

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 5, 2021  
To: Joint Standing Committee on Health & Human Services  
From: Anna Broome, Legislative Analyst

### **LD 1490 An Act To Improve Home and Community-base Services for Adults with Intellectual Disabilities, Autism, Brain Injury and Other Related Conditions**

**SUMMARY:** This bill amends the system of care for adults with intellectual disabilities, autism, brain injury and other related conditions and the requirements of the two year plan submitted by the department, in the following ways.

1. It renames "system of care" the "system of services and support."
2. It amends the principles guiding delivery of services by providers of services and the Department of Health and Human Services in the rights of recipients §5610 to add the principle that inadequate reimbursement rates, extended stays on waiting lists and service definitions that do not meet the needs of persons who have significant need for significant levels of support are incompatible with the other goals guiding delivery of services. (Sec. 14 of the bill)
3. It requires DHHS to post at least monthly on the department's website, for each home and community-based services waiver in which the State participates, data on how many persons were on a waiting list for services on the first day of that month, including, for prioritized waiting lists, how many persons were in each prioritization category.
4. It requires DHHS to post at least quarterly on the department's website, for each home and community-based services waiver in which the State participates, data on median time from application for waiver services to approval by the department for receipt of the same waiver services, using a statistically valid methodology.
5. It requires that the Commissioner of Health and Human Services' plan include quality metrics and data collection developed with input from across stakeholder groups.
6. It requires that the commissioner's plan include participation of persons with intellectual disabilities, autism, brain injury and other related conditions; direct care workers; and persons from immigrant and indigenous populations. It requires the plan to describe how the commissioner achieved the required inclusion and to describe the feedback received from participants in each required group.

7. It requires that the commissioner's plan project whether there will be any waiting lists for home and community-based services waivers over the next 4 years, how many people are projected to be on those waiting lists, how many people are projected to be in each prioritization category of prioritized waiting lists and how many people would be in a different prioritization category if they were not currently living with a parent.
8. It requires that the commissioner's plan project the budgetary impact of eliminating any waiting lists for home and community-based services if such waiting lists are projected to exist over the next 4 years, including detailing any anticipated savings from release of resources of a less expensive service when a person transfers to another service.
9. It allows the commissioner's plan to consider how home and community-based services may be redesigned to promote self-determination by persons with intellectual disabilities or autism, to promote less restrictive placements over more restrictive placements and to promote competitive integrated employment by persons with intellectual disabilities or autism.
10. It authorizes the joint standing committee of the Legislature having jurisdiction over health and human services matters to introduce legislation in each regular session of the Legislature.
11. It requires DHHS to submit a waiver renewal or waiver amendment for home and community-based services that separates community support into tiered services as described in a draft waiver renewal for home and community-based services. (Sec. 15)
12. It requires the department to submit a waiver renewal or waiver amendment for Sections 21 and 29 home and community-based services to add a "behavioral add-on" for persons who otherwise would be denied access to community support or whose needs would not otherwise be met by the community support service structure. (Sec. 16)

#### **ISSUES FROM TESTIMONY:**

- Proponents: the bill adds to the reporting requirements that are already required in statute, including to the biennial plan that is already required. Includes waiver recipients in stakeholder groups in statute reflecting what the department is currently doing. Updates language to be more respectful.
- MDDC requests adding shortest and longest wait time as well as medians to applications for waiver services in Sec. 6 of the bill.
- DRM requests inclusion of brain injury and other related conditions in all instances that refer to ID and autism.

- Sec. 15 has already been done by DHHS.
- Sec. 16 requires a behavioral add on (LD 1574).
- DHHS opposed: DHHS publishes waitlist data quarterly and will continue to do so. Also develop performance measures to meet federally required assurances and reports those measures in publicly available reports to CMS. Creates new reporting burdens for providers and won't improve the system. Sec. 15 is no longer necessary. Sec. 16 – September report recommending a value-based payment approach.

## **FISCAL IMPACT:**

Not yet received from OFPR.

### **34-B, §5003-A. System of care for clients with intellectual disabilities or autism**

**1. System of care.** The Legislature declares that the system of care through which the State provides services to and programs for persons with intellectual disabilities or autism must be designed to protect the integrity of the legal and human rights of these persons and to meet their needs consistent with the principles guiding delivery of services as set forth in section 5610.

**2. Responsibilities of the department.** To facilitate the development of a system that meets the needs of persons with intellectual disabilities or autism, the commissioner shall:

- Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to persons with intellectual disabilities or autism that is consistent with the principles guiding delivery of services, as set forth in section 5610, through appropriate personal planning offered to persons served by the department in accordance with section 5470-B;
- Identify the needs and desires of persons with intellectual disabilities or autism through appropriate personal planning and record any unmet needs of persons served or eligible for service by the department for development of budget requests to the Governor that are adequate to meet such needs;
- Provide programs, insofar as resources permit, for appropriate services and supports to persons with intellectual disabilities or autism regardless of age, severity of need or ability to pay;
- Support the establishment of community services for persons eligible to receive services from the department by promoting access to professional services in the person's community. Such support may be provided directly or through contracts with qualified providers. For persons who have professional service needs identified through personal planning, the department shall monitor the provision of those services;
- Eliminate the department's own duplicative and unnecessary administrative procedures and practices in the system of care for persons with intellectual disabilities or autism, encourage other departments to do the same and clearly define areas of responsibility in order to use present resources economically;
- Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment that is beneficial to persons with intellectual disabilities or autism; and
- Encourage other departments to provide to persons with intellectual disabilities or autism those services that are required by law, and in particular:

(1) The commissioner shall work actively with the Commissioner of Education to ensure that persons with intellectual disabilities or autism receive appropriate services upon being diagnosed with either disability regardless of the degree of functional limitation or accompanying disabilities;

(2) The commissioner shall advise other departments about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licensing procedures and other areas that affect persons with intellectual disabilities or autism residing in facilities licensed by the department; and

(3) The commissioner shall inform the joint standing committee of the Legislature having jurisdiction over human resources matters about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to persons with intellectual disabilities or autism.

**3. Plan.** The commissioner shall prepare a plan pursuant to this subsection.

A. The plan must indicate the most effective and efficient manner in which to implement services and programs for persons with intellectual disabilities or autism while safeguarding and respecting the legal and human rights of these persons.

B. The plan must be prepared once every 2 years and must be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters by no later than January 15th of every odd-numbered year.

C. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall study the plan and make recommendations to the Legislature with respect to funding improvements in programs and services to persons with intellectual disabilities or autism.

D. The plan must describe the system of intellectual disability and autism services in each of the adult developmental service regions and statewide.

E. The plan must include both existing service resources and deficiencies in the system of services.

F. The plan must include an assessment of the roles and responsibilities of intellectual disability and autism agencies, human service agencies, health agencies and involved state departments and suggest ways in which these departments and agencies can better cooperate to improve the service systems.

G. The plan must be made public within the State in such a manner as to facilitate public involvement.

H. The commissioner must ensure that the development of the plan includes the participation of community intellectual disability and autism service providers, consumer and family groups and other interested persons or groups in annual statewide hearings, as well as informal meetings and work sessions.

I. The commissioner must consider community service needs, relate these identified needs to biennial budget requests and incorporate necessary service initiatives into a comprehensive planning document.

**4. General Fund account; Medicaid match; intellectual disability; autism.** The commissioner shall establish a General Fund account to provide the General Fund match for intellectual disability or autism Medicaid eligible services. Any unencumbered balances of General Fund appropriations remaining at the end of each fiscal year must be carried forward to be used for the same purposes.

**5. Medicaid savings.** Intermediate care facilities for persons with intellectual disabilities or autism and providers of freestanding day habilitation programs shall submit payment to the department equal to 50% of any Medicaid savings due the State pursuant to the principles of reimbursement, as established under Title 22, sections 3186 and 3187, that are reported in any unaudited cost report for fiscal years ending June 30, 1995 and thereafter. Payment is due with the cost report. After audit, any amount submitted in excess of savings allocated to the facility or provider pursuant to the principles of reimbursement must be returned to the facility or provider. Notwithstanding requirements or conditions contained in the principles of reimbursement, any amount due the State after final audit in excess of savings paid on submission of a cost report must be paid to the State within 90 days following receipt of the department's final audit report.

**6. Required reporting by the department.** The department shall make available, on at least an annual basis, a report or reports regarding the services and support provided by the department to persons with intellectual disabilities or autism.

A. The goal of the reporting under this subsection is to provide the public with information on outcome measures established by the department. These measures may include, but are not limited to, whether:

- (1) Persons served by the department are healthy and safe;
- (2) Needs of persons are being met;
- (3) People are included in their communities; and
- (4) The system of care under this section is efficient and effective.

B. At a minimum, the department's report or reports under this subsection must offer information on the following:

- (1) Unmet needs;
- (2) Reportable events;
- (3) Adult protective services;
- (4) Crisis services;
- (5) Persons' and families' satisfaction with services;
- (6) Case management ratios;
- (7) Evaluations of costs of services;
- (8) Grievances;
- (9) Quality assurance and quality improvement efforts; and
- (10) New initiatives.

C. A report under this subsection must be provided to the joint standing committee of the Legislature having jurisdiction over health and human services matters. The commissioner or the commissioner's designee shall appear in person before the committee and shall present the report. The report must be posted on the department's publicly accessible website and must be made easily available to persons served by the department, families, guardians, advocates, Legislators and the provider community.

### **34-B, §5610. Service delivery**

**1. Guiding service delivery.** The delivery of services by providers of services and the department to persons with intellectual disabilities and autism is guided by the following.

A. Persons with intellectual disabilities or autism have the same rights as all citizens, including the rights to live, work and participate in the life of the community.

B. Community inclusion is achieved by connecting persons and their families, whenever possible, to local and generic supports within the community and by the use of residential services that are small and integrated into the community.

C. Real work for real pay for persons in integrated settings in the community is the cornerstone of all vocational and employment services.

D. Service delivery to persons with intellectual disabilities and autism is based on the following fundamentals:

- (1) Maximizing the growth and development of the person and inclusion in the community;
- (2) Maximizing the person's control over that person's life;
- (3) Supporting the person in that person's own home;
- (4) Acknowledging and enhancing the role of the family, as appropriate, as the primary and most natural caregiver; and
- (5) Planning for the delivery of community services that:
  - (a) Promotes a high quality of life;

- (b) Is based on ongoing individualized assessment of the strengths, needs and preferences of the person and the strengths of that person's family; and
- (c) Identifies and considers connections in other areas of the person's life, including but not limited to family, allies, friends, work, recreation and spirituality.