

HOUSE BILL No. 2488

By Legislative Budget Committee

1-9

AN ACT concerning the developmental disabilities reform act; relating to intake and service referral functions and treatment and care service functions; amending K.S.A. 39-1801, 39-1803, 39-1804, 39-1805 and 39-1806 and K.S.A. 2003 Supp. 39-1811 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 39-1801 is hereby amended to read as follows: 39-1801. The provisions of K.S.A. ~~1999 Supp.~~ 39-1801 through 39-1810 *and amendments thereto* shall be known and may be cited as the developmental disabilities reform act.

Sec. 2. K.S.A. 39-1803 is hereby amended to read as follows: 39-1803. As used in the developmental disabilities reform act:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person's age, cultural group and community.

(b) "Affiliate" means an entity or person that meets standards set out in rules and regulations adopted by the secretary relating to the provision of services and that contracts with a community developmental disabilities organization.

(c) "Community services" means services provided to meet the needs of persons with developmental disabilities relating to work, living in the community, and individualized supports and services.

(d) "Community developmental disability organization" means *prior to June 30, 2007*, any community mental retardation facility that is organized pursuant to K.S.A. 19-4001 through 19-4015 and amendments thereto *and on or after June 30, 2007*, any entity selected by the secretary to provide intake, referral and case management services for a region with a contiguous population of not less than 150,000 people except that the secretary upon a finding of convenience and necessity may reduce a regional population to less than 150,000 people.

(e) "Community service provider" means ~~a community developmental disability organization or affiliate thereof~~ *an entity or person that meets standards prescribed in rules and regulations adopted by the secretary*

1 *relating to the provision of services and that contracts with a community*
2 *developmental disabilities organization except that on and after June 30,*
3 *2007, a community service provider shall not be a community develop-*
4 *mental disability organization.*

5 (f) “Developmental disability” means:

6 (1) Mental retardation; or

7 (2) a severe, chronic disability, which:

8 (A) Is attributable to a mental or physical impairment, a combination
9 of mental and physical impairments or a condition which has received a
10 dual diagnosis of mental retardation and mental illness;

11 (B) is manifest before 22 years of age;

12 (C) is likely to continue indefinitely;

13 (D) results, in the case of a person five years of age or older, in a
14 substantial limitation in three or more of the following areas of major life
15 functioning: Self-care, receptive and expressive language development
16 and use, learning and adapting, mobility, self-direction, capacity for in-
17 dependent living and economic self-sufficiency;

18 (E) reflects a need for a combination and sequence of special inter-
19 disciplinary or generic care, treatment or other services which are lifelong,
20 or extended in duration and are individually planned and coordinated;
21 and

22 (F) does not include individuals who are solely and severely emo-
23 tionally disturbed or seriously or persistently mentally ill or have disabili-
24 ties solely as a result of the infirmities of aging.

25 (g) “Institution” means state institution for the mentally retarded as
26 defined by subsection (c) of K.S.A. 76-12b01 and amendments thereto
27 or intermediate care facility for the mentally retarded of nine beds or
28 more as defined by subsection (a) (4) of K.S.A. 39-923 and amendments
29 thereto.

30 (h) “Mental retardation” means substantial limitations in present
31 functioning that is manifested during the period from birth to age 18
32 years and is characterized by significantly subaverage intellectual func-
33 tioning existing concurrently with deficits in adaptive behavior including
34 related limitations in two or more of the following applicable adaptive
35 skill areas: Communication, self-care, home living, social skills, commu-
36 nity use, self-direction, health and safety, functional academics, leisure
37 and work.

38 (i) “Secretary” means the secretary of social and rehabilitation
39 services.

40 Sec. 3. K.S.A. 39-1804 is hereby amended to read as follows: 39-
41 1804. (a) Except as otherwise specifically provided in this act and subject
42 to appropriations of federal and state funds, the secretary, after consul-
43 tation with representatives of community developmental disability organ-

1 izations, community service providers, families and consumer advocates,
2 shall implement and administer the provisions of the developmental dis-
3 abilities reform act in accordance with the following policies. Persons with
4 developmental disabilities shall:

5 (1) Be provided assistance to obtain food, housing, clothing and med-
6 ical care; protection from abuse, neglect and exploitation; and a range of
7 services and supports which assist in the determination of individual
8 needs; and

9 (2) receive assistance in determining their needs; be provided infor-
10 mation about all service options available to meet those needs; have co-
11 ordination of services delivered; be assisted and supported in living with
12 their families, or independently; be assisted in finding transportation to
13 support access to the community; and receive individually planned ha-
14 bilitation, education, training, employment and recreation subject to sup-
15 ports and services available in the community of their choice.

16 (b) To accomplish the policies set forth in subsection (a), the secre-
17 tary, subject to the provisions of appropriation acts, shall annually propose
18 and implement a plan including, but not limited to, financing thereof
19 which shall: (1) Provide for an organized network of community services
20 for persons with developmental disabilities; (2) maximize the availability
21 of federal resources to supplement state and local funding for such sys-
22 tems; and (3) reduce reliance on separate, segregated settings in institu-
23 tions or the community for persons with developmental disabilities.

24 (c) The secretary shall report to the legislature the number of persons
25 with developmental disabilities eligible to receive community services and
26 shall make a progress report on the implementation of the annual plans
27 and the progress made to accomplish a comprehensive community serv-
28 ices system for persons with developmental disabilities.

29 (d) The secretary shall prepare and submit budget estimates for the
30 department of social and rehabilitation services to the division of the
31 budget and the legislature and shall establish and implement policies and
32 procedures within the programs and activities of the department so that
33 funds for state-level programs and activities for persons who are devel-
34 opmentally disabled are allocated between services delivered in institu-
35 tions and community services. *The secretary shall establish the method of*
36 *administering and disbursing funds in a manner so as to maximize to the*
37 *greatest extent possible the funds available for the delivery of services in*
38 *accordance with K.S.A. 2003 Supp. 39-1811 and amendments thereto.*

39 (e) Subject to the provisions of this act and appropriation acts, the
40 secretary shall administer and disburse funds to each community devel-
41 opmental disability organization for the coordination ~~and~~ *of the* provision
42 of community services. *Subject to the provisions of the developmental*
43 *disabilities reform act and appropriation acts, a community developmen-*

1 *tal disability organization which is a community developmental disability*
2 *organization on the effective date of this act and which is a community*
3 *service provider on the effective date of this act may continue as a com-*
4 *munity service provider until June 30, 2007, except that if the community*
5 *developmental disability organization withdraws from being a community*
6 *service provider prior to June 30, 2006, such community developmental*
7 *disability organization shall receive as an incentive for such action a grant*
8 *of money in an amount specified by appropriation act.*

9 (f) The secretary shall establish procedures and systems to evaluate
10 the results and outcomes of the implementation of this act to assure the
11 attainment of maximum quality and efficient delivery of community
12 services.

13 (g) *All policies of the secretary developed for the purpose of imple-*
14 *menting and administering the provisions of the developmental disabilities*
15 *reform act shall be adopted by the secretary as rules and regulations.*

16 (h) *For any county which on or after June 30, 2007, has not selected*
17 *a community developmental disability organization, the secretary shall*
18 *assign the county to a community developmental disability organization*
19 *area.*

20 Sec. 4. K.S.A. 39-1805 is hereby amended to read as follows: 39-
21 1805. (a) In addition to any other power and duty prescribed by law, and
22 subject to appropriations *and the provisions of the developmental disa-*
23 *bilities reform act*, a community developmental disability organization
24 shall have the power and duty to:

25 ~~(a)~~ (1) Directly or by subcontract, serve as a single point of application
26 or referral for services, and assist all persons with a developmental disa-
27 bility to have access to and an opportunity to participate in community
28 services, except in those circumstances in which the secretary determines,
29 subject to an immediate hearing before the district court located in the
30 county in which the person with a developmental disability resides, partici-
31 pation in community services is not the appropriate placement for such
32 person because such person is presently likely to cause harm to self or
33 others;

34 ~~(b)~~ (2) provide either directly or by subcontract, *intake and referral*
35 services to persons with a developmental disability, including, but not
36 limited to, *client* eligibility determination; explanation of available services
37 and service providers; case management services, if requested; assistance
38 in establishing new providers, if requested; *tier determination for differ-*
39 *ent levels of service; quality control and an annual review of services* and
40 advocacy for participation in community services;

41 ~~(c)~~ (3) organize a council of community members, consumers or their
42 family members or guardians, and community service providers, com-
43 posed of a majority of consumers or their family members or guardians

1 who shall meet not less than quarterly to address systems issues, includ-
2 ing, but not limited to, planning and implementation of services; and
3 develop and implement a method by which consumer complaints, inter-
4 agency and other intrasystem disputes are resolved;

5 ~~(d)~~ (4) provide, directly or by subcontract, information about ~~affiliate~~
6 ~~and referral~~ *community* services to persons with a developmental disa-
7 bility whose particular needs can be met in the community or through
8 government; and

9 ~~(e)~~ (5) ensure that ~~affiliates~~ *community service providers* have the
10 option to review referrals and waiting lists on a periodic basis to contact
11 potential consumers with information concerning their services.

12 (b) *On and after June 30, 2007, no community developmental disa-*
13 *bility organization shall provide treatment and care services for persons*
14 *with developmental disabilities.*

15 Sec. 5. K.S.A. 39-1806 is hereby amended to read as follows: 39-
16 1806. To carry out the provisions of this act, the secretary shall establish
17 after consultation with representatives of community developmental dis-
18 ability organizations ~~and affiliates thereof, and~~ *community service pro-*
19 *viders*, families and consumer advocates:

20 (a) A system of adequate and reasonable funding or reimbursement
21 for the delivery of community services that:

22 (1) For persons moving from institutions into the community, directs
23 funding to follow in an amount not less than that which is required to
24 reimburse community service providers for services as set forth in such
25 person's plan for transfer from the institution to community services in-
26 cluding expenses of relocation and initiation of services;

27 (2) consolidates federal and state funding sources;

28 (3) requires an independent, professional review of the rate struc-
29 tures on a biennial basis resulting in a recommendation to the legislature
30 regarding rate adjustments. Such recommendation shall be adequate to
31 support: (A) A system of employee compensation competitive with local
32 conditions; (B) training and technical support to attract and retain qual-
33 ified employees; (C) a quality assurance process which is responsive to
34 consumers' needs and which maintains the standards of quality service;
35 (D) risk management and insurance costs; and (E) program management
36 and coordination responsibilities;

37 (b) a system of quality assurance based on standards ~~set out pre-~~
38 ~~scribed~~ in rules and regulations adopted by the secretary which insures
39 effective service delivery, fiscal accountability and networking coopera-
40 tion and which allows community service providers to present evidence
41 of attainment of national accreditation or compliance with state or federal
42 laws or rules and regulations, or both, to indicate compliance with such
43 standards; ~~and~~

1 (c) a system of contracting that:

2 (1) Authorizes open and equitable negotiation between contracting
3 parties or their designated agent or agents;

4 (2) authorizes mediation by an independent entity chosen by the par-
5 ties to the contract in the event of contract disputes and if mediation is
6 not completed prior to the end of any existing contract, authorizes an
7 extension of time of such existing contract or entering into a temporary
8 contract;

9 (3) *on and after June 30, 2007, separates the functions of client intake*
10 *and service referral from client treatment and care services;*

11 (4) requires achievement and maintenance of community services
12 standards by community service providers;

13 ~~(4)~~(5) includes compensation for community services which meet the
14 individualized needs of persons with developmental disabilities for com-
15 munity services; and

16 ~~(5)~~(6) requires community developmental disability organizations to
17 contract with those ~~affiliates~~ *community service providers* from whom a
18 person with a developmental disability chooses services; *and*

19 (d) *a pilot program for peer review quality control and, to the extent*
20 *possible, a single case management system.*

21 Sec. 6. K.S.A. 2003 Supp. 39-1811 is hereby amended to read as
22 follows: 39-1811. (a) In carrying out the provisions of subsection (b)(2)
23 *and subsection (d)* of K.S.A. 39-1804, and amendments thereto, the sec-
24 retary shall ensure annually that all available state funds appropriated for
25 community developmental disability services are used as match or certi-
26 fied match to secure federal financial participation to the maximum extent
27 feasible.

28 (b) In addition, the secretary shall ensure that funding provided to
29 any community developmental disability organization or any affiliate
30 thereof by any taxing subdivision of the state is utilized as certified match
31 for federal financial participation to the maximum extent feasible. Any
32 public funding identified under this section shall be retained at the local
33 level and the authority for the use of such revenues shall be subject to
34 the statutory authority under which such funds are collected and ex-
35 pended and to any agreements entered into by the local authority with
36 the community service provider or community developmental disability
37 organization to which such funds have been granted, appropriated or
38 otherwise transferred. No community developmental disability organi-
39 zation or affiliate shall use any funding received pursuant to this section
40 to supplant funds previously received from any taxing subdivision of the
41 state. In the event that such funding provided by any taxing subdivision
42 of the state becomes unavailable for any reason, the state shall have no
43 obligation, except as otherwise provided by law, to provide funding in the

1 amount no longer available in order to retain the same level of federal
2 financial participation.

3 (c) All actions of the secretary to maximize the availability of federal
4 financial participation shall be in accordance with applicable federal stat-
5 utes and regulations.

6 (d) Except as otherwise provided in this section, revenue derived
7 from the maximization of federal financial participation shall be used ex-
8 clusively (1) to increase the reimbursement rate above the state fiscal year
9 2001 levels for the home and community based services developmental
10 disabilities waiver for day, residential, and individual and family supports,
11 provided on or after July 1, 2001, based on an apportionment agreed to
12 by the secretary and the community developmental disability organiza-
13 tions; or (2) for other medicaid reimbursable services for persons with
14 developmental disabilities based upon an agreement entered into by the
15 secretary and community developmental disability organizations by writ-
16 ten contract. The secretary shall not be required to utilize more than
17 \$15,000,000 in funding provided to community developmental disability
18 organizations and their affiliates by any taxing subdivision of the state as
19 match for additional federal financial participation in any state fiscal year.

20 (e) The secretary shall require that the council of community mem-
21 bers in each service area convene representatives of the community de-
22 velopmental disability organization, community service providers, fami-
23 lies, consumers and other community stakeholders to develop and
24 implement community capacity building plans annually, to improve the
25 quality and efficiency of service delivery. Each such local plan shall: (1)
26 Identify strengths within the local service area, including natural and com-
27 munity supports; (2) identify barriers to meeting the independence, pro-
28 ductivity, integration and inclusion goals of the developmental disabilities
29 reform act; and (3) identify key goals that will be addressed in the service
30 area to develop and maintain such community capacity.

31 (f) The secretary shall report to the legislature on or before the 15th
32 day of each regular session on the results of plans to maximize federal
33 financial participation and on the results of community capacity building
34 plans developed and implemented within each service area.

35 (g) This section shall be construed to be part of and supplemental to
36 the developmental disabilities reform act.

37 Sec. 7. K.S.A. 39-1801, 39-1803, 39-1804, 39-1805 and 39-1806 and
38 K.S.A. 2003 Supp. 39-1811 are hereby repealed.

39 Sec. 8. This act shall take effect and be in force from and after its
40 publication in the statute book.

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