

CHAPTER 162**(HB 455)**

AN ACT relating to services for individuals with developmental disorders and mental retardation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section and Sections 2, 3, 4, and 5 of this Act, "pervasive developmental disorders" has the same meaning as in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV). The term includes five (5) diagnostic subcategories:*
 - (a) Autistic disorder;*
 - (b) Pervasive disorder not otherwise specified;*
 - (c) Asperger's disorder;*
 - (d) Rett's disorder; and*
 - (e) Childhood disintegrative disorder.*
- (2) The Department for Medicaid Services shall make application, within three (3) months of the effective date of this Act, to the federal Centers for Medicare and Medicaid Services for a waiver to provide services and supports to individuals who:*
 - (a) Are Medicaid eligible;*
 - (b) Have an Axis I diagnosis of a pervasive developmental disorder;*
 - (c) Are institutionalized or at risk for institutionalization; and*
 - (d) Require a coordinated plan of medically necessary community-based behavioral health services.*
- (3) The waiver application shall include services that are documented to be effective in the treatment of pervasive developmental disorders and consistent with clinical best practices.*
- (4) The waiver application shall specify the required credentials for the providers of each service.*
- (5) The cabinet shall cap the number of children served under the waiver program to insure budget neutrality based upon the expenditures for children with Pervasive Developmental Disorders that were served under the IMPACT Plus Program during fiscal years 2001-2002:*
- (6) The cabinet shall include in the waiver application those items that are necessary to ensure the waiver operates within the designated dollars including, but not limited to, a maximum number of individuals to be served and a maximum dollar amount that can be expended for an individual.*
- (7) The waiver shall be coordinated with and shall not supplant services provided by schools under KRS Chapter 157 or services provided under KRS Chapters 200 and 347. Nothing in this section shall affect or limit a school district's ability to obtain Medicaid reimbursement for school-related health services.*

- (8) *The Department for Medicaid Services shall report to the Governor, the Legislative Research Commission, and the Interim Joint Committee on Health and Welfare on the number of individuals receiving services under the waiver, the cost and type of services received, and any available nonidentifying information pertaining to individual outcomes.*

Section 2. KRS 200.654 is amended to read as follows:

As used in KRS 200.650 to 200.676, unless the context requires otherwise:

- (1) "Awards and contracts" means the state and federal funds designated by the cabinet for projects relating to planning, resource development, or provision of direct early intervention services, as defined in this section, to infants and toddlers with disabilities and their families;
- (2) "Cabinet" means the Cabinet for Health Services;
- (3) "Child find" means a system to identify, locate, and evaluate all infants and toddlers with disabilities who are eligible for early intervention services, determine which children are receiving services, and coordinate the effort with other state agencies and departments;
- (4) "Council" means the Kentucky Early Intervention System Interagency Coordinating Council;
- (5) "District" means one (1) of the fifteen (15) area development districts;
- (6) "District early intervention committee" means an interagency coordinating committee established within each of the fifteen (15) area development districts to facilitate interagency coordination at the district level;
- (7) "Early intervention services" means services for infants and toddlers with disabilities and their families delivered according to an individualized family service plan developed by the child multidisciplinary team to meet the developmental needs of eligible children, as defined in this section, and provided by entities receiving public funds using qualified personnel. The individualized family services plan is developed and the services are provided in collaboration with the families and, to the maximum extent appropriate, in natural environments, including home and community settings in which infants and toddlers without disabilities would participate. These services are necessary to enable the child to reach maximum potential. Services to be made available shall include, but not be limited to, the following:
 - (a) Screening services;
 - (b) Evaluation services;
 - (c) Assessment services;
 - (d) Service coordination;
 - (e) Transportation and related costs for accessing early intervention services;
 - (f) Family services including counseling, psychological, and social work services;
 - (g) Health services including medical services for diagnostic and evaluation purposes only;
 - (h) Nutrition services;

- (i) Occupational therapy services;
 - (j) Physical therapy services;
 - (k) Communication development services;
 - (l) Sensory development services;
 - (m) Developmental intervention services;
 - (n) Assistive technology services; and
 - (o) Respite services;
- (8) "Early intervention system" means the management structure established in KRS 200.654 to 200.670 and which is comprised of the interdependent array of services and activities for the provision of a statewide, comprehensive, coordinated, multidisciplinary, interagency program for infants and toddlers with disabilities and their families;
- (9) "Individual family service plan" means the singular comprehensive written service plan developed by the child's multidisciplinary team, with the child's parents serving as fully participating members of the team, to be followed by all agencies and other entities involved in providing early intervention services to an infant or toddler with disabilities and the child's family;
- (10) "Infants and toddlers with disabilities" and "eligible children" mean children from birth to thirty-six (36) months of age in need of early intervention services as a result of one (1) of the following circumstances:
- (a) The child is experiencing developmental delays, as measured by diagnostic instruments and procedures in one (1) or more of the following skill areas: physical; cognitive; communication; social or emotional; or adaptive development;~~{or}~~
 - (b) The child has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; *or*
 - (c) ***The child has a diagnosis of pervasive developmental disorder;***
- (11) "Multidisciplinary team" means the child-specific group responsible for determining the services needed by the infant or toddler with disabilities and the child's family, and development of the individualized family services plan. The team for each child shall include the parent or guardian of the child and individuals representing at least two (2) applicable disciplines which may include but need not be limited to the following: physical therapy; speech therapy; social work; nursing; or education;
- (12) "Point of entry" means an easily identifiable, highly accessible nonstigmatized entry into services; and
- (13) "Qualified service provider" means an entity, including but not limited to an individual, program, department, or agency, responsible for the delivery of early intervention services to eligible infants and toddlers with disabilities and their families who has met the highest minimum standards of state-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the entity is providing early intervention services.

Section 3. KRS 200.660 is amended to read as follows:

The cabinet shall:

- (1) Administer all funds appropriated to implement the provisions of KRS 200.650 to 200.676;
- (2) Identify and coordinate all available financial resources for early intervention within the Commonwealth from federal, state, local, and private sources including, but not limited to:
 - (a) Title V of the Federal Social Security Act relating to maternal and child health;
 - (b) Title XIX of the Federal Social Security Act relating to Medicaid and the Early Periodic Screening Diagnostic and Treatment (EPSDT) program;
 - (c) The Federal Head Start Act;
 - (d) The Federal Individuals with Disabilities Education Act, Parts B and H;
 - (e) The Federal Elementary and Secondary Education Act of 1964 Title I, Chapter I, Part B, Subpart 2 as amended;
 - (f) The Federal Developmentally Disabled Assistance and Bill of Rights Act, P.L. 100-146;
 - (g) Other federal programs; and
 - (h) Private insurance.
- (3) Develop a sliding fee scale of the cost of early intervention services to families, including those circumstances where no fee shall be required;
- (4) ***Make available, in addition to the services specified in subsection (7) of Section 2 of this Act, social skill development and behavioral therapy services to infants and toddlers with a diagnosis of pervasive developmental disorders;***
- (5) Enter into contracts with service providers within a local community aided by the district committee in identifying providers;
- ~~(6)(5)~~ Develop procedures to monitor and evaluate services that are provided to infants and toddlers with disabilities and their families;
- ~~(7)(6)~~ Develop procedures to ensure that early intervention services identified on the individualized family service plan are provided to eligible infants and toddlers with disabilities and their families in a timely manner pending resolution of any disputes among public agencies or service providers; and
- ~~(8)(7)~~ In conjunction with the council and district early intervention committees, promulgate administrative regulations, pursuant to KRS Chapter 13A, necessary to implement the provisions of KRS 200.650 to 200.676.

Section 4. KRS 347.020 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Active treatment" means provision of services as specified in an individualized service plan. These services may include, but are not limited to activities, experiences and therapy which are part of a professionally developed and supervised program of health, social, habilitative and developmental services;
- (2) "Case management services" means all such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, legal, educational and other services, and such term includes:

- (a) Follow-along services which assure, through a continuing relationship between an agency or provider and a person with a developmental disability and the person's parent, if the person is a minor, or guardian, if the person has been adjudicated legally disabled, that the changing needs of the person and the family are recognized and appropriately met; and
 - (b) Coordinated services which provide to persons with developmental disabilities support, access to, and coordination of other services, information on programs and services and monitoring of the person's progress;
- (3) "Habilitation" means the process described in the individualized service plan by which a person is assisted to acquire and maintain physical, mental and social skills which will enable him to live most efficiently and effectively in the least restrictive individually appropriate environment;
- (4) "Individualized service plan (ISP)" means a written plan of service based on an interdisciplinary approach which is revised as needed but no less than annually. The plan shall be developed by the interdisciplinary team and shall contain a statement of:
- (a) The nature of the specific mental, physical, social and developmental needs of the person;
 - (b) The specific services to be provided under this chapter, those services being provided under other state and federal laws and a schedule for the provision of said services; and
 - (c) The least restrictive individually appropriate environment for the provision of services and active treatment;
- (5) "Individually appropriate" means responsive to the needs of the person as determined through interdisciplinary assessment and provided pursuant to an individualized service plan;
- (6) "Interdisciplinary team (IDT)" means those persons who work most directly with the individual in each of the professions, disciplines and service areas that provide active treatment, services and evaluations for the person, including the persons set forth in KRS 347.030(6). Prior to relocation to a more individually appropriate placement in accordance with his individualized service plan, the IDT shall include staff representing the current placement and staff representing the proposed placement;
- (7) "Least restrictive environment" means the individually appropriate residence and service delivery setting, including the entire array of residential alternatives as defined by this chapter, in which the person can function most effectively and independently, gaining to the maximum extent possible, control over his environment, and shall be based solely on his needs as identified in his individualized service plan. This definition shall not be construed to abolish any existing residential or institutional alternatives as defined by this chapter;
- (8) "Monitor" means to conduct a systematic, coordinated, objective qualitative review of services by a body independent of the agencies providing services under this chapter. This body shall include persons with developmental disabilities, parents, guardians and professionals;
- (9) "Person with a developmental disability" means a person with a long term disability which:

- (a) Is attributable to a developmental or physical impairment or combination of developmental and physical impairments, ***including pervasive developmental disorders***;
 - (b) Is likely to continue indefinitely;
 - (c) Results in substantial functional limitations in at least three (3) of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency;
 - (d) Requires special, generic or interdisciplinary care and active treatment and services of extended duration; and
 - (e) Is manifested before the person attains age twenty-two (22); and
- (10) "Representative" means any individual who can advise and advocate for a person with developmental disabilities and who shall serve at the request and pleasure of such person; provided, however, if the person with developmental disabilities is a minor or is legally disabled and has not requested a representative, the parent or guardian may request a representative to assist on behalf of a person with developmental disabilities;
- (11) "Residence" or "residential alternative" means the living space occupied by the person with a developmental disability, including single-person homes, natural family homes, institutional facilities and all other types of living arrangements; and
- (12) "Services" means such residential, developmental, vocational, support and related services, training and active treatment in the least restrictive, individually appropriate environment to provide for continuing development of independent or interdependent living skills of persons with developmental disabilities. These services include, but are not restricted to, diagnostic services; child development services; respite care; domestic assistance; consumer-directed attendant care; habilitation and rehabilitation, ***including behavioral therapies***; speech, physical and occupational therapy; recreational therapy and activities; training for parents, guardians and care providers as requested by said persons; transportation; equipment; development of language and communication skills; interpreters; family counseling and case management.

Section 5. KRS 387.510 is amended to read as follows:

As used in KRS 387.500 to 387.770 and 387.990:

- (1) "Conservator" means an individual, agency, or corporation appointed by the court to manage the financial resources of a disabled person.
- (2) "Limited conservator" means an individual, agency, or corporation appointed by the court to assist in managing the financial resources of a partially disabled person and whose powers and duties have been specifically enumerated by court order.
- (3) "Guardian" means any individual, agency, or corporation appointed by the court to have full care, custody, and control of a disabled person and to manage his financial resources.
- (4) "Limited guardian" means a guardian who possesses fewer than all of the legal powers and duties of a full guardian, and whose powers and duties have been specifically enumerated by court order.

- (5) "Standby" guardian or conservator means a person or entity designated by the court to assume the powers and duties assigned to a limited guardian, guardian, limited conservator, or conservator upon his death, resignation, removal, or incapacity.
- (6) "Testamentary" guardian or conservator means an individual, agency, or corporation nominated in the will of a limited guardian, guardian, limited conservator, or conservator to succeed the testator in that capacity upon his death.
- (7) "Developmental disability" means a severe, chronic disability of a person which:
- (a) Is attributable to a mental or physical impairment or combination of mental and physical impairments, *including pervasive developmental disorder*;
 - (b) Is manifested before the person attains age twenty-two (22);
 - (c) Is likely to continue indefinitely;
 - (d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: 1. self-care; 2. receptive and expressive language; 3. learning; 4. mobility; 5. self-direction; 6. capacity for independent living; and 7. economic self-sufficiency; and
 - (e) Reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.
- (8) "Disabled" means a legal, not a medical disability, and is measured by functional incapacities. It refers to any person fourteen (14) years of age or older who is:
- (a) Unable to make informed decisions with respect to his personal affairs to such an extent that he lacks the capacity to provide for his physical health and safety, including but not limited to health care, food, shelter, clothing, or personal hygiene; or
 - (b) Unable to make informed decisions with respect to his financial resources to such an extent that he lacks the capacity to manage his property effectively by those actions necessary to obtain, administer, and dispose of both real and personal property.

Such inability shall be evidenced by acts or occurrences within six (6) months prior to the filing of the petition for guardianship or conservatorship and shall not be evidenced solely by isolated instances of negligence, improvidence, or other behavior.

- (9) "Partially disabled" refers to an individual who lacks the capacity to manage some of his personal affairs and/or financial resources as provided in subsection (8) of this section, but who cannot be found to be fully disabled as provided therein.
- (10) "Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of his affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors.
- (11) "Interdisciplinary evaluation report" means a report of an evaluation of a respondent performed pursuant to the provisions of KRS 387.540 to determine whether he is partially disabled or disabled as defined herein.

- (12) "Interested person or entity" means an adult relative or friend of the respondent or ward, an official or representative of a public or private agency, corporation, or association concerned with that person's welfare, or any other person found suitable by the court.
- (13) "Petitioner" means a person who institutes a proceeding under KRS 387.530.
- (14) "Respondent" means an individual alleged to be a partially disabled or disabled person.
- (15) "Ward" means a person for whom a limited guardian, guardian, limited conservator, or conservator has been appointed.
- (16) "Committee" means a person appointed by the court prior to July 1, 1982, to have full care, custody, and control of a disabled person and his estate.

Section 6. KRS 205.6317 is amended to read as follows:

- (1) As used in this section:
 - (a) "Supports for Community Living Waiver Program" means funding from the Department for Medicaid Services to serve individuals with mental retardation or other developmental disabilities who qualify for intermediate care and choose to live in a community-based setting; and
 - (b) "Slots" means the dedication of provider or financial resources for services to persons with mental retardation or other developmental disabilities.
- (2) The Department for Medicaid Services shall develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with mental retardation and other developmental disabilities participating in the Supports for Community Living Waiver Program.
- (3) The Department for Medicaid Services shall allocate slots to the fourteen (14) community mental health regions based on percentage of total population.
- (4) The Department for Medicaid Services shall reallocate underutilized slots to address statewide needs and shall reallocate slots in emergency situations to address unmet needs for services and supports.
- (5) Within six (6) months after April 14, 2000, the Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.
- (6) ***Funds for the Supports for Community Living Waiver Program shall be appropriated only for direct services to qualified individuals and any unexpended funds shall not lapse but shall be carried forward to the next fiscal year and shall be used for the same purpose.***

Approved April 2, 2002