

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 333

FINAL READING

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

Read first time January 12, 2017

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to public health and welfare; to amend
2 sections 83-1202, 83-1209, 83-1212.01, and 83-1216, Reissue Revised
3 Statutes of Nebraska, and sections 71-1107, 71-1108.01, and 83-1201,
4 Revised Statutes Cumulative Supplement, 2016; to provide, change,
5 and eliminate definitions for the Developmental Disabilities Court-
6 Ordered Custody Act; to restate legislative intent; to change powers
7 and duties of the Director of Developmental Disabilities of the
8 Division of Developmental Disabilities, of such division, and the
9 Advisory Committee on Developmental Disabilities; to change the
10 membership of the advisory committee; to change provisions relating
11 to eligibility for services and funding for services under the
12 Developmental Disabilities Services Act; to provide for a quality
13 management and improvement plan; to eliminate quality review teams;
14 to harmonize provisions; to provide operative dates; to repeal the
15 original sections; to outright repeal sections 71-1113 and 83-1213,
16 Reissue Revised Statutes of Nebraska; and to declare an emergency.
17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-1107, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 71-1107 Developmental disability means a severe, chronic disability,
4 including an intellectual disability, other than mental illness, which:
5 an intellectual disability or a severe chronic cognitive impairment,
6 other than mental illness, that is manifested before the age of twenty-
7 two years and is likely to continue indefinitely.

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

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

12 (3) Is likely to continue indefinitely;

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

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

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

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

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

28 An individual from birth through the age of nine years who has a
29 substantial developmental delay or specific congenital or acquired
30 condition may be considered to have a developmental disability without
31 manifesting substantial functional limitations in three or more of the

1 areas of adaptive functioning described in subdivision (4) of this
2 section if the individual, without services and support, has a high
3 probability of manifesting such limitations in such areas later in life.

4 Sec. 2. Section 71-1108.01, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 71-1108.01 Intellectual disability means ~~a state of~~ significantly
7 subaverage general intellectual functioning which is associated with
8 significant impairments in adaptive functioning manifested before the age
9 of twenty-two years. Significant subaverage general intellectual
10 functioning shall refer to a score of seventy or below on a properly
11 administered and valid intelligence quotient test.

12 Sec. 3. Section 83-1201, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 83-1201 Sections 83-1201 to 83-1227 and section 8 of this act shall
15 be known and may be cited as the Developmental Disabilities Services Act.

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

18 83-1202 It is the intent of the Legislature that:

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

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

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

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

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

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

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

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

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

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

27 83-1209 To carry out the policies and purposes of the Developmental
28 Disabilities Services Act, the director shall:

29 (1) Ensure effective management by (a) determining whether
30 applicants are eligible for specialized services, (b) authorizing service
31 delivery for eligible persons, (c) ensuring that services are available,

1 accessible, and coordinated, (d) ensuring that eligible persons have
2 their needs assessed by a team process, have individual program plans
3 developed by a team process to address assessed needs, which plans
4 incorporate the input of the individual and the family, and have services
5 delivered in accordance with the program plan, (e) having the amount of
6 funding for specialized services determined by an objective assessment
7 process, (f) providing information and referral services to persons with
8 developmental disabilities and their families, (g) promoting the
9 development of pilot projects of high quality, cost-efficient services
10 provided by specialized programs, and (h) administering the Beatrice
11 State Developmental Center;

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

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

29 (4) Ensure maximum quality of services by (a) developing a due
30 process mechanism for resolution of disputes, (b) coordinating the
31 development and implementation of a quality management and improvement

1 ~~plan as described in section 8 of this act review teams designed to~~
2 ~~enhance the quality of specialized services,~~ (c) developing certification
3 and accreditation requirements for service providers, (d) providing
4 technical assistance to local service providers, and (e) providing
5 eligible persons, their families, and the designated protection and
6 advocacy system authorized pursuant to the Developmental Disabilities
7 Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with
8 copies of all reports resulting from surveys of providers of specialized
9 services conducted as part of the certification and accreditation
10 process; and

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

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

16 83-1212.01 (1) There is hereby created the Advisory Committee on
17 Developmental Disabilities. The advisory committee shall consist of a
18 representative of a statewide advocacy organization for persons with
19 developmental disabilities and their families, a representative of
20 Nebraska's designated protection and advocacy organization, a
21 representative of the Nebraska Planning Council on Developmental
22 Disabilities, a representative of the University Center for Excellence in
23 Developmental Disability Education, Research and Service as defined in
24 section 68-1114, and not more than fifteen additional members. At ~~at~~
25 least fifty-one percent of the members ~~one-third of whom~~ shall be persons
26 with developmental disabilities and family members ~~at least one-third~~
27 ~~of whom shall be families~~ of persons with developmental disabilities, ~~and~~
28 ~~no more than one-third of whom shall be elected officials or interested~~
29 ~~community persons.~~

30 (2) The members shall be appointed by the Governor for staggered
31 terms of three years. Any vacancy shall be filled by the Governor for the

1 remainder of the term. One of the members shall be designated as
2 chairperson by the Governor. Members shall be reimbursed for their actual
3 and necessary expenses as provided in sections 81-1174 to 81-1177.

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

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

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

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

24 83-1216 (1) The department shall administer the medicaid home and
25 community-based services waivers upon application approval by the federal
26 Centers for Medicare and Medicaid Services. Beginning July 1, ~~2019~~ 1995,
27 persons determined to be eligible for specialized services who on or
28 after September 6, 1993, graduate from high school, reach the age of
29 twenty-one years, or are currently receiving services shall receive
30 services in accordance with the Developmental Disabilities Services Act.
31 The amount of funding for any person receiving services shall be

1 determined using an objective assessment process developed by the
2 department and approved by the federal Centers for Medicare and Medicaid
3 Services plan in subsection (3) of this section.

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

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

10 ~~(3) (4) It is the intent of the Legislature that the department take~~
11 ~~all possible steps to maximize federal funding in order to implement~~
12 ~~subsections (1) and (2) of this section prior to the date these~~
13 ~~subsections become entitlements. All Nebraska residents eligible for~~
14 ~~funding for specialized services through the department under the~~
15 ~~Developmental Disabilities Services Act shall apply for and accept any~~
16 ~~federal medicaid benefits for which they may be eligible and benefits~~
17 ~~from other funding sources within the department, the State Department of~~
18 ~~Education, specifically including the Division of Rehabilitation~~
19 ~~Services, and other agencies to the maximum extent possible.~~

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

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

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

31 (c) The third funding priority of the state in responding to the

1 needs of persons with developmental disabilities shall be for serving
2 wards of the department or persons placed under the supervision of the
3 Office of Probation Administration by the Nebraska court system who are
4 transitioning upon age nineteen with no other alternatives as determined
5 by the department to support residential services necessary to pursue
6 economic self-sufficiency;

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

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

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

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

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

30 (d) The quality management and improvement plan shall assess,
31 through both quantitative and qualitative means, (i) the quality of

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

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

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

26 (3) The department shall issue an implementation report regarding
27 the quality management and improvement plan and publish it on the web
28 site of the department and provide it electronically to the Legislature
29 on or before December 30, 2017, and March 30, 2018. Beginning in 2018,
30 the department shall annually provide a report regarding outcomes,
31 improvement priorities, and activities of the department during the

1 previous fiscal year. The report shall be published on the web site of
2 the department and shall be provided electronically to the Legislature on
3 or before September 30.

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

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

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

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

15 Sec. 13. The following section is outright repealed: Section
16 83-1213, Reissue Revised Statutes of Nebraska.

17 Sec. 14. The following section is outright repealed: Section
18 71-1113, Reissue Revised Statutes of Nebraska.

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