

SENATE BILL No. 232

By Committee on Ways and Means

3-16

1 AN ACT concerning the developmental disabilities reform act; relating to
2 home and community based services; powers, duties and functions of
3 the secretary for aging and disability services and the secretary of
4 health and environment; amending K.S.A. 39-1801, 39-1802, 39-1805,
5 39-1806 and 39-1808 and K.S.A. 2016 Supp. 39-1803 and 39-1804 and
6 repealing the existing sections; also repealing K.S.A. 2016 Supp. 39-
7 1811.
8

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

10 New Section 1. (a) In any situation where the secretary for aging and
11 disability services deems it necessary or proper to delegate any
12 responsibility under the developmental disabilities reform act, such
13 responsibility may only be delegated to community developmental
14 disability organizations or affiliates thereof.

15 (b) The secretary of health and environment and the secretary for
16 aging and disability services shall terminate any request to the federal
17 centers for medicare and medicaid services to administer intellectual or
18 developmental disability services through a managed care delivery system
19 and shall cease administering intellectual or developmental disability
20 services through a managed care delivery system pursuant to a waiver
21 granted by the federal centers for medicare and medicaid services under
22 section 1115 or 1915 of the federal social security act, or any combination
23 thereof. Nothing in this section shall be construed to prevent the
24 department of health and environment or the Kansas department for aging
25 and disability services from administering intellectual or developmental
26 disability services pursuant to a waiver granted by the federal centers for
27 medicare and medicaid services pursuant to section 1915(c) of the federal
28 social security act, provided that such services are not administered
29 through a managed care delivery system.

30 (c) This section shall not impair or otherwise affect the validity of any
31 contract in existence on the effective date of this act between a managed
32 care organization and the department of health and environment to provide
33 state medicaid services.

34 (d) The secretary of health and environment shall submit to the
35 federal centers for medicare and medicaid services any waiver request,
36 waiver amendment or state plan amendment necessary to implement this

1 section.

2 (e) This section shall be part of and supplemental to the
3 developmental disabilities reform act.

4 New Sec. 2. (a) If any provision of the developmental disabilities
5 reform act or any application of the developmental disabilities reform act
6 to any person or circumstance is held invalid, such invalidity shall not
7 affect any other provisions or applications of the developmental
8 disabilities reform act that can be given effect without the invalid
9 provision or application. To this end, the provisions of the developmental
10 disabilities reform act are severable.

11 (b) This section shall be part of and supplemental to the
12 developmental disabilities reform act.

13 Sec. 3. K.S.A. 39-1801 is hereby amended to read as follows: 39-
14 1801. The provisions of K.S.A. 39-1801 through *39-1806 and 39-1808*
15 *through 39-1810 and K.S.A. 2016 Supp. 39-1811, section 1 and section 2,*
16 *and amendments thereto,* shall be known and may be cited as the
17 developmental disabilities reform act.

18 Sec. 4. K.S.A. 39-1802 is hereby amended to read as follows: 39-
19 1802. It is the policy of this state to assist persons who have a
20 developmental disability to have by:

21 ~~(a) Services and supports which allow persons opportunities of choice~~
22 ~~to increase their independence and productivity and integration and~~
23 ~~inclusion into the community~~ *Creating a person-centered system of*
24 *supports and services that promotes dignity and respect, provides an*
25 *alternative to institutional care, when appropriate, and provides persons*
26 *with opportunities for community integration;*

27 (b) *providing access to a range of services and supports appropriate to*
28 *such persons, including, but not limited to, employment supports, access to*
29 *health and mental health resources, community living, activities of*
30 *community integration and integrated transportation; and*

31 ~~(c) the same dignity and respect as persons who do not have a~~
32 ~~developmental disability~~ *balancing local control of the system with*
33 *strong partnerships between providers, state agencies, the Kansas*
34 *legislature and other governmental and community services;*

35 (d) *establishing a policy for the necessary and sufficient*
36 *compensation of services, supports and administration that: Provides*
37 *choices; allows providers to build capacity; promotes recruitment and*
38 *retention of a well-trained and qualified workforce sufficient to meet*
39 *system needs; incentivizes innovation; ensures quality services; and*
40 *allows for timely access to home and community based services; and*

41 (e) *regularly gathering data in a consistent manner to allow for the*
42 *measurement of consumer outcomes and comprehensive system*
43 *sustainability.*

1 Sec. 5. K.S.A. 2016 Supp. 39-1803 is hereby amended to read as
2 follows: 39-1803. As used in the developmental disabilities reform act:

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

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

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

13 (d) "Community developmental disability organization" means any
14 community facility for people with intellectual disability that is organized
15 pursuant to K.S.A. 19-4001 through 19-4015, and amendments thereto.

16 (e) "Community service provider" means *an entity licensed in*
17 *accordance with K.A.R. 30-63 et seq. that provides direct community*
18 *supports and services to persons with intellectual or developmental*
19 *disabilities and that is affiliated with a community developmental*
20 *disability organization or affiliate thereof.*

21 (f) "Developmental disability" means:

22 (1) Intellectual disability; or

23 (2) a severe, chronic disability, ~~which that~~:

24 (A) Is attributable to a mental or physical impairment, a combination
25 of mental and physical impairments or a condition ~~which that~~ has received
26 a dual diagnosis of intellectual disability and mental illness;

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

28 (C) is likely to continue indefinitely;

29 (D) results, ~~in the case of a person five years of age or older,~~ in a
30 substantial limitation in three or more of the following areas of major life
31 functioning: Self-care, receptive and expressive language development and
32 use, learning and adapting, mobility, self-direction, capacity for
33 independent living and economic self-sufficiency;

34 (E) reflects a need for a combination and sequence of special
35 interdisciplinary or generic care, treatment or other services ~~which that~~ are
36 lifelong, or extended in duration and are individually planned and
37 coordinated; and

38 (F) does not include individuals who are solely and severely
39 emotionally disturbed or seriously or persistently mentally ill or have
40 disabilities solely as a result of the infirmities of aging.

41 (g) "Institution" means state institution for people with intellectual
42 disability as defined by ~~subsection (e) of~~ K.S.A. 76-12b01(c), and
43 amendments thereto, or intermediate care facility for people with

1 intellectual disabilities of nine beds or more as defined by ~~subsection (a)~~
2 ~~(4)~~ of K.S.A. 39-923(a)(4), and amendments thereto.

3 (h) "Intellectual disability" means substantial limitations in present
4 functioning that is manifested during the period from birth to age 18 years
5 and is characterized by significantly subaverage intellectual functioning
6 existing concurrently with deficits in adaptive behavior including related
7 limitations in two or more of the following applicable adaptive skill areas:
8 Communication, self-care, home living, social skills, community use, self-
9 direction, health and safety, functional academics, leisure and work.

10 (i) "Secretary" means the secretary for aging and disability services.

11 Sec. 6. K.S.A. 2016 Supp. 39-1804 is hereby amended to read as
12 follows: 39-1804. (a) Except as otherwise specifically provided in this act
13 and subject to appropriations of federal and state funds, the secretary, after
14 consultation with representatives of community developmental disability
15 organizations, community service providers, families and consumer
16 advocates, shall implement and administer the provisions of the
17 developmental disabilities reform act in accordance with the following
18 policies. Persons with developmental disabilities shall:

19 (1) Be provided assistance to obtain food, housing, clothing and
20 medical care; protection from abuse, neglect and exploitation; and a range
21 of services and supports which assist in the determination of individual
22 needs; and

23 (2) receive assistance *from community developmental disability*
24 *organizations and affiliates thereof* in determining their needs; be provided
25 information about all service options available to meet those needs; have
26 *local* coordination of services delivered; be assisted and supported in
27 living with their families, or independently; be assisted in finding
28 transportation to support access to the community; and receive
29 individually planned habilitation, education, training, employment and
30 recreation subject to supports and services available in the community of
31 their choice.

32 (b) To accomplish the policies set forth in subsection (a), the
33 secretary, subject to the provisions of appropriation acts, shall annually
34 propose and implement a plan including, but not limited to, financing
35 thereof which shall: (1) Provide for an organized network of community
36 services for persons with developmental disabilities *that shall be*
37 *developed and managed by community developmental disability*
38 *organizations*; (2) maximize the availability of federal resources to
39 supplement state and local funding for such systems; and (3) reduce
40 reliance on separate, segregated settings in institutions or the community
41 for persons with developmental disabilities.

42 (c) The secretary shall report to the legislature the number of persons
43 with developmental disabilities eligible to receive community services,

1 *including those who are waiting to receive services*, and shall make a
 2 progress report on the implementation of the annual plans and the progress
 3 made to accomplish a comprehensive community services system for
 4 persons with developmental disabilities.

5 (d) The secretary shall prepare and submit budget estimates for the
 6 Kansas department for aging and disability services to the division of the
 7 budget and the legislature and shall establish and implement policies and
 8 procedures within the programs and activities of the department so that
 9 funds for state-level programs and activities for persons who are
 10 developmentally disabled are allocated between services delivered in
 11 institutions and community services, *including services for those persons*
 12 *who may not otherwise be eligible for institutional care.*

13 (e) Subject to the provisions of this act and appropriation acts, the
 14 secretary shall administer and disburse funds to each community
 15 developmental disability organization for the coordination and provision of
 16 community services.

17 (f) The secretary shall establish procedures and systems to evaluate
 18 the results and outcomes of the implementation of this act to assure the
 19 attainment of maximum quality and efficient delivery of community
 20 services.

21 Sec. 7. K.S.A. 39-1805 is hereby amended to read as follows: 39-
 22 1805. In addition to any other power and duty prescribed by law, and
 23 subject to appropriations, a community developmental disability
 24 organization shall have the power and duty to:

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

34 (b) *authorize access to and management of waiting lists for all*
 35 *intellectual or developmental disability resources;*

36 (c) provide either directly or by subcontract, services to persons with
 37 a developmental disability, including, but not limited to:; Eligibility
 38 determination; explanation of available services and service providers;
 39 *access to* case management services, if requested; *access to enhanced*
 40 *funding to provide extraordinary support needs, if necessary;* assistance in
 41 establishing new providers, if requested; and advocacy for participation in
 42 community services;

43 (e)(d) organize a council of community members, consumers-~~or~~ *and*

1 their family members or guardians, and community service providers,
 2 composed of a majority of consumers ~~or~~ and their family members or
 3 guardians who shall meet not less than quarterly to address systems issues,
 4 including, but not limited to, planning and implementation of services; and
 5 develop and implement a method by which consumer complaints,
 6 interagency and other intrasystem disputes are resolved;

7 ~~(d)~~(e) provide, directly or by subcontract, information about ~~affiliate~~
 8 ~~and referral~~ all services available to persons with a developmental
 9 disability whose particular needs can be met in the community or ~~through~~
 10 ~~government~~ otherwise; and

11 ~~(e)~~(f) ensure that affiliates have the option to review referrals and
 12 waiting lists on a periodic basis to contact potential consumers with
 13 information concerning their services, *subject to permission from*
 14 *individual consumers and applicable state and federal laws regarding the*
 15 *preservation and protection of personal medical records.*

16 Sec. 8. K.S.A. 39-1806 is hereby amended to read as follows: 39-
 17 1806. To carry out the provisions of this act, ~~the secretary shall establish~~
 18 ~~after consultation with representatives of community developmental~~
 19 ~~disability organizations and affiliates thereof, and families and consumer~~
 20 ~~advocates:~~

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

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

28 ~~(2) consolidates federal and state funding sources;~~

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

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

1 ~~(e) 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~~
5 ~~parties 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) requires achievement and maintenance of community services~~
10 ~~standards by community service providers;~~

11 ~~(4) includes compensation for community services which meet the~~
12 ~~individualized needs of persons with developmental disabilities for~~
13 ~~community services; and~~

14 ~~(5) requires community developmental disability organizations to~~
15 ~~contract with those affiliates from whom a person with a developmental~~
16 ~~disability chooses services.~~

17 *(a) The secretary, in consultation and cooperation with other state*
18 *agencies or officials, as necessary, shall establish reimbursement rates for*
19 *the delivery of home and community based services to intellectually and*
20 *developmentally disabled persons as follows:*

21 *(1) (A) For the fiscal year ending June 30, 2018, such reimbursement*
22 *rates shall be equal to fiscal year 2015 reimbursement rates for home and*
23 *community based services plus 5%;*

24 *(B) for the fiscal year ending June 30, 2019, such reimbursement*
25 *rates shall be equal to fiscal year 2018 reimbursement rates for home and*
26 *community based services plus 5%; and*

27 *(C) for the fiscal year ending June 30, 2020, such reimbursement*
28 *rates shall be equal to fiscal year 2019 reimbursement rates for home and*
29 *community based services plus 5%; and*

30 *(2) beginning with the fiscal year ending June 30, 2021, and each*
31 *fiscal year thereafter, such reimbursement rates shall be equal to the*
32 *reimbursement rates for home and community based services during the*
33 *immediately preceding fiscal year plus the greater of 2% or the annual*
34 *percentage increase in the consumer price index for urban wage earners*
35 *and clerical workers for the immediately preceding calendar year as*
36 *published by the United States department of labor.*

37 *(b) The secretary shall establish, in consultation with representatives*
38 *of community service providers, families and consumer advocates:*

39 *(1) A system of quality assurance based on standards established in*
40 *rules and regulations adopted by the secretary that ensures effective*
41 *service delivery, fiscal accountability and networking cooperation that*
42 *allows community service providers to present evidence of relevant*
43 *national accreditation or compliance with applicable state or federal laws*

1 *or rules and regulations to indicate compliance with such standards; and*

2 *(2) a system of contracting that:*

3 *(A) Authorizes open and equitable negotiation between contracting*
4 *parties or the parties' designated agents;*

5 *(B) authorizes mediation by an independent entity chosen by the*
6 *parties to the contract in the event of contract disputes, and if mediation is*
7 *not completed prior to the end of any existing contract, authorizes*
8 *extending such existing contract or executing a temporary contract;*

9 *(C) includes sufficient funding for community services that meet the*
10 *individualized needs of persons with developmental disabilities for*
11 *community services, including extraordinary needs; and*

12 *(D) requires community developmental disability organizations to*
13 *contract with qualified service providers and to create and sustain a*
14 *network of qualified service providers.*

15 Sec. 9. K.S.A. 39-1808 is hereby amended to read as follows: 39-
16 1808. Nothing in this act shall authorize the secretary to require a
17 community service provider to make expenditures not in compliance with
18 contracts or agreements entered into by the governing board of such
19 provider *or to serve persons beyond the community service provider's*
20 *capacity or capability.*

21 Sec. 10. K.S.A. 39-1801, 39-1802, 39-1805, 39-1806 and 39-1808
22 and K.S.A. 2016 Supp. 39-1803, 39-1804 and 39-1811 are hereby
23 repealed.

24 Sec. 11. This act shall take effect and be in force from and after July
25 1, 2018, and its publication in the statute book.