

E AND R AMENDMENTS TO LB 333

Introduced by Wishart, 27, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 71-1107, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 71-1107 Developmental disability means a severe, chronic disability,
6 including an intellectual disability, other than mental illness, which:
7 an intellectual disability or a severe chronic cognitive impairment,
8 other than mental illness, that is manifested before the age of twenty-
9 two years and is likely to continue indefinitely.

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

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

14 (3) Is likely to continue indefinitely;

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

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

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

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

26 (5) Reflects the individual's need for a combination and sequence of
27 special, interdisciplinary, or generic services, individualized support,

1 or other forms of assistance that are of lifelong or extended duration
2 and are individually planned and coordinated.

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

10 Sec. 2. Section 71-1108.01, Revised Statutes Cumulative Supplement,
11 2016, is amended to read:

12 71-1108.01 Intellectual disability means ~~a state of~~ significantly
13 subaverage general intellectual functioning which is associated with
14 significant impairments in adaptive functioning manifested before the age
15 of twenty-two years. Significant subaverage general intellectual
16 functioning shall refer to a score of seventy or below on a properly
17 administered and valid intelligence quotient test.

18 Sec. 3. Section 83-1201, Revised Statutes Cumulative Supplement,
19 2016, is amended to read:

20 83-1201 Sections 83-1201 to 83-1227 and section 8 of this act shall
21 be known and may be cited as the Developmental Disabilities Services Act.

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

24 83-1202 It is the intent of the Legislature that:

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

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

30 (3) All persons with developmental disabilities shall have a right,
31 ~~to the maximum extent possible,~~ to live, work, and recreate with people

1 who are not disabled;

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

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

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

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

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

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

31 Sec. 5. Section 83-1209, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 83-1209 To carry out the policies and purposes of the Developmental
3 Disabilities Services Act, the director shall:

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

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

28 (3) Ensure specialized services which are efficient and
29 individualized by (a) developing a written policy which ensures the
30 adequate and equitable distribution of fiscal resources based upon a
31 consistent rationale for reimbursement that allows funding to follow

1 service recipients as their service needs change and which also includes
2 a plan for funding shortfalls and (b) administering all state and federal
3 funds as may be allowed by law;

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

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

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

22 83-1212.01 (1) There is hereby created the Advisory Committee on
23 Developmental Disabilities. The advisory committee shall consist of a
24 representative of a statewide advocacy organization for persons with
25 developmental disabilities and their families, a representative of
26 Nebraska's designated protection and advocacy organization, a
27 representative of the Nebraska Planning Council on Developmental
28 Disabilities, a representative of the University Center for Excellence in
29 Developmental Disability Education, Research and Service as defined in
30 section 68-1114, and not more than fifteen additional members. ~~At ,~~ ~~at~~
31 least fifty-one percent of the members ~~one-third of whom~~ shall be persons

1 with developmental disabilities and family members, ~~at least one-third~~
2 ~~of whom shall be families of persons with developmental disabilities, and~~
3 ~~no more than one-third of whom shall be elected officials or interested~~
4 ~~community persons.~~

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

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

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

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

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

30 83-1216 (1) The department shall administer the medicaid home and
31 community-based services waivers upon application approval by the federal

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

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

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

16 ~~(3) (4) It is the intent of the Legislature that the department take~~
17 ~~all possible steps to maximize federal funding in order to implement~~
18 ~~subsections (1) and (2) of this section prior to the date these~~
19 ~~subsections become entitlements. All Nebraska residents eligible for~~
20 ~~funding for specialized services through the department under the~~
21 ~~Developmental Disabilities Services Act shall apply for and accept any~~
22 ~~federal medicaid benefits for which they may be eligible and benefits~~
23 ~~from other funding sources within the department, the State Department of~~
24 ~~Education, specifically including the Division of Rehabilitation~~
25 ~~Services, and other agencies to the maximum extent possible.~~

26 (4) The priorities for funding under this section are as follows:

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

31 (b) The second funding priority of the state in responding to the

1 needs of persons with developmental disabilities shall be for persons
2 that have resided in an institutional setting for a period of at least
3 twelve consecutive months and who are requesting community-based
4 services;

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

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

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

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

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

31 (c) The quality management and improvement plan shall reflect

1 national best practice for services for persons with developmental
2 disabilities and their families as determined by the department with the
3 assistance of the advisory committee.

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

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

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

31 (3) The department shall issue an implementation report regarding

1 the quality management and improvement plan and publish it on the web
2 site of the department and provide it electronically to the Legislature
3 on or before December 30, 2017, and March 30, 2018. Beginning in 2018,
4 the department shall annually provide a report regarding outcomes,
5 improvement priorities, and activities of the department during the
6 previous fiscal year. The report shall be published on the web site of
7 the department and shall be provided electronically to the Legislature on
8 or before September 30.

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

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

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

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

20 Sec. 13. The following section is outright repealed: Section
21 83-1213, Reissue Revised Statutes of Nebraska.

22 Sec. 14. The following section is outright repealed: Section
23 71-1113, Reissue Revised Statutes of Nebraska.

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

26 2. On page 1, strike beginning with "assistance" in line 1 through
27 line 4 and insert "health and welfare; to amend sections 83-1202,
28 83-1209, 83-1212.01, and 83-1216, Reissue Revised Statutes of Nebraska,
29 and sections 71-1107, 71-1108.01, and 83-1201, Revised Statutes
30 Cumulative Supplement, 2016; to provide, change, and eliminate
31 definitions for the Developmental Disabilities Court-Ordered Custody Act;

1 to restate legislative intent; to change powers and duties of the
2 Director of Developmental Disabilities of the Division of Developmental
3 Disabilities, of such division, and the Advisory Committee on
4 Developmental Disabilities; to change the membership of the advisory
5 committee; to change provisions relating to eligibility for services and
6 funding for services under the Developmental Disabilities Services Act;
7 to provide for a quality management and improvement plan; to eliminate
8 quality review teams; to harmonize provisions; to provide operative
9 dates; to repeal the original sections; to outright repeal sections
10 71-1113 and 83-1213, Reissue Revised Statutes of Nebraska; and to declare
11 an emergency."