

LEGISLATIVE BILL 297

Approved by the Governor April 13, 2004

Introduced by Hartnett, 45; Byars, 30

AN ACT relating to the Developmental Disabilities Services Act; to amend sections 83-1202.01, 83-1209, 83-1216, 83-1217, 83-1219, and 83-1224, Reissue Revised Statutes of Nebraska; to restate findings and intent; to provide and change powers and duties; to change provisions relating to funding for specialized services and judicial review and enforcement of certain orders under the act; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 83-1202.01, Reissue Revised Statutes of Nebraska, is amended to read:

83-1202.01. The Legislature finds that present state appropriations on behalf of community-based services to persons with developmental disabilities are ~~twenty-nine million dollars below the amount which has been identified by the Department of Public Institutions as being the minimum necessary~~ inadequate to pay the reasonable costs of providing such services to all Nebraskans who are eligible to receive them. ~~Of that total, eighteen million dollars is required to bring services to an estimated one thousand one hundred fifty-five persons who are presently waiting for services and eleven million dollars is required to pay employees of community-based providers of services on a parity with employees performing essentially the same tasks in state institutions.~~

~~The~~ It is the intent of the Legislature also finds that increasing the present appropriation by the required amount in a single budget period is not feasible but that the state must pursue full funding of community-based developmental disability programs in a reasonable timeframe. Although Nebraska is presently committed to the goal of providing services to all eligible persons by July 1, 1996, and that the Legislature finds that a more realistic goal is July 1, 2000, and hereby commits commit itself and the state to attaining that the goal of providing services to all eligible persons by July 1, 2010.

Sec. 2. 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 as developed in subsection (3) of section 83-1216, (f) providing information and referral services to persons with developmental disabilities and their families, ~~(f) coordinating local services networks,~~ (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;

(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 used by specialized programs in the state;

(4) Ensure maximum quality of services by (a) developing a due process mechanism for resolution of disputes, (b) coordinating the development of 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. ~~6000~~ 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. 3. Section 83-1216, Reissue Revised Statutes of Nebraska, is amended to read:

83-1216. (1) Beginning July 1, 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 plan in subsection (3) of this section.

(2) ~~On or after July 1, 1995, the~~ The department shall provide directly or by contract service coordination to ~~each person~~ Nebraska residents found to be eligible for specialized services.

(3) It is the intent of the Legislature that ~~beginning by~~ beginning by July 1, ~~2000~~ 2010, all persons determined to be eligible for services shall receive services in accordance with the act. The department shall establish a workgroup including representatives from the State Department of Education, the Advisory Committee on Developmental Disabilities, the Developmental Disabilities Planning Council, consumers, families, consumer advocacy organizations, developmental disabilities service providers, and other interested parties. On or before December 1, 1991, 2004, the department Department of Health and Human Services, in consultation with the workgroup, shall submit a report to the Legislature and the Governor as to the number of persons anticipated to be served, what services would be needed, how the services would be developed, and the cost of serving all eligible persons for the development and provision of needed specialized services to implement such intent. Such plan shall provide for, but shall not be limited to: (a) The adequate and equitable distribution of available funding for the provision of specialized services pursuant to an objective assessment process; (b) the incremental statewide implementation of such process for the provision of specialized services; and (c) the projected number of persons who will likely become eligible for specialized services under the act during the next calendar year. The workgroup shall terminate upon submission of such plan or on December 1, 2004, whichever occurs earlier.

(4) It is the intent of the Legislature that the ~~Department of Health and Human Services~~ department take all possible steps to maximize funding in order to implement subsections (1) and (2) of this section prior to the date these subsections become entitlements. ~~It is the intent of the Legislature that~~ All Nebraska residents eligible for funding for specialized services 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 of Health and Human Services department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies be utilized to the maximum extent possible.

Sec. 4. Section 83-1217, Reissue Revised Statutes of Nebraska, is amended to read:

83-1217. ~~After July 1, 1992, the~~ The department shall contract for specialized services and shall only contract with specialized programs which meet certification and accreditation requirements. In order to be certified, each program shall:

- (1) Have an internal quality assurance process;
- (2) Have a program evaluation component;
- (3) Have a complaint mechanism for persons with developmental disabilities and their families;
- (4) Have a process to ensure direct and open communication with the department;
- (5) Develop, implement, and regularly evaluate a plan to ensure retention of quality employees and prevent staff turnover;
- (6) Have measures to enhance staff training and development;

(7) ~~By July 1, 1992, be~~ Be governed by a local governing board or have an advisory committee, the membership of which consists of (a) county commissioners or other locally elected officials, (b) persons with developmental disabilities or members of their families, and (c) persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities. At least one-third of the membership shall be persons with developmental disabilities or members of their families. No more than one-third of the membership shall be elected officials, and no more than one-third of the membership shall be persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities;

(8) Meet accreditation standards developed by the department;

(9) Require a criminal history record information check of all employees hired on or after September 13, 1997, who work directly with clients receiving services and who are not licensed or certified as members of their profession; and

(10) Meet any other certification requirements developed by the department to further the purposes of the Developmental Disabilities Services Act.

Sec. 5. Section 83-1219, Reissue Revised Statutes of Nebraska, is amended to read:

83-1219. A person with developmental disabilities or his or her parent or guardian may initiate a hearing on matters related to the initiation, change, or termination of or the refusal to initiate, change, or terminate the determination of eligibility for specialized services or the evaluation or placement of the person or the provision of specialized services or records relating thereto. A copy of the procedures specified in rules and regulations of the department for complaints and hearings under this section shall be provided to such persons who are receiving specialized services ~~as of September 6, 1991, or their parents or guardians. and thereafter upon initial consideration of the provision of services.~~ The hearing shall be initiated by filing a petition with the department.

Sec. 6. Section 83-1224, Reissue Revised Statutes of Nebraska, is amended to read:

83-1224. (1) Any party aggrieved by the findings, conclusions, or final decision and order of the hearing officer shall be entitled to judicial review under this section. Any party of record also may seek enforcement of the final decision and order of the hearing officer pursuant to this section.

(2) Proceedings for judicial review shall be instituted by filing a petition in the district court of ~~the county of residence of the person with developmental disabilities~~ Lancaster County within thirty days after service of the final decision and order on the party seeking such review. All parties of record shall be made parties to the proceedings. The court, in its discretion, may permit other interested parties to intervene.

(3) The filing of a petition for judicial review to such district court shall operate to stay the enforcement of the final decision and order of the hearing officer. While judicial proceedings are pending in district court and unless the parties otherwise agree, the person with developmental disabilities shall remain in his or her current placement. If the health or safety of the person with developmental disabilities or of other persons would be endangered by delaying a change in placement, the service provider may make such change without prejudice to the rights of any party.

(4) Within ~~fifteen~~ thirty days after receiving notification that a petition for judicial review has been filed or, if good cause is shown, within such further time as the court may allow, the department shall prepare and transmit to the court a certified transcript of the proceedings before the hearing officer. ~~Any deposition or exhibit introduced before the hearing officer shall, upon demand of the party who introduced such deposition or exhibit, be returned to such party for use in the review proceedings.~~

(5) Judicial review shall be ~~conducted by the court without a jury~~ heard de novo on the record. The court shall receive the records of the administrative proceedings, ~~hear additional evidence at the request of a party,~~ base its decision on the preponderance of the evidence, and grant such relief as the court determines is appropriate. The district court may affirm, reverse, or modify the decision of the hearing officer, or remand the case to the hearing officer for further proceedings, including the receipt of additional evidence, for good cause shown.

(6) An aggrieved party may secure a review of any final judgment of the district court under this section by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(7) When no petition for judicial review or other civil action is

filed within thirty days after service of the final decision and order on all of the parties, the hearing officer's final decision and order shall become effective. Proceedings for enforcement of a hearing officer's final decision and order shall be instituted by filing a petition for appropriate relief in the district court of ~~the county of residence of the person with developmental disabilities~~ Lancaster County within one year after the date of the hearing officer's final decision and order.

Sec. 7. Original sections 83-1202.01, 83-1209, 83-1216, 83-1217, 83-1219, and 83-1224, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.