivision (4) of this section if the individual, without services and support, has a high probability of manifesting such limitations in such areas later in life.

Sec. 2. Section 71-1108.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

71-1108.01 Intellectual disability means a state of significantly subaverage general intellectual functioning which is associated with significant impairments in adaptive functioning manifested before the age of twenty-two years. Significant subaverage general intellectual functioning shall refer to a score of seventy or below on a properly administered and valid intelligence quotient test.

Sec. 3. Section 83-1201, Revised Statutes Cumulative Supplement, 2016, is amended to read:

83-1201 Sections 83-1201 to 83-1227 and section 8 of this act shall be known and may be cited as the Developmental Disabilities Services Act.

Sec. 4. Section 83-1202, Reissue Revised Statutes of Nebraska, is amended to read:

83-1202 It is the intent of the Legislature that:

(1) All persons with developmental disabilities shall receive services and assistance which present opportunities to increase their independence, productivity, and integration into the community;

(2) All persons with developmental disabilities shall have access to a full array of services appropriate for them as individuals;

(3) All persons with developmental disabilities shall have a right, to the maximum extent possible, to live, work, and recreate with people who are not disabled;

(4) All persons with developmental disabilities shall, ~~to the maximum extent possible,~~ be served in their communities and should only be served by specialized programs when their needs cannot be met through general services available to all persons, including those without disabilities;

(5) All persons with developmental disabilities shall have the right to receive age-appropriate services consistent with their individual needs, potentials, and abilities;

(6) All persons with developmental disabilities shall be afforded the same rights, dignity, and respect as members of society who are not disabled; and

(7) Persons who deliver services to persons with developmental disabilities shall be assured a uniform system of compensation and training and a full range of work-site enhancements which attract and retain qualified employees. ÷

~~(8) The first priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons have sufficient food, housing, clothing, medical care, protection from abuse or neglect, and protection from harm; and~~

~~(9) The second priority of the state in responding to the needs of persons with developmental disabilities should be to ensure that all such persons receive appropriate assessment of their needs, planning to meet their needs, information about services available to meet their needs, referral to services matched to their needs, coordination of services delivered, support sufficient to allow them to live with their natural families or independently, transportation to facilitate access to services, and meaningful habilitation, education, training, employment, and recreation designed to enhance their skills, increase their independence, and improve their quality of life.~~

Sec. 5. Section 83-1209, Reissue Revised Statutes of Nebraska, is amended to read:

83-1209 To carry out the policies and purposes of the Developmental Disabilities Services Act, the director shall:

(1) Ensure effective management by (a) determining whether applicants are eligible for specialized services, (b) authorizing service delivery for eligible persons, (c) ensuring that services are available, accessible, and coordinated, (d) ensuring that eligible persons have their needs assessed by a team process, have individual program plans developed by a team process to address assessed needs, which plans incorporate the input of the individual and the family, and have services delivered in accordance with the program plan, (e) having the amount of funding for specialized services determined by an objective assessment process, (f) providing information and referral services to persons with developmental disabilities and their families, (g) promoting the development of pilot projects of high quality, cost-efficient services provided by specialized programs, and (h) administering the Beatrice State Developmental Center;

(2) Ensure a coordinated statewide response by (a) developing a comprehensive and integrated statewide plan for specialized services to persons with developmental disabilities in conjunction with state and local officials, designated advocates for such persons, service providers, and the general public, (b) reporting biennially to the Legislature, the Governor, service providers, and the public on persons served and progress made toward meeting requirements of the plan, and (c) creating a statewide registry of persons eligible for specialized services. The report submitted to the Legislature shall be submitted electronically;

(3) Ensure specialized services which are efficient and individualized by (a) developing a written policy which ensures the adequate and equitable distribution of fiscal resources based upon a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change and which also includes a plan for funding shortfalls and (b) administering all state and federal funds as may be allowed by law;

(4) Ensure maximum quality of services by (a) developing a due process mechanism for resolution of disputes, (b) coordinating the development and implementation of a quality management and improvement plan as described in section 8 of this act ~~review teams designed to enhance the quality of specialized services,~~ (c) developing certification and accreditation requirements for service providers, (d) providing technical assistance to local service providers, and (e) providing eligible persons, their families, and the designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with copies of all reports resulting from surveys of providers of specialized services conducted as part of the certification and accreditation process; and

(5) Establish and staff a developmental disabilities division which shall assist in carrying out the policies and purposes of the Developmental Disabilities Services Act.

Sec. 6. Section 83-1212.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-1212.01 (1) There is hereby created the Advisory Committee on Developmental Disabilities. The advisory committee shall consist of a representative of a statewide advocacy organization for persons with developmental disabilities and their families, a representative of Nebraska's designated protection and advocacy organization, a representative of the Nebraska Planning Council on Developmental Disabilities, a representative of the University Center for Excellence in Developmental Disability Education, Research and Service as defined in section 68-1114, and not more than fifteen

~~additional members. At , at least fifty-one percent of the members one-third of whom shall be persons with developmental disabilities and family members , at least one-third of whom shall be families of persons with developmental disabilities, and no more than one-third of whom shall be elected officials or interested community persons.~~

(2) The members shall be appointed by the Governor for staggered terms of three years. Any vacancy shall be filled by the Governor for the remainder of the term. One of the members shall be designated as chairperson by the Governor. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The advisory committee shall advise the department regarding all aspects of the funding and delivery of services to persons with developmental disabilities.

(4) The advisory committee shall (a) provide sufficient oversight to ensure that persons placed in the custody of the department under the Developmental Disabilities Court-Ordered Custody Act are receiving the least restrictive treatment and services necessary and (b) oversee the design and implementation of the quality management and improvement plan described in section 8 of this act.

(5) The department shall inform the advisory committee of proposed systemic changes to services for persons with developmental disabilities at least thirty days prior to implementation of the changes so that the advisory committee may provide for a response to the proposed changes. If the director determines that circumstances require implementation of the changes prior to such notice, the department shall inform the advisory committee as soon as possible. The advisory committee, in partnership with the director, shall establish criteria for the process of providing the information and receiving the response.

Sec. 7. Section 83-1216, Reissue Revised Statutes of Nebraska, is amended to read:

83-1216 (1) The department shall administer the medicaid home and community-based services waivers upon application approval by the federal Centers for Medicare and Medicaid Services. Beginning July 1, 2019 1995, persons determined to be eligible for specialized services who on or after September 6, 1993, graduate from high school, reach the age of twenty-one years, or are currently receiving services shall receive services in accordance with the Developmental Disabilities Services Act. The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the department and approved by the federal Centers for Medicare and Medicaid Services plan in subsection (3) of this section.

(2) The department shall provide directly or by contract service coordination to Nebraska residents found to be eligible for specialized services.

~~(3) It is the intent of the Legislature that by July 1, 2010, all persons determined to be eligible for services shall receive services in accordance with the act.~~

~~(3) (4) It is the intent of the Legislature that the department take all possible steps to maximize federal funding in order to implement subsections (1) and (2) of this section prior to the date these subsections become entitlements. All Nebraska residents eligible for funding for specialized services through the department under the Developmental Disabilities Services Act shall apply for and accept any federal medicaid benefits for which they may be eligible and benefits from other funding sources within the department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies to the maximum extent possible.~~

(4) The priorities for funding the medicaid home and community-based services waivers under this section are as follows:

(a) The first funding priority of the state shall be responding to the needs of persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person;

(b) The second funding priority of the state in responding to the needs of persons with developmental disabilities shall be for persons that have resided in an institutional setting for a period of at least twelve consecutive months and who are requesting community-based services;

(c) The third funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving wards of the department or persons placed under the supervision of the Office of Probation Administration by the Nebraska court system who are transitioning upon age nineteen with no other alternatives as determined by the department to support residential services necessary to pursue economic self-sufficiency;

(d) The fourth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving persons transitioning from the education system upon attaining twenty-one years of age to maintain skills and receive the day services necessary to pursue economic self-sufficiency; and

(e) The fifth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving all other persons by date of application.

Sec. 8. (1)(a) The department shall, with the assistance and support of the Advisory Committee on Developmental Disabilities, develop and implement a quality management and improvement plan to promote and monitor quality relating to services and quality of life for persons with developmental disabilities.

(b) The purpose of the quality management and improvement plan is to provide information necessary for an accurate assessment of the quality and effectiveness of services for persons with developmental disabilities and their families and the delivery of such services, with special attention to the impact that the services have on the quality of life of recipients and their families.

(c) The quality management and improvement plan shall reflect national best practice for services for persons with developmental disabilities and their families as determined by the department with the assistance of the advisory committee.

(d) The quality management and improvement plan shall assess, through both quantitative and qualitative means, (i) the quality of services provided to persons with developmental disabilities and their families, (ii) the ability of the services provided to meet the needs of the recipients of the services, (iii) the effect of the services to support or improve the quality of life of the recipients of the services, and (iv) the satisfaction of the recipients with the process of determination of eligibility and the process of delivery of the services. In order to develop the quality management and improvement plan, the department shall use procedures to collect data from recipients of services for persons with disabilities and their families by relying on external, independent evaluators who are not employed by the department. The quality management and improvement plan shall give significance to input gathered from recipients of services for persons with developmental disabilities and families of such recipients and include information gathered from the department.

(e) The quality management and improvement plan shall include recommendations for improvements to the types of services and the delivery of services for persons with developmental disabilities and their families.

(2) The department shall provide a quality management plan electronically to the Legislature no later than September 30, 2017. In the plan the department shall detail its approach to ensuring a sustainable, continuous, quality improvement management system for the delivery of services for persons with developmental disabilities and their families that incorporates responsibilities of the department and recipients.

(3) The department shall issue an implementation report regarding the quality management and improvement plan and publish it on the web site of the department and provide it electronically to the Legislature on or before December 30, 2017, and March 30, 2018. Beginning in 2018, the department shall annually provide a report regarding outcomes, improvement priorities, and activities of the department during the previous fiscal year. The report shall be published on the web site of the department and shall be provided electronically to the Legislature on or before September 30.

Sec. 9. Sections 5, 10, and 13 of this act become operative on October 1, 2017. Sections 6 and 11 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 10. Original section 83-1209, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 11. Original section 83-1212.01, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 12. Original sections 83-1202 and 83-1216, Reissue Revised Statutes of Nebraska, and sections 71-1107, 71-1108.01, and 83-1201, Revised Statutes Cumulative Supplement, 2016, are repealed.

Sec. 13. The following section is outright repealed: Section 83-1213, Reissue Revised Statutes of Nebraska.

Sec. 14. The following section is outright repealed: Section 71-1113, Reissue Revised Statutes of Nebraska.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.