

# Colorado Revised Statutes 2012

## TITLE 27

### BEHAVIORAL HEALTH

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PART 1

RIGHTS OF DEVELOPMENTALLY DISABLED

**27-10.5-101. Legislative declaration.** (1) In recognition of the varied, extensive, and substantial needs of persons with developmental disabilities, including the urgent need to enhance the development of children with developmental disabilities, the general assembly, subject to available appropriations and subject to the existence of appropriate services and supports with available resources, hereby declares that the purposes of this article are:

(a) To provide appropriate services and supports to persons with developmental disabilities throughout their lifetimes regardless of their age or degree of disability;

(b) To prohibit deprivation of liberty of persons with developmental disabilities, except when such deprivation is for the purpose of providing services and supports which constitute the least restrictive available alternative adequate to meet the person's needs, and to ensure that these services and supports afford due process protections;

(c) To ensure the fullest measure of privacy, dignity, rights, and privileges to persons with developmental disabilities;

(d) To ensure the provision of services and supports to all persons with developmental disabilities on a statewide basis;

(e) To enable persons with developmental disabilities to remain with their families and in their home communities, to minimize the likelihood of out-of-home placement, and to enhance the capacity of families to meet the needs of children with developmental disabilities;

(f) To provide community services and supports for persons with developmental disabilities which reflect typical patterns of everyday living;

(g) To encourage state and local agencies to provide a wide array of innovative and cost-effective services and supports for persons with developmental disabilities;

(h) To ensure that persons with developmental disabilities receive services and

supports which encourage and build on existing social networks and natural sources of support, and result in increased interdependence, contribution, and inclusion in community life; and

(i) To recognize the efficacy of early intervention services and supports in minimizing developmental delays and reducing the future education costs to our society.

**27-10.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Authorized representative" means an individual designated by the person receiving services, or by the parent or guardian of the person receiving services, if appropriate, to assist the person receiving services in acquiring or utilizing services or supports pursuant to this article. The extent of the authorized representative's involvement shall be determined upon designation.

(2) "Case management services" means the following:

(a) The determination of eligibility for services and supports;

(b) Service and support coordination; and

(c) The monitoring of all services and supports delivered pursuant to the individualized plan, and the evaluation of results identified in the individualized plan.

(2.3) "Case manager" means an individual who assists with case management services and supports provided pursuant to this article for persons with developmental disabilities.

(2.5) (Deleted by amendment, L. 2008, p. 1442, § 1, effective August 5, 2008.)

(3) "Community centered board" means a private corporation, for profit or not for profit, that, when designated pursuant to section 27-10.5-105, provides case management services to persons with developmental disabilities, is authorized to determine eligibility of those persons within a specified geographical area, serves as the single point of entry for persons to receive services and supports under this article, and provides authorized services and supports to those persons either directly or by purchasing services and supports from service agencies.

(4) "Community residential home" means a group living situation accommodating at least four but no more than eight persons, licensed by the state, where services and supports are provided to persons with developmental disabilities.

(5) "Consent" means an informed assent that is expressed in writing and freely given. Consent shall always be preceded by the following:

(a) A fair explanation of the procedures to be followed, including an identification of procedures that are experimental;

(b) A description of the attendant discomforts and risks;

(c) A description of the expected benefits;

(d) A disclosure of appropriate alternative procedures together with an explanation of the respective benefits, discomforts, and risks;

(e) An offer to answer any inquiries concerning procedures;

(f) An instruction that the person giving consent is free to withdraw consent and to discontinue participation in the project or activity at any time; and

(g) A statement that withholding or withdrawal of consent shall not prejudice future provision of appropriate services and supports to individuals.

(6) "Contribution" means the benefits gained by the household or community in which a person lives as the result of the person engaging in meaningful activities, including, but not limited to, income producing work, volunteer work, continuing education, and participation in community activities.

(7) "Court" means a district court of the state of Colorado or the probate court in the city and county of Denver.

(8) "Department" means the department of human services.

(9) "Designated service area" means the geographical area specified by the executive director to be served by a designated community centered board.

(10) "Developmental disabilities professional" means a person who has professional training and experience in the developmental disabilities field, as defined by the department.

(11) (a) "Developmental disability" means a disability that is manifested before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected individual, and that is attributable to mental retardation or related conditions which include cerebral palsy, epilepsy, autism, or other neurological conditions when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation. Unless otherwise specifically stated, the federal definition of "developmental disability" found in 42 U.S.C. sec. 15001 et seq. shall not apply.

(b) "Person with a developmental disability" means a person determined by a community centered board to have a developmental disability and shall include a child with a developmental delay.

(c) "Child with a developmental delay" means:

(I) A person less than five years of age with delayed development as defined by the department; or

(II) A person less than five years of age who is at risk of having a developmental disability as defined by the department.

(12) "Early intervention services and supports" means services described in and provided pursuant to part 7 of this article, including education, training, and assistance in child development, parent education, therapies, and other activities for infants and toddlers and their families that are designed to meet the developmental needs of infants and toddlers including, but not limited to, cognition, speech, communication, physical, motor, vision, hearing, social-emotional, and self-help skills.

(13) "Eligible for supports and services" refers to any person with a developmental

disability as determined eligible by the community centered boards, pursuant to section 27-10.5-106.

(13.5) (Deleted by amendment, L. 2008, p. 1442, § 1, effective August 5, 2008.)

(13.7) "Enrolled" means that a person with a developmental disability who is eligible for supports and services has been authorized, as defined by rules promulgated by the department, to participate in a program funded pursuant to this article.

(14) "Executive director" means the executive director of the department of human services.

(15) (a) "Family" means the interdependent group of persons that consists of:

(I) A parent, child, sibling, grandparent, aunt, uncle, spouse, or any combination thereof and a family member with a developmental disability;

(II) An adoptive parent of and a family member with a developmental disability;

(III) One or more persons to whom legal custody of a person with a developmental disability has been given by a court and in whose home such person resides; or

(IV) Any other family unit as may be defined in rules developed pursuant to section 27-10.5-407.

(b) Department rules shall define the families that are eligible to receive services and supports pursuant to this article.

(15.5) "Family caregiver" means a family member of the person with a developmental disability who provides care to the person with a developmental disability in the family home, who meets the requirements for a qualified family caregiver, as established by rule of the department, and who is working through a program-approved service agency, as established by rule of the department.

(16) "Gastrostomy tube" means a tube that has been surgically inserted into the stomach through the abdominal wall, or a tube that has been inserted through the nasal passage into the stomach, or both.

(17) "Human rights committee" means a third-party mechanism to adequately safeguard the legal rights of persons receiving services by participating in the granting of informed consent, monitoring the suspension of rights of persons receiving services, monitoring behavior development programs in which persons with developmental disabilities are involved, monitoring the use of psychotropic medication by persons with developmental disabilities, and at the committee's option, either providing or ensuring the investigation of allegations of abuse or neglect of persons with developmental disabilities who are receiving services or supports under this article.

(17.5) "IDEA" means the federal "Individuals with Disabilities Education Improvement Act of 2004", 20 U.S.C. sec. 1400 et seq., as amended, and its implementing regulations, 34 CFR part 303.

(18) "Inclusion" means:

(a) The use by persons with developmental disabilities of the same community resources that are used by and available to other persons;

(b) The participation by persons with developmental disabilities in the same community activities in which persons without developmental disabilities participate. Participation includes regular contact with persons without developmental disabilities.

(c) Vocational experiences for persons with developmental disabilities in community settings that offer opportunities to associate with other individuals who do not have developmental disabilities; and

(d) Living in homes that are in residential neighborhoods and in proximity to community resources.

(19) "Independent residential support services" means a community living situation, defined by the department, where services and supports are provided to no more than three persons with developmental disabilities and that is not required to be licensed by the state.

(19.5) "Individualized family service plan" or "IFSP" means a written plan developed pursuant to 20 U.S.C. sec. 1436 and 34 CFR 303.340 that authorizes the provision of early intervention services to an eligible child and the child's family. An IFSP shall serve as the individualized plan, pursuant to paragraph (c) of subsection (20) of this section, for a child from birth through two years of age.

(20) (a) "Individualized plan" means a written plan designed by an interdisciplinary team for the purpose of identifying:

- (I) The needs of the person or family receiving services;
- (II) The specific services and supports appropriate to meet those needs;
- (III) The projected date for initiation of services and supports; and
- (IV) The anticipated results to be achieved by receiving the services and supports.

(b) Every individualized plan will include a statement of agreement with the plan, signed by the person receiving services or other such person legally authorized to sign on behalf of the person and a representative of the community centered board.

(c) Any other service or support plan, designated by the department, that meets all of the requirements of an individualized plan will be considered to be an individualized plan pursuant to this article.

(d) (I) Every individualized plan that includes the provision of respite care for medical purposes, pursuant to section 27-10.5-104, shall include a process by which the person receiving services and supports may receive necessary care if the person's family or caregiver is unavailable due to an emergency situation or unforeseen circumstances. The family or caregiver shall be duly informed by the interdisciplinary team of these alternative care provisions at the time the individualized plan is initiated.

(II) Nothing in this paragraph (d) requires the provision of respite care, only that each individual plan that includes the provision of respite care for medical purposes have a contingency plan.

(21) "Infants and toddlers" means a child with a developmental delay from birth through two years of age.

(22) "Interdependence" means those multiple interactive relationships that are



necessary to create a sense of belonging and support between people that are mutually sought, sustained over time, and beneficial to those involved.

(23) "Interdisciplinary team" means a group of people convened by a designated community centered board that shall include the person receiving services, the parents or guardian of a minor, a guardian or an authorized representative, as appropriate, the person who coordinates the provisions of services and supports, and others as determined by the person's needs and preference, who are assembled to work in a cooperative manner to develop or review the individualized plan.

(24) "Least restrictive environment" means an environment that represents the least departure from the normal patterns of living and that effectively meets the needs of the person receiving services. Least restrictive environment may include, but need not be limited to, receiving services from a community centered board, service agency, or a family caregiver in the family home.

(25) "Person receiving services" means a person with a developmental disability who is enrolled in a program funded pursuant to this article.

(25.5) "Program" means a specific group of services or supports as defined by rules promulgated by the department and for which funding is available pursuant to this article to a person with a developmental disability who is eligible for supports and services.

(26) Repealed.

(27) "Regional center" means a facility or program operated directly by the department that provides services and supports to persons with developmental disabilities.

(28) "Service agency" means an individual or any publicly or privately operated program, organization, or business providing services or supports for persons with developmental disabilities.

(29) "Service and support coordination" means planning, locating, facilitating access to, coordinating, and reviewing all aspects of needed services, supports, and resources that are provided in cooperation with the person receiving services, the person's family, as appropriate, the family of a child with a developmental delay, and the involved public or private agencies. Planning includes the development or review of an existing individualized plan. "Service and support coordination" also includes the reassessment of the needs of the person receiving services or the needs of the family of the person, with maximum participation of the person receiving services and the person's parents, guardian, or authorized representative, as appropriate.

(30) "Services and supports" means one or more of the following: Education, training, independent or supported living assistance, therapies, identification of natural supports, and other activities provided to:

(a) Enable persons with developmental disabilities to make increasingly responsible choices, exert greater control over their lives, experience presence and inclusion in their communities, develop their competencies and talents, maintain relationships, foster a sense of belonging, and experience personal security and self-respect;

(b) Enhance child development and healthy parent-child and family interaction for eligible infants and toddlers and their families pursuant to part 7 of this article; and

(c) Enable families, who choose or desire to maintain a family member with a developmental disability at home, to obtain support and to enjoy a typical lifestyle.

(31) "Sterilization" means any surgical or other medical procedure that has as its primary purpose to render a person permanently incapable of reproduction.

(32) "Waiting list" means the list of persons with developmental disabilities who are waiting for enrollment into a program provided pursuant to this article.

**27-10.5-103. Duties of the executive director - rules.** (1) In order to implement the provisions of this article, the executive director shall, subject to available appropriations, carry out the following duties:

(a) Prepare a statewide plan for the provision of services and supports for persons with developmental disabilities based upon input from persons with developmental disabilities, their families, community centered boards, service agencies, and other interested persons. The statewide plan shall consider state and local needs.

(b) Conduct monitoring and review activities that include community centered boards and service agencies;

(c) Provide or obtain training and technical assistance through community centered boards and service agencies in order to improve the quality of services and supports provided to persons with developmental disabilities;

(d) Prepare and transmit annually to the governor and the joint budget committee of the general assembly, in the form and manner prescribed pursuant to section 24-1-136, C.R.S., a report detailing the following information, as available and appropriate, that shall be broken down into designated service areas as well as provided in an overall statewide format:

(I) The total number of persons receiving services pursuant to this article;

(II) The types of services and supports provided;

(III) The costs of services and supports regardless of funding source;

(IV) An evaluation of the quality of the services and supports rendered;

(V) An evaluation of the effectiveness of the services and supports rendered in implementing the individualized plans of persons receiving services;

(VI) The numbers, types, and resolution of appeals that were heard by the department arising from disputes specified in section 27-10.5-107; and

(VII) The number of persons determined to be eligible to receive services and supports who are not receiving services or supports pursuant to this article along with an analysis of the reasons they are not receiving services and supports;

(e) Designate a community centered board in each designated service area in the state;

(f) Consistent with the policies adopted by the department of health care policy and

financing, implement the provision of home- and community-based services to eligible persons with developmental disabilities and pursue other medicaid-funded services determined by the department to be appropriate for persons with developmental disabilities, pursuant to part 4 of article 6 of title 25.5, C.R.S., and subject to available appropriations;

(g) Promote effective coordination with agencies serving persons with developmental disabilities in order to improve continuity of services and supports for persons facing life transitions from toddler to preschool, school to adult life, and work to retirement; and

(h) Conduct appropriate part C child find activities as described in section 27-10.5-704. Part C child find activities conducted by the department shall include, but need not be limited to, case management, referral, transitions, and public education outreach and awareness of early intervention services.

(2) The department shall adopt such rules, in accordance with section 24-4-103, C.R.S., as are necessary to carry out the provisions and purposes of this article, including but not limited to the following subjects:

(a) Standards for services and supports, including preparation of individualized plans;

(b) The designation of community centered boards and the organization of those entities, including standards of organization, staff qualifications, and other factors necessary to ensure program integrity;

(c) Purchase of services and supports and financial administration;

(d) Procedures for resolving disputes over eligibility determination and the modification, denial, or termination of services;

(e) Eligibility determination, the criteria for determination, and admission to the program;

(f) Systems of quality assurance and data collection;

(g) The rights of a person receiving services;

(h) Confidentiality of records of a person receiving services;

(i) Designation of authorized representatives and delineation of their rights and duties pursuant to this article;

(j) Repealed.

(k)(I) The establishment of guidelines and procedures for authorization of individuals for administration of nutrition and fluids through gastrostomy tubes.

(II) The department shall require that a service agency providing residential or day program services or supports have a staff member qualified pursuant to subparagraph (III) of this paragraph (k) on duty at any time the facility administers said nutrition and fluids through gastrostomy tubes, and that the facility maintain a written record of each nutrient or fluid administered to each person receiving services, including the time and the amount of the nutrient or fluid.

(III) An individual who is not otherwise authorized by law to administer nutrition and fluids through gastrostomy tubes shall be allowed to perform the duties only under the supervision of a licensed nurse or physician. An individual who administers nutrition and

fluids in compliance with the provisions of this paragraph (k) shall be exempt from the licensing requirements of the "Colorado Medical Practice Act" and the "Nurse Practice Act". Nothing in this paragraph (k) shall be deemed to authorize the administration of medications through gastrostomy tubes. An individual administering medications through gastrostomy tubes shall be subject to the requirements of part 3 of article 1.5 of title 25, C.R.S.

(IV) For purposes of this paragraph (k), "administration" means assisting a person in the ingestion of nutrition or fluids according to the direction and supervision of a licensed nurse or physician.

(V) Repealed.

(1) Child find activities, as described in section 27-10.5-704.

(3) (Deleted by amendment, L. 92, p. 1357, § 3, effective July 1, 1992.)

**27-10.5-103.5. Community centered boards and service agencies - local public procurement units.** For purposes of entering into a cooperative purchasing agreement pursuant to section 24-110-201, C.R.S., a nonprofit community centered board or a nonprofit service agency may be certified as a local public procurement unit as provided in section 24-110-207.5, C.R.S.

**27-10.5-104. Authorized services and supports - conditions of funding - purchase of services and supports - boards of county commissioners - appropriation.** (1) Subject to annual appropriations by the general assembly, the department shall provide or purchase, pursuant to subsection (4) of this section, authorized services and supports from community centered boards or service agencies for persons who have been determined to be eligible for such services and supports pursuant to section 27-10.5-106, and as specified in the eligible person's individualized plan. Those services and supports may include, but are not limited to, the following:

(a) Family support services, including an array of supportive services provided to the person receiving services and the person's family, that enable the family to maintain the person in the family home, thereby preventing or delaying the need for out-of-home placement that is unwanted by the person or the family, pursuant to section 27-10.5-401;

(b) Early intervention services and supports that offer infants and toddlers and their families services and supports to enhance child development in the areas of cognition, speech, communication, physical, motor, vision, hearing, social-emotional development, and self-help skills; parent-child or family interaction; and early identification, screening, and assessment services that are provided pursuant to part 7 of this article;

(c) Case management services;

(d) Respite care services, including temporary care of a person with a developmental

disability to offer relief to the person's family or caregiver or to allow the family or caregiver to deal with emergency situations or to engage in personal, social, or routine activities and tasks that otherwise may be neglected, postponed, or curtailed due to the demands of caring for a person who has a developmental disability;

(e) Day services and supports that offer opportunities for persons with developmental disabilities to experience and actively participate in valued adult roles in the community. These services and supports will enable persons receiving services to access and participate in community activities, such as work, recreation, higher education, and senior citizen activities. Day services and supports, including early intervention services, may also include the administration of nutrition or fluids through gastrostomy tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k) and supervised by a licensed nurse or physician.

(f) Residential services and supports, including an array of training, learning, experiential, and support activities provided in living alternatives designed to meet the individual needs of persons receiving services and may include the administration of nutrition or fluids through gastrostomy tubes, if administered by an individual authorized pursuant to section 27-10.5-103 (2) (k) and supervised by a licensed nurse or physician;

(g) Ancillary services, including activities that are secondary but integral to the provision of the services and supports specified in this subsection (1).

(2) Service agencies receiving funds pursuant to subsection (1) of this section shall comply with all of the provisions of this article and the rules and regulations promulgated thereunder.

(3) Service and support coordination shall be purchased from the community centered board designated pursuant to section 27-10.5-105, except as otherwise provided in subsection (4) of this section and in part 7 of this article.

(4) (a) The department of human services may, directly or in coordination with the department of health care policy and financing, purchase services and supports, including service and support coordination, directly from service agencies if:

(I) Required by the federal requirements for the state to qualify for federal funds under Title XIX of the federal "Social Security Act", as amended, including programs authorized pursuant to part 4 of article 6 of title 25.5, C.R.S.; or

(II) (Deleted by amendment, L. 2008, p. 2216, § 1, effective June 5, 2008.)

(III) The executive director has determined that a service or support provided or purchased by a designated community centered board does not meet established standards and the continuation of purchase of the service or support through the community centered board is not in the best interests of the persons receiving services.

(a.5) The department shall only purchase services and supports directly from those community centered boards or service agencies that meet established standards.

(a.7) The department may purchase services and supports, including service and

support coordination, from a family caregiver if the executive director has determined that the provision of a service or support by a family caregiver in the family home would provide the person receiving the service or support with the least restrictive environment.

(b) (Deleted by amendment, L. 2008, p. 2216, § 1, effective June 5, 2008.)

(c) Nothing in this section shall be construed to prohibit the provision of services and supports, including case management services, directly by the department through regional centers, for persons receiving services in regional centers.

(d) Nothing in this section shall be construed to require the provision of services and supports, including case management services, directly by the department.

(5) Governmental units, including but not limited to counties, municipalities, school districts, health service districts, and state institutions of higher education, are authorized at their own expense to furnish money, materials, or services and supports to persons with developmental disabilities, or to purchase services and supports for such persons through designated community centered boards or service agencies, so long as no conditions or requirements imposed as a result of the provision or purchase through a community centered board or service agency are in conflict with the provisions of this article or the rules promulgated thereunder.

(6) Boards of county commissioners may levy up to one mill for the purpose of purchasing services and supports for persons with developmental disabilities. To the extent authorized by federal law, and subject to annual appropriation by the general assembly, and pursuant to rules established by the department of human services and the department of health care policy and financing, a county may transfer the revenue raised pursuant to the mill levy to the department of health care policy and financing or the department of human services to receive matching federal funds to provide medicaid-approved waiver services to persons with developmental disabilities.

(7) (a) Each year the general assembly shall appropriate funds to the department of human services to provide or purchase services and supports for persons with developmental disabilities pursuant to this section. Unless specifically provided otherwise, services and supports shall be purchased on the basis of state funding less any federal or cash funds received for general operating expenses from any other state or federal source, less funds available to a person receiving residential services or supports after such person receives an allowance for personal needs or for meeting other obligations imposed by federal or state law, and less the required local school district funds specified in paragraph (b) of this subsection (7). The yearly appropriation, when combined with all other sources of funds, shall in no case exceed one hundred percent of the approved program costs as determined by the general assembly. Funds received for capital construction shall not be considered in the calculation for the distribution of funds under the provisions of this section.

(b) Each school district shall pay to the community centered board providing programs attended by a student with a developmental disability, who is domiciled in the school district and may be counted in the district's pupil enrollment, an amount at least equal

to the district's per pupil revenues as determined pursuant to the "Public School Finance Act of 1994", article 54 of title 22, C.R.S. This subsection (7) shall apply to students who are less than twenty-two years of age.

(c) The department is authorized to use up to three percent of the appropriation allocated for early intervention services and supports for training and technical assistance to assure that the latest developments for early intervention services and supports are rapidly integrated into service provision throughout the state.

**27-10.5-104.2. Services and supports - waiting list reduction - cash fund.** (1) There is hereby created in the state treasury the developmental disabilities services cash fund, consisting of moneys appropriated thereto by the general assembly. Any interest derived from the deposit and investment of moneys in the developmental disabilities services cash fund shall be credited to the fund. Any moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not revert to the general fund or any other fund.

(2) During each regular session of the general assembly, the joint budget committee and the health and human services committees of the senate and the house of representatives, or any successor committees, shall hold a joint hearing and take public testimony on the status of the waiting lists for adult comprehensive services, adult supported living services, and family support services for persons with developmental disabilities and the availability of general fund moneys to reduce the number of persons on the waiting lists and the amount of time eligible persons wait for such services. The goal of the hearing shall be to propose an appropriation from the general fund to the developmental disabilities services cash fund.

(3) The general assembly may annually appropriate moneys in the developmental disabilities services cash fund to:

(a) The department for program costs for adult comprehensive services, adult supported living services, and family support services for persons with developmental disabilities provided pursuant to this article or part 4 of article 6 of title 25.5, C.R.S.; and

(b) The department of health care policy and financing for program costs for adult comprehensive services and adult supported living services for persons with developmental disabilities provided pursuant to this article or part 4 of article 6 of title 25.5, C.R.S.

(4) Any moneys appropriated from the developmental disabilities services cash fund pursuant to subsection (3) of this section that are unexpended at the end of a fiscal year shall revert to the fund.

(5) It is the intent of the general assembly that the moneys in the developmental disabilities services cash fund be used to reduce the number of persons on the waiting lists for such services and the amount of time eligible persons wait for such services.

**27-10.5-104.5. Service agencies - moneys - rules.** (1) A service agency, including a community centered board when acting as a service agency, shall comply with the requirements set forth in this article and the rules promulgated thereunder.

(2) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)

(3) The department shall promulgate rules to implement the purchase of services and supports from a community centered board, service agency, or family caregiver. The rules shall include, but need not be limited to:

(a) Terms and conditions necessary to promote the effective delivery of services and supports, including those services and supports delivered by a family caregiver;

(b) Procedures for obtaining an annual audit of designated community centered boards and service agencies not affiliated with a designated community centered board to provide financial information deemed necessary by the department to establish costs of services and supports and to ensure proper management of moneys received pursuant to section 27-10.5-104;

(c) Delineation of a system to resolve contractual disputes between the department and designated community centered boards or service agencies and between designated community centered boards and service agencies, including the contesting of any rates that the designated community centered boards charge to service agencies based upon a percentage of the rates that service agencies charge for services and supports;

(d) Specification of what services and supports are to be reimbursed by the department of human services and secondarily by the community centered board, the source of reimbursement, actual service or support costs, incentives, and program service objectives which affect reimbursement;

(e) The methods of coordinating the purchase of services and supports, including, but not limited to, service and support coordination, with other federal, state, and local programs which provide funding for authorized services and supports;

(f) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)

(g) and (h) (Deleted by amendment, L. 2008, p. 2219, § 2, effective June 5, 2008.)

(i) Criteria for and limitations on any rates that designated community centered boards charge to service agencies based upon a percentage of the rates that service agencies charge for services and supports.

(3.5) Any incorporated service agency which is registered in Colorado as a foreign corporation shall organize a local advisory board consisting of individuals who reside within the designated service area. Such advisory board shall be representative of the community at large and persons receiving services and their families.

(4) Upon a determination by the executive director that services or supports have not been provided in accordance with the program or financial administration standards specified in this article and the rules and regulations promulgated thereunder, the executive director may reduce, suspend, or withhold payment to a designated community centered board, service agency under contract with a designated community centered board, or service



agency from which the department of human services purchased services or supports directly. When the executive director decides to reduce, suspend, or withhold payment, the executive director shall specify the reasons therefor and the actions which are necessary to bring the service agency into compliance.

(5) Nothing in this article or in any rules or regulations promulgated pursuant thereto and no actions taken by the executive director pursuant to this article shall be construed to affect the obtaining of funds from local authorities, including those funds obtained from a mill levy assessed by a county or municipality for the purpose of purchasing services or supports for persons with developmental disabilities, or to require that such funds from local authorities be used to supplant state or federal funds available for purchasing services and supports for persons with developmental disabilities.

(6) (Deleted by amendment, L. 92, p. 1363, § 5, effective July 1, 1992.)

**27-10.5-105. Community centered boards - designation - purchase of services and supports by community centered boards.** (1) In order to be designated as the community centered board in a particular designated service area, a private corporation, for profit or not for profit, shall annually apply for such designation to the department in the form and manner specified by the executive director. Designation shall be based on the following factors:

(a) Utilization of existing service agencies or existing social networks or natural sources of support in the designated service area;

(b) Encouragement of competition among service agencies within the designated service area to provide newly identified services or supports, the variety of service agencies available to the person receiving services within the designated service area, and the demonstrated effort to purchase new or expanded services or supports from service agencies other than those affiliated with the community centered board;

(c) Utilization of state-funded services and supports administered at the local level, including but not limited to public education, social services, public health, and rehabilitation programs;

(d) Quality of services and supports provided directly or by contract for persons with developmental disabilities;

(e) The establishment of new services and supports for the prevention of institutionalization, the support of deinstitutionalization, and a commitment to innovative, effective, and inclusive services and supports for persons with developmental disabilities;

(f) The willingness of the applicant to pursue authorized services and supports from all eligible persons within the designated service area.

(2) Once a community centered board has been designated pursuant to this section, it shall, subject to available appropriations:

(a) Be under the control and direction of a board of directors or trustees comprised

of one or more persons from each of the following categories:

- (I) Interested persons representing the community at large;
  - (II) Family members of persons with developmental disabilities who are receiving services or supports; and
  - (III) Persons with developmental disabilities who are receiving services or supports;
- (b) Adopt bylaw provisions to ensure that:
- (I) Members of the governing board are prohibited from voting on issues in which they have a conflict of interest;
  - (II) Staff members of the community centered board and employees or board members of service agencies shall not serve on the governing board;
  - (III) Staff members of the community centered board and employees or board members of service agencies are prohibited from voting in elections for members of the governing board; and
  - (IV) Board meetings shall be scheduled after adequate notice and shall be open to the public; except that by vote of a two-thirds majority of members present the board may elect to address the following matters in executive session:
    - (A) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest;
    - (B) Conferences with an attorney for the purpose of receiving legal advice on specific legal questions;
    - (C) Matters required to be kept confidential by federal or state law or rules or regulations;
    - (D) Specialized details of security arrangements or investigations;
    - (E) Determining positions relative to matters that may be subject to negotiations;
    - (F) Developing strategy for negotiations and instructing negotiators; and
    - (G) Personnel matters;
- (c) Determine the needs of eligible persons within the community centered board designated service area and prepare and implement a long-range plan and annual updates to that plan for the development and coordination of services and supports to address those needs. The needs determination and designated service area plans or annual update shall be submitted to the department.
- (d) Determine eligibility and develop an individualized plan for each person who receives services or supports pursuant to section 27-10.5-106; except that, for a child from birth through two years of age, eligibility determination and development of an individualized family service plan shall be made pursuant to part 7 of this article;
- (e) Provide case management services, including service and support coordination and periodic reviews, for persons receiving services and families with children with developmental disabilities;
- (f) Repealed.
- (g) Obtain or provide early intervention services and supports pursuant to part 7 of

this article;

(h) Take steps to notify eligible persons, and their families as appropriate, regarding the availability of services and supports;

(i) Establish a human rights committee. The human rights committee shall, to the extent possible, be comprised of two professional persons trained in the application of behavior development techniques and three representatives of persons receiving services, their parents, legal guardians, or authorized representatives. No employee or board member of a service agency within the community centered board's designated service area shall serve as a member of the human rights committee.

(j) Pursuant to section 27-10.5-704, collaborate with the department as it develops and implements a statewide plan for public education outreach and awareness efforts related to part C child find and the availability of early intervention services.

(3) The executive director shall review each designated community centered board program to ensure that the program complies with the requirements and standards set forth in this article and the rules promulgated thereunder.

**27-10.5-105.5. Revocation of designation.** (1) The executive director may revoke the designation of a community centered board upon a finding that the community centered board is in violation of the provisions of this article and the rules and regulations promulgated thereunder. Such revocation shall conform to the provisions and procedures specified in article 4 of title 24, C.R.S., and shall be made only after a hearing is provided as specified in that article.

(2) Once a designation has been revoked pursuant to subsection (1) of this section, the executive director may designate a service agency to perform the case management services of the designated community centered board pending designation of a new community centered board.

(3) (Deleted by amendment, L. 92, p. 1368, § 7, effective July 1, 1992.)

**27-10.5-106. Eligibility determination - individualized plan - periodic review - rules.** (1) (a) Any person may request an evaluation to determine whether he or she has a developmental disability and is eligible to receive services and supports pursuant to this article. Application for eligibility determination shall be made to the designated community centered board in the designated service area where the person resides.

(b) Pursuant to contract with the department, designated community centered boards shall determine whether a person is eligible to receive services and supports pursuant to this article and, if so, shall develop an individualized plan for him or her as part of his or her enrollment into a program. The department shall promulgate rules, pursuant to article 4 of title 24, C.R.S., setting forth the procedure and criteria for determination of eligibility and

individualized plan development. The procedure and criteria shall be uniform in nature and applied throughout the state in a consistent manner.

(2) Following intake and assessment by the designated community centered board, an individualized plan shall be developed as provided by rules promulgated by the department. The individualized family service plan for a child with disabilities from birth through two years of age shall be developed pursuant to section 27-10.5-703.

(2.5) Subject to available appropriations pursuant to section 27-10.5-104 and to the availability of space within an individual service agency, the person with a developmental disability shall be provided options for services and supports within the designated service area that can appropriately meet the person's identified needs, as identified pursuant to subsection (2) of this section, and may select the service agency from which to receive services or supports.

(3) (a) Each person receiving services shall receive periodic and adequate reviews to ascertain whether the services and supports specified in his or her individualized plan have been provided, determine the appropriateness of current services and supports, identify whether the results specified in the person's individualized plan have been achieved, and modify and revise current services or supports to meet the identified needs of the person receiving services. Modifications or revisions to the individualized family service plan for a child with disabilities from birth through two years of age shall be developed pursuant to section 27-10.5-703.

(b) In order to accurately review the services and supports being provided, the community centered board or regional center may make cognitive, physical, medical, behavioral, social, vocational, educational, or other necessary types of evaluations of a person receiving services. The reviews shall be supervised by a developmental disabilities professional. The person receiving services, the parents or guardian of a minor, or the guardian of the person receiving services, and the authorized representative of the person receiving services may attend and shall receive adequate advance notice of the reviews. Parental or legal guardian consent must be obtained prior to administering evaluations for program review to minors. The results of a review shall be given to the person receiving services and to the person's parent, or guardian, as appropriate, and shall be made a part of the person's record.

(c) A person's individualized plan shall be reviewed at least annually; except that an individualized family service plan for a child with disabilities from birth through two years of age shall be reviewed as required pursuant to part 7 of this article.

(4) (Deleted by amendment, L. 92, p. 1368, 8, effective July 1, 1992.)

(5) An individualized plan shall not be required for a person with developmental disabilities who is eligible for supports and services and who is on a waiting list for enrollment into a program funded pursuant to this article. Each community centered board shall provide information and referral services to each person on the waiting list for enrollment in a program, at the time of his or her eligibility and annually thereafter, regarding

services and supports that are relevant to the individual and are commonly used by persons with developmental disabilities as provided by rules promulgated by the department. The criteria for information and referral shall be uniform in nature and applied throughout the state in a consistent manner.

**27-10.5-107. Procedure for resolving disputes over eligibility, modification of services or supports, and termination of services or supports.** (1) Every state or local service agency receiving state moneys pursuant to section 27-10.5-104 shall adopt a procedure for the resolution of disputes arising between the service agency and any recipient of, or applicant for, services or supports authorized under section 27-10.5-104. Procedures for the resolution of disputes regarding early intervention services shall be in compliance with IDEA. The procedures shall be consistent with rules promulgated by the department pursuant to article 4 of title 24, C.R.S., and shall be applicable to the following disputes:

(a) A contested decision that the applicant is not eligible for services or supports;

(b) A contested decision to provide, modify, reduce, or deny services or supports set forth in the individualized plan or individualized family service plan of the person receiving services;

(c) A contested decision to terminate services or supports;

(d) A contested decision that the person receiving services is no longer eligible for services or supports.

(2) (Deleted by amendment, L. 92, p. 1369, § 9, effective July 1, 1992.)

(3) The department shall promulgate rules pursuant to article 4 of title 24, C.R.S., setting forth procedures for the resolution of disputes specified in subsection (1) of this section that shall:

(a) Require that all applicants for services and supports and the parents or guardian of a minor, the guardian, or an authorized representative be informed orally and in writing, in their native language, of the dispute resolution procedures at the time of application, at the time the individualized plan is developed, and any time changes in the plan are contemplated;

(b) Require that a service agency keep a written record of all proceedings specified pursuant to this section;

(c) Require that no person receiving services be terminated from such services or supports during the resolution process;

(d) Require that utilizing the dispute resolution procedure shall not prejudice the future provision of appropriate services or supports to individuals; and

(e) Require that the intended action not occur until after reasonable notice has been provided to the person, the parents or guardian of a minor, the guardian, or an authorized representative, along with an opportunity to utilize the resolution process, except in emergency situations, as determined by the department.

(3.5) The resolution process need not conform to the requirements of section 24-4-

105, C.R.S., as long as the rules adopted by the department include provisions specifically setting forth procedures, time frames, notice, an opportunity to be heard and to present evidence, and the opportunity for impartial review of the decision in dispute by the executive director or designee, if the resolution process has failed.

(4) and (5) (Deleted by amendment, L. 92, p. 1369, § 9, effective July 1, 1992.)

**27-10.5-108. Discharge.** (1) A person receiving services shall be discharged from services or supports upon a determination, made pursuant to the individualized planning process, that the services or supports are no longer appropriate. At least ten days prior to effectuation of the discharge, notification of discharge shall be given to the person receiving services, the parents or guardian of such a person who is a minor, and such person's legal guardian and authorized representative when applicable.

(2) When a person receiving services notifies a service agency that such person no longer wishes to receive a service or support, the person shall be discharged from such service or support unless the person is subject to a petition to impose a legal disability or to remove a legal right, filed pursuant to section 27-10.5-110, or for whom a legal guardian has been appointed, affecting the person's ability to voluntarily terminate services or supports. The parents of the person receiving services who is a minor and such person's guardian shall be notified of the person's wish to terminate services or supports, but no minor will be discharged without the consent of the parent or legal guardian.

**27-10.5-109. Community residential home - licenses - rules.**

(1) (Deleted by amendment, L. 92, p. 1371, § 11, effective July 1, 1992.)

(2) (a) The department of public health and environment and the department of human services shall implement a system of joint licensure and certification of community residential homes. Independent residential support services provided by the department of human services do not require licensure by the department of public health and environment.

(b) By December 31, 2012, the department of public health and environment, the department of health care policy and financing, and the department of human services shall develop an implementation plan, in consultation with industry representatives, to resolve differing requirements and to eliminate obsolete, redundant rules and reporting, monitoring, compliance, auditing certification, licensing, and work processes pertaining to the regulation of community residential homes pursuant to this section. The departments shall study the feasibility of implementing a single, consolidated survey and methods for conducting surveys simultaneously. The departments shall report their progress in meeting the requirements of this paragraph (b) to their respective committees of reference when making their departmental presentations as required by part 2 of article 7 of title 2, C.R.S. The departments shall send copies of the report to the health care facility stakeholder forum created in section

25-3-113, C.R.S.

(3) (a) The department of public health and environment and the department of human services shall develop standards for the licensure and certification of community residential homes. The standards shall include health, life, and fire safety, as well as standards to ensure the effective delivery of services and supports to residents; except that any community residential home must comply with local codes.

(b) (I) The department of human services or the state board of health, as appropriate, shall adopt the standards by rule and shall specify the responsibilities of each department in the program. Surveys undertaken to ensure compliance with these standards shall, as appropriate, be undertaken as joint surveys by the departments.

(II) If a service agency operates a community residential home and provides personal care services, as defined in section 25-27.5-102, C.R.S., the department of public health and environment or the department of human services, as appropriate, is responsible for surveying those services provided by the service agency, which survey shall be conducted simultaneously with the survey of the community residential home.

(4) Any community residential home applying for a license or certification on or after January 1, 1986, shall accommodate at least four but no more than eight persons with developmental disabilities. All licenses and certificates issued by the department of public health and environment or the department of human services shall bear the date of issuance and shall be valid for not more than a twenty-four-month period.

(5) The issuance, suspension, revocation, modification, renewal, or denial of a license or certification shall be governed by the provisions of section 24-4-104, C.R.S. The failure of a community residential home to comply with the provisions of this article and the rules promulgated thereunder, or any local fire, safety, and health codes shall be sufficient grounds for the department of public health and environment or the department of human services to deny, suspend, revoke, or modify the community residential home's license or certification.

(6) The department of human services and the state board of health shall promulgate such rules as are necessary to implement this section, pursuant to the provisions specified in article 4 of title 24, C.R.S. The rules shall include, but shall not be limited to, the following:

(a) (Deleted by amendment, L. 92, p. 1371, § 11, effective July 1, 1992.)

(b) Requirements concerning the distance between the location of community residential homes and factors to be considered in waiving such requirements for existing community residential homes;

(c) Procedures to secure the health and safety of persons receiving services or supports residing in a community residential home in the event the community residential home closes or its license is denied, suspended, or revoked pursuant to this section.

**27-10.5-109.5. Compliance with local government zoning regulations - notice to local governments - provisional licensure.** (1) The department shall require any

community residential home seeking licensure pursuant to section 27-10.5-109 to comply with any applicable zoning regulations of the municipality, city and county, or county where the home is situated. Failure to comply with applicable zoning regulations shall constitute grounds for the denial of a license to a home; except that nothing in this section shall be construed to supersede the provisions of sections 30-28-115 (2), 31-23-301 (4), and 31-23-303 (2), C.R.S.

(2) The department shall assure that timely written notice is provided to the municipality, city and county, or county where a community residential home is situated, including the address of the home and the population and number of persons to be served by the home, when any of the following occurs:

(a) An application for a license to operate a community residential home pursuant to section 27-10.5-109 is made;

(b) A license is granted to a community residential home pursuant to section 27-10.5-109;

(c) A change in the license of a community residential home occurs; or

(d) The license of a community residential home is revoked or otherwise terminated for any reason.

(3) In the event of a zoning or other delay or dispute between a community residential home and the municipality, city and county, or county where the home is situated, the department may grant a provisional license to the home for up to one hundred twenty days pending resolution of the delay or dispute.

**27-10.5-110. Imposition of legal disability - removal of legal right.** (1) Any interested person may petition the court to impose a legal disability on or to remove a legal right from a person with a developmental disability as defined in section 27-10.5-102. The petition shall set forth the disability to be imposed or the legal right to be removed and the reasons therefor. The petition may affect the right to contract, the right to determine place of abode or provisions of services and supports, the right to operate a motor vehicle, and other similar rights.

(2) (a) Prior to granting the petition, the court shall find:

(I) That the person subject to the petition has been determined to be a person with a developmental disability pursuant to the provisions of this article; and

(II) That the requested disability or removal is both necessary and desirable to implement the individualized plan developed for the person receiving services or supports under the supervision of a developmental disabilities professional and the interdisciplinary team. Such professional shall have an understanding of the rights of persons receiving services as set forth in sections 27-10.5-112 to 27-10.5-123. Such plan shall be submitted to the court and shall be signed by the developmental disabilities professional.

(b) When a petition filed pursuant to subsection (1) of this section seeks to impose



a disability or to remove a legal right, related to the selection of place of abode by the person with a developmental disability, the court shall also find:

(I) That, based on the recent overt actions or omissions of the person subject to the petition, and because of the presence of a developmental disability, without the relief prayed for in the petition such person poses a probable threat of serious physical harm to such person or others or is unable to care for such person's own needs to the extent that such person's own life or safety is seriously threatened; and

(II) That the place of abode requested in the petition is the least restrictive residential setting which is appropriate for the individual needs of the person with a developmental disability.

(3) Within six months after a legal disability has been imposed or a legal right has been removed, the court shall hold a hearing to review its order and either reaffirm the findings made pursuant to subsection (2) of this section and continue the legal disability or removal or remove the legal disability or restore the legal rights to the person subject to the petition. The court may remove a legal disability from or restore a legal right to a person without a hearing upon the filing of a motion requesting such relief containing affidavits in support of the motion signed by all of the parties.

(4) Any interested person may move that the court remove a legal disability or restore a legal right. If such motion is contested, it shall be served on the person whose rights are affected and upon the party who filed the original petition if the person is not the moving party.

(5) The following procedures shall apply to any proceedings instituted pursuant to this section:

(a) When a petition is filed pursuant to subsection (1) of this section, the person subject to the petition shall be advised by the court of such person's right to retain and consult with an attorney at any time, and that if such person cannot afford to pay an attorney, one will be appointed by the court without cost. Attorney fees for court-appointed counsel shall be paid by the court.

(b) Upon the request of an indigent respondent or such respondent's attorney, the court shall appoint one or more developmental disabilities professionals of the respondent's choice to assist the respondent in the preparation of the respondent's case. Fees for such developmental disabilities professionals shall be paid by the court.

(c) The court may issue a temporary order imposing a legal disability or removing a legal right, pending a hearing, for a period not to exceed ten days, based upon the standards required for issuance of a temporary restraining order. No individualized plan shall be required by the court to support the issuance of such order.

(d) The burden of proof shall at all times be upon the party seeking imposition of a disability or removal of a legal right or opposing removal of a disability or restoration of a legal right, and the standard of proof shall be by clear and convincing evidence.

(e) Except as otherwise provided in this subsection (5), all proceedings shall be held

in conformance with the Colorado rules of civil procedure, but no costs shall be assessed against the respondent.

(6) In order to provide representation to eligible persons as provided in this section, the judicial department is authorized to pay moneys, out of appropriations made therefor by the general assembly, directly to appointed counsel or developmental disabilities professionals on a case-by-case basis or, on behalf of the state, to contract with individual attorneys, legal partnerships, legal professional corporations, public interest law firms, or nonprofit legal services corporations to provide legal representation for an agreed-upon lump sum.

(7) No person shall be admitted to a regional center without a court order issued pursuant to this section except in an emergency or for the purpose of temporary respite care.

**27-10.5-111. Conduct of court proceedings.** All court proceedings arising under section 27-10.5-110 shall be conducted by the district attorney of the county where the proceeding is held or by a qualified attorney acting for the district attorney appointed by the district court for that purpose; except that, in any county or in any city and county having a population exceeding one hundred thousand persons, the proceedings shall be conducted by the county attorney or by a qualified attorney acting for the county attorney appointed by the district court. In any case in which there has been a change of venue to a county other than the county of residence of the respondent or the county in which the proceeding was commenced, the county from which the proceeding was transferred shall either reimburse the county in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be.

**27-10.5-112. Individuals' rights.** (1) Unless a person's rights are modified by court order, a person with a developmental disability shall have the same legal rights and responsibilities guaranteed to all other individuals under the federal and state constitutions and federal and state laws. No otherwise qualified person, by reason of having a developmental disability, shall be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives public funds.

(2) The receipt of services and supports pursuant to this article shall not operate to deprive any person of any other rights, benefits, or privileges or cause the person to be declared legally incompetent.

(3) The rights of any person receiving services which are specified in this article may be suspended to protect the person receiving services from endangering such person, others, or property. Such rights may be suspended only by the developmental disabilities professional with subsequent review by the interdisciplinary team and by the human rights

committee in order to provide specific services or supports to the person receiving services, which will promote the least restriction on the person's rights. Such person's legal rights may be removed by a court pursuant to section 27-10.5-110.

(4) None of the rights established pursuant to this article shall be construed to interfere with the rights and privileges of parents regarding their minor child.

**27-10.5-113. Right to individualized plan or individualized family service plan.** (1) Each person receiving services shall have an individualized plan, an individualized family service plan, or a similar plan specified by the department that qualifies as an individualized plan, that is developed by the person's interdisciplinary team. The individualized family service plan for a child with disabilities from birth through two years of age shall be developed in compliance with part 7 of this article.

(2) Pursuant to section 27-10.5-106, the individualized plan for each person who receives services or supports shall be reviewed at least annually and modified as necessary or appropriate; except that an individualized family service plan for a child with disabilities from birth through two years of age shall be reviewed as required pursuant to part 7 of this article. A review shall consist of, but is not limited to, the determination by the interdisciplinary team as to whether the needs of the person receiving services or supports are accurately reflected in the plan, whether the services and supports provided pursuant to the plan are appropriate to meet the person's needs, and what actions are necessary for the plan to be achieved.

**27-10.5-114. Right to medical care and treatment.** (1) Each person receiving services shall have access to appropriate dental and medical care and treatment for any physical ailments and for the prevention of any illness or disability.

(2) No medication for which a prescription is required shall be administered without the written order of a physician. A physician shall conduct a review of all prescriptions and other orders for medications in order to determine the appropriateness of the person's medication regimen annually, or more often, if required by law.

(3) All service agencies which administer medication shall require that notation of the medication of a person receiving services be kept in the person's medical records. All medications shall be administered pursuant to part 3 of article 1.5 of title 25, C.R.S.

(4) Persons receiving services shall have a right to be free from unnecessary or excessive medication. The service agency's records shall state the effects of psychoactive medication if administered to the person receiving services. When dosages of such are changed or other psychoactive medications are prescribed, a notation shall be made in such person's record concerning the effect of the new medication or new dosages and the behavior changes, if any, which occur.

(5) Medication shall not be used for the convenience of the staff, for punishment, as a substitute for a treatment program, or in quantities that interfere with the treatment program of the person receiving services.

(6) Only appropriately trained staff shall be allowed to administer drugs.

(6.5) The executive director has the power to direct the administration or monitoring of medications to persons being cared for and treated in centers for the developmentally disabled pursuant to section 25-1.5-301 (2) (h), C.R.S.

(7) No person receiving services shall be subjected to any experimental research or hazardous treatment procedures without the consent of such person, if the person is over eighteen years of age and is able to give such consent, or of the person's parent, if the person is under eighteen years of age, or of the person's legal guardian. Such consent may be given only after consultation with the interdisciplinary team and a developmental disabilities professional not affiliated with the facility or community residential home in which the person receiving services resides. However, no such person of any age shall be subjected to experimental research or hazardous treatment procedures if said person implicitly or expressly objects to such procedure.

(8) No person receiving services shall have any organs removed for the purpose of transplantation without the consent of such person, if the person is over eighteen years of age and is able to give such consent. If the person's ability to give consent to the medical procedure is challenged by the physician, the same procedures as those set forth in section 27-10.5-129 shall be followed. Consent for the removal of organs for transplantation may be given by the parents of a person receiving services, if the person is under eighteen years of age, or by the person's legal guardian. Such consent may be given only after consultation with the interdisciplinary team and a developmental disabilities professional not affiliated with the facility or community residential home in which the person receiving services resides. However, no person receiving services of any age shall be a donor of an organ if the person implicitly or expressly objects to such procedure.

(9) (a) As used in subsections (7) and (8) of this section, consent also shall require that the person whose consent is sought has been adequately and effectively informed as to the:

(I) Method of experimental research, hazardous treatment, or transplantation;

(II) Nature and consequence of such procedures; and

(III) Risks, benefits, and purposes of such procedures.

(b) The consent of any person may be revoked at any time.

(10) Subsections (7), (8), and (9) of this section shall not apply when a physician renders emergency medical care or treatment to any resident.

**27-10.5-115. Right to humane care and treatment.** (1) Corporal punishment of persons with a developmental disability shall not be permitted.

(2) All service agencies shall prohibit mistreatment, exploitation, neglect, or abuse in any form of any person receiving services.

(3) Service agencies shall provide every person receiving services with a humane physical environment.

(4) Each person receiving services shall be attended to by qualified staff in numbers sufficient to provide appropriate services and supports.

(5) Seclusion, defined as the placement of a person receiving services alone in a closed room for the purpose of punishment, is prohibited.

(6) "Time out" procedures, defined as separation from other persons receiving services and group activities, may be employed under close and direct professional supervision, as defined by the department, and only as a technique in behavior-shaping programs. Behavior-shaping programs utilizing a "time out" procedure shall be implemented only when it incorporates a positive approach designed to result in the acquisition of adaptive behaviors. Such behavior programs shall only be implemented following the completion of a comprehensive functional analysis, when alternative nonrestrictive procedures have been proven to be ineffective, and only with the informed consent of the individual, parents, or legal guardian. Such behavior programs shall be implemented only following the review and approval process defined in rules and regulations. Behavior development programs shall be developed in conjunction with the interdisciplinary team and implemented only following review by the human rights committee. Behavior development programs involving the use of the procedure in a "time out room" are prohibited.

(7) Behavior development programs involving the use of aversive or noxious stimuli are prohibited.

(8) Physical restraint, defined as the use of manual methods intended to restrict the movement or normal functioning of a portion of an individual's body through direct contact by staff, shall be employed only when necessary to protect the person receiving services from injury to self or others. Physical restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a program of services and supports. Physical guidance or prompting techniques of short duration such as those employed in training techniques are not considered physical restraint. Physical restraint shall be applied only if alternative techniques have failed and only if such restraint imposed the least possible restriction consistent with its purpose. If physical restraint is used in an emergency or on a continuing basis its use shall be reviewed by the interdisciplinary team and the human rights committee in accordance with the rules and regulations of the department.

(9) The use of a mechanical restraint, defined as the use of mechanical devices intended to restrict the movement or normal functioning of a portion of an individual's body, is subject to special review and oversight, as defined in rules and regulations. Use of mechanical restraints shall be applied only in an emergency if alternative techniques have failed and in conjunction with a behavior development program. Mechanical restraints shall be designed and used so as not to cause physical injury to the person receiving services and

so as to cause the least possible discomfort. The use of mechanical restraints shall be reviewed by the human rights committee. The use of posey vests, straight jackets, ankle and wrist restraints, and other devices defined in rules and regulations is prohibited.

(10) A record shall be maintained of all physical injuries to any person receiving services, all incidents of mistreatment, exploitation, neglect, or abuse, and all uses of physical or mechanical restraint. All records shall be subject to review by the human rights committee.

(11) Behavior development programs shall be supervised by a developmental disabilities professional having specific knowledge and skills to develop and implement positive behavioral intervention strategies.

**27-10.5-116. Right to religious belief, practice, and worship.** No person receiving services shall be required to perform any act or be subject to any procedure whatsoever which is contrary to the person's religious belief, and each such person shall have the right to practice such religious belief and be accorded the opportunity for religious worship. Provisions for religious worship shall be made available to all persons receiving services on a nondiscriminatory basis. No such person shall be coerced into engaging in or refraining from any religious activity, practice, or belief.

**27-10.5-117. Rights to communications and visits.** (1) Each person receiving services has the right to communicate freely and privately with others of the person's own choosing.

(2) Each person receiving services has the right to receive and send sealed, unopened correspondence. No such person's incoming or outgoing correspondence shall be opened, delayed, held, or censored by any person.

(3) Each person receiving services shall have the right to receive and send packages. No such person's outgoing packages shall be opened, delayed, held, or censored by any person.

(4) Repealed.

(5) Each person receiving services shall have reasonable access to telephones, both to make and to receive calls in privacy, and shall be afforded reasonable and frequent opportunities to meet with visitors.

(6) All service agencies shall ensure that persons receiving services have suitable opportunities for interaction with persons of their choice. Nothing in this section will limit the protections provided under article 3.1 of title 26, C.R.S.

(7) Repealed.

**27-10.5-118. Right to fair employment practices.** (1) No person receiving services

shall be required to perform labor; except that persons receiving services may voluntarily engage in such labor if the labor is compensated in accordance with applicable minimum wage laws.

(2) No person receiving services shall be involved in the physical care, care and treatment, training, or supervision of other persons receiving services unless such person has volunteered, has been specifically trained in the necessary skills, and has the judgment required for such activities, is adequately supervised, and is reimbursed in accordance with the applicable minimum wage laws.

(3) Each person receiving services may perform vocational training tasks, subject to a presumption that an assignment longer than three months to any task is not a training task, if the specific task or any change in task assignment is an integral part of such person's individualized plan. If such person performs vocational training tasks for which the service agency is receiving compensation from any outside source, the person shall be compensated in accordance with the applicable minimum wage laws.

(4) Each person receiving services may voluntarily engage in labor for which the service agency would otherwise have to pay an employee if the specific labor or any change in labor is an integral part of such person's individualized plan and the person is compensated in accordance with the applicable minimum wage laws.

(5) Each person receiving services may be required to perform tasks of a personal housekeeping nature or tasks oriented to improving community living skills in accordance with the person's individualized plan.

(6) Payment to persons receiving services pursuant to this section shall not be collected by the service agency to offset the costs of providing services and supports to such person.

**27-10.5-119. Right to vote.** Each person receiving services who is eligible to vote according to law has the right to vote in all primary and general elections. As necessary, all service agencies shall assist such persons to register to vote, to obtain applications for mail-in ballots and to obtain mail-in ballots, to comply with other requirements which are prerequisite to voting, and to vote.

**27-10.5-120. Records and confidentiality of information pertaining to eligible persons or their families.** (1) A record for each person receiving services shall be diligently maintained by the community centered board. The record shall include, but not be limited to, information pertaining to the determination of eligibility for services and the individualized plan. The record shall not be a public record.

(2) Except as otherwise provided by law, all information obtained and any records prepared in the course of determining eligibility or providing services and supports pursuant

to this article shall be confidential and subject to the evidentiary privileges established by law. The disclosure of this information and these records in any manner shall be permitted only:

(a) To the applicant or person receiving services, to the parents of a minor, such person's legal guardian, and to any person authorized by the above named person;

(b) In communications between qualified professional personnel, including the board of directors of community centered boards and service agencies providing services to persons with developmental disabilities, to the extent necessary for the acquisition, provision, oversight, or referral of services and supports;

(c) (Deleted by amendment, L. 92, p. 1380, § 21, effective July 1, 1992.)

(d) To the extent necessary to make claims for aid, insurance, or medical assistance to which a person receiving services may be entitled, or to access services and supports pursuant to the individualized plan;

(e) For the purposes of evaluation, gathering statistics, or research when no identifying information concerning an individual person or family is disclosed. Identifying information is information which could reasonably be expected to identify a specific individual and includes, but is not limited to, name, address, telephone number, social security number, medicaid number, household number, and photograph.

(f) To the court when necessary to implement the provisions of this article;

(g) To persons authorized by an order of court issued after a hearing, notice of which was given to the person, parents or legal guardian, where appropriate, and the custodian of the information;

(h) To the agency designated pursuant to 42 U.S.C. sec. 6012 as the protection and advocacy system for Colorado when:

(I) A complaint has been received by the protection and advocacy system from or on behalf of a person with a developmental disability; and

(II) Such person does not have a legal guardian or the state or the designee of the state is the legal guardian of such person;

(i) To the department or its designees as deemed necessary by the executive director to fulfill the duties prescribed by this article.

(3) Nothing in this section shall be construed to limit access by a person receiving services to such person's records.

(4) Nothing in this section shall be construed to interfere with the protections afforded to a person under the federal "Health Insurance Portability and Accountability Act of 1996", 42 U.S.C. sec. 1320d, and the federal "Family Education Rights and Privacy Act of 1974", 20 U.S.C. sec. 1232g.

**27-10.5-121. Right to personal property.** (1) Each person receiving services has



the right to the possession and use of such person's own clothing and personal effects. If the service agency holds any of such person's personal effects for any reason, such retention shall be promptly recorded in such person's record and the reason for retention shall also be recorded.

(2) Upon the request of a person receiving services, a service agency may hold money or funds belonging to the person receiving services, received by such person, or received by the service agency for such person. All such money or funds shall be held by the service agency as trustee for the person receiving services. Upon request, an accounting shall be rendered by the service agency.

(3) Upon request, a person receiving services shall be entitled to receive reasonable amounts of such person's money or funds held in trust.

**27-10.5-122. Right to influence policy.** The persons receiving services of a service agency shall be entitled to establish a committee to hear the views and represent the interests of all such persons served by the agency and to attempt to influence the policies of the agency to the extent that they influence provision of services and supports.

**27-10.5-123. Right to notification.** Each person receiving services shall have the right to read or have explained, in each person's or family's native language, any rules or regulations adopted by the service agency and pertaining to such person's activities.

**27-10.5-124. Discrimination.** No person who has received services or supports under any provision of this article shall be discriminated against because of such status. For purposes of this section, "discrimination" means the giving of any unfavorable weight to the fact that a person has received such services or supports.

**27-10.5-125. Transfer of residents. (Repealed)**

**27-10.5-126. Return of residents. (Repealed)**

**27-10.5-127. Restoration of rights. (Repealed)**

**27-10.5-128. Sterilization rights.** (1) It is the intent of the general assembly that the

procedures set forth in the following subsections be utilized when sterilization is being considered for the primary purpose of rendering the individual incapable of reproduction.

(2) Any person with a developmental disability over eighteen years of age who has given informed consent has the right to be sterilized, subject to the following:

(a) Prior to the procedure, competency to give informed consent and assurance that such consent is voluntarily and freely given shall be evaluated by the following:

(I) A psychiatrist, psychologist, or physician who does not provide services or supports to the person and who has consulted with and interviewed the person with a developmental disability; and

(II) A developmental disabilities professional who does not provide services or supports in which said person participates, and who has consulted with and interviewed the person with a developmental disability.

(b) The professionals who conducted the evaluation pursuant to paragraph (a) of this subsection (2) shall consult with the physician who is to perform the operation concerning each professional's opinion in regard to the informed consent of the person requesting the sterilization.

(3) Any person with a developmental disability whose capacity to give an informed consent is challenged by the developmental disabilities professional or the physician may file a petition with the court to declare competency to give consent pursuant to the procedures set forth in section 27-10.5-129.

(4) No person with a developmental disability who is over eighteen years of age and has the capacity to participate in the decision-making process regarding sterilization shall be sterilized in the absence of the person's informed consent. No minor may be sterilized without a court order pursuant to section 27-10.5-130.

(5) Sterilization conducted pursuant to this section shall be legal. Consent given by any person pursuant to subsection (2) of this section shall not be revocable after sterilization, and no person shall be liable for acting pursuant to such consent.

**27-10.5-129. Competency to give consent to sterilization.** (1) If the competency of the person with a developmental disability to give consent to sterilization is disputed by the developmental disabilities professional, the psychiatrist or psychologist, or physician, said person may file a petition for declaration of competency to give consent to sterilization with the court. Upon the filing of a petition which shows that said person is over eighteen years of age and desires to give consent to sterilization, the court shall immediately set a hearing to determine the person's competency to give such consent. For the purpose of determining competency, the court shall appoint two or more independent professional persons with expertise in the field of developmental disabilities who do not provide services and supports to said person to examine said person and to present their findings as to said person's competency to give consent to sterilization at the competency hearing.

(2) If the court determines that the person has given consent to sterilization and is competent to give such consent, the court shall order that the sterilization be performed unless the person withdraws consent to sterilization prior to the sterilization being performed. If the court determines that the person is incompetent to give consent to sterilization, the court shall order that no sterilization be performed without further court proceedings pursuant to section 27-10.5-130.

(3) Determination of competency in these proceedings is specific to the ability to give consent to sterilization and does not determine legal competency for any other purpose.

**27-10.5-130. Court-ordered sterilization.** (1) A person with a developmental disability who has been determined to be incompetent to give consent, the person's legal guardian, or the parents of a minor with a developmental disability, may petition the court to hold a hearing to determine whether said person should be ordered to be sterilized. The petition shall set forth the following:

- (a) The name, age, and residence of the person to be sterilized;
- (b) The name, address, and relation to said person of the petitioner;
- (c) The names and addresses of any parents, spouse, legal guardian, or custodian of said person;
- (d) The mental condition of the person to be sterilized;
- (e) A statement that the sterilization is medically necessary to preserve the life or physical or mental health of the person, including a short and plain description of the reasons behind the determination of medical necessity;
- (f) A statement that other less intrusive measures were considered and the reasons behind the determination that less intrusive means would not protect the interests of the individual.

(2) Upon petition to the court, the court shall appoint an attorney who will represent the interests of the person with a developmental disability and one or more experts in the developmental disability field to examine the person and to give testimony at the hearing regarding the person's mental and physical status and other relevant matters.

(3) The hearing on the petition shall be held promptly. The person with a developmental disability shall be represented by an attorney and shall have the opportunity to present testimony and to cross-examine witnesses.

(4) Copies of the petition and notices of the time and place of the hearing shall be mailed, not less than ten days prior to the hearing, to the person with a developmental disability, that person's attorney, a parent or next of kin, and legal guardian or custodian.

(5) Reasonable fees and costs incurred pursuant to this section shall be paid by the court for a person who is indigent.

(6) Prior to ordering sterilization, the court must find:

- (a) That the person lacks the capacity to effectively participate in the decision-making process regarding sterilization or is a minor with a developmental disability;
- (b) That the court has heard from the person regarding that person's desires, if possible, and the court has considered the desires of the person;
- (c) That the person lacks the capacity to make a decision regarding sterilization and that the person's capacity to make such a decision is unlikely to improve in the future;
- (d) That the person is capable of reproduction and is likely to engage in activities at the present or in the near future which could result in pregnancy;
- (e) By clear and convincing evidence, that the sterilization is medically necessary to preserve the life or physical or mental health of the person, including a short and plain description of the reasons behind the determination of medical necessity;
- (f) That other less intrusive measures were considered and the reasons behind the determination that less intrusive means would not protect the interests of the person.

**27-10.5-131. Confidentiality of sterilization proceedings.** All records, hearings, and proceedings pursuant to sections 27-10.5-128 to 27-10.5-130 shall be strictly confidential unless requested to be open to the public by the person with a developmental disability or the person's legal guardian.

**27-10.5-132. Limitations on sterilization.** (1) Consent to sterilization shall be made neither a condition for release from any institution nor a condition for the exercise of any right, privilege, or freedom.

(2) Nothing in this article shall require any hospital or any person to participate in any sterilization, nor shall any hospital or any person be civilly or criminally liable for refusing to participate in any sterilization.

**27-10.5-133. Group homes for the developmentally disabled. (Repealed)**

**27-10.5-134. Civil action and attorney fees.** A violation of any provision of this article shall give rise to a civil cause of action by the person adversely affected by such violation, and any judgment may include plaintiff's reasonable attorney fees.

**27-10.5-135. Terminology.** (1) Whenever the terms "insane", "insanity", "mentally or mental incompetent", "mental incompetency", or "of unsound mind" are used in the laws of the state of Colorado, they shall be deemed to refer to the insane, as defined in section 16-

8-101, C.R.S., or to a person with a developmental disability, as defined in section 27-10.5-102, as the context of the particular law requires.

(2) Whenever the term "mentally deficient person" is used in the laws of the state of Colorado, it shall be deemed to mean and be included with the term "person with a developmental disability", as defined in section 27-10.5-102 (11) (b).

**27-10.5-136. Adjudication of competency. (Repealed)**

**27-10.5-137. Federal funds.** The department is authorized to accept, on behalf of the state, any grants of federal funds made available for any purposes consistent with the provisions of this article. The executive director of the department, with the approval of the governor, shall have power to direct the disposition of any such grants so accepted in conformity with the terms and conditions under which they are given.

**27-10.5-138. Service provision system evaluation. (Repealed)**

**27-10.5-139. Evaluations to determine whether a defendant is mentally retarded for purposes of class 1 felony trials.** Upon request of the court, the executive director, or his or her designee, shall recommend specific professionals who are qualified to perform an evaluation to determine whether a defendant is mentally retarded, as defined in section 18-1.3-1101, C.R.S. Any professional who is recommended shall be licensed as a psychologist in the state of Colorado and shall have experience in and shall have demonstrated competence in determination and evaluation of persons with mental retardation. The executive director shall convene a panel of not fewer than three individuals with expertise in mental retardation who shall assess the qualifications of licensed psychologists and make recommendations to the executive director.

**27-10.5-140. Child find - responsibilities - interagency operating agreements - rules. (Repealed)**

**27-10.5-141. Retaliation prohibited.** No person shall be discriminated against because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to this article, including the dispute resolution procedures in section 27-10.5-107. A service agency, including the department and

any community centered board, shall not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of any right pursuant to this article, or on account of his or her having exercised or enjoyed any right pursuant to this article, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of any right pursuant to this article.

**27-10.5-142. Caregiver abuse - duties of the department - working group - issues - report - funding.** (1) The general assembly hereby finds and declares that:

(a) Persons with developmental disabilities are four to ten times more likely to be victims of crime than the general population. Studies have shown that most crimes against persons with developmental disabilities are unreported, and, for those that are reported, there are excessively low rates of prosecution and conviction.

(b) Persons with developmental disabilities frequently depend upon others to meet their basic needs, leading to a power imbalance between the caregiver and the client with developmental disabilities.

(c) The general assembly is especially concerned by the prevalence of abuse, neglect, and exploitation of persons with developmental disabilities by caregivers who are in a position of trust. Studies estimate that most perpetrators who abuse persons with developmental disabilities had access to their victims through their work providing care for those persons.

(d) The protection of populations who are at risk due to advanced age or developmental disabilities requires the creation of a system to protect these vulnerable populations from those who abuse or neglect them.

(e) Therefore, the general assembly hereby determines that it is necessary to create a caregiver abuse registry to track those persons who abuse, neglect, or exploit at-risk adults and, to that end, tasks the department of human services to develop a plan to create and implement such a registry.

(2) On or before August 30, 2008, the department shall convene a working group to make recommendations for the development of a plan by the department to implement a registry of caregivers who have a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability. The working group shall include representation from interested parties, including but not limited to the division for developmental disabilities, community centered boards, service providers, family members, advocates for persons with developmental disabilities, the judicial department, law enforcement, and any other experts as determined by the department. In developing the plan, the department and the working group shall consider existing registry models in Colorado, as well as statutory models for caregiver abuse registries in other states.

(3) In developing the plan, the department and the working group shall consider, at a minimum, the following issues related to the creation and implementation of a registry of

caregivers who have a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability:

(a) A review and evaluation of existing processes to determine current best practices and how to build on the existing system;

(b) Clear and consistent standards concerning what constitutes a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability;

(c) A definition of family and a determination of whether a family member who acts as a caregiver to a person with a developmental disability should be included on the registry;

(d) Due process considerations for individuals whose names are on the registry or are going to be placed on the registry, including the right to be advised of any allegations and an opportunity to be heard, request a hearing, and be represented by legal counsel;

(e) The need for thorough and fair investigations, including who would perform the investigations and uniform standards and training for those investigators;

(f) Any statutes that need modification due to the creation of a caregiver abuse registry;

(g) Information technology needs and personnel services associated with the creation, implementation, and ongoing administration of a caregiver abuse registry;

(h) The costs associated with creating and implementing a caregiver abuse registry, including whether federal funds or other potential funding sources may be available to cover any part of such costs; and

(i) A process and timeline to phase in the registry.

(4) On or before January 30, 2009, the department shall submit a report to the health and human services committees of the senate and the house of representatives, or any successor committees, summarizing the work of the department pursuant to this section. The report shall include the department's plan for a caregiver abuse registry and any recommendations for implementing legislation.

(5) The department is authorized to seek and accept gifts, grants, or donations from private or public sources for the purposes of this section. All private and public funds received through gifts, grants, or donations shall be transmitted to the state treasurer, who shall credit the same to the caregiver abuse registry fund, which fund is hereby created and referred to in this section as the "fund". The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this section. Any moneys in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund. All unexpended and unencumbered moneys remaining in the fund as of June 30, 2010, shall be transferred to the general fund.

(6) The department shall not be obligated to implement the provisions of this section until such time as there is at least thirty-three thousand dollars in the fund, whether received from gifts, grants, donations, or other sources.

**27-10.5-143. Caregiver abuse - task force.** (1) There is hereby created a task force to study and make recommendations for developing a plan for the department to implement a registry of caregivers who have a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability, referred to in this section as a "registry". The task force shall be limited to twenty members and may include voluntary representation from interested parties, including but not limited to persons with disabilities, members of the general assembly, the division for developmental disabilities in the department, community centered boards, service providers, family members, advocates for persons with developmental disabilities, the judicial department, law enforcement agencies, persons with legal or judicial expertise in abuse registries, and any other interested party. The members of the task force shall select a chair and vice-chair at the first meeting. In developing the plan, the task force may consider existing registry models in Colorado, as well as statutory models for caregiver abuse registries in other states. The department shall not provide staff support to the task force. Members of the task force shall serve without pay and without compensation for expenses. Members of the task force are encouraged to meet monthly, beginning on or before June 2009 and ending June 2010, at which time the task force shall make a report of its activities and findings to the department of human services.

(2) In developing the plan, the task force is encouraged to consider the following issues related to the creation and implementation of a registry:

(a) A review and evaluation of existing processes to determine current best practices and ways to build on the existing system;

(b) Clear and consistent standards concerning what constitutes a substantiated allegation of exploitation, mistreatment, neglect, physical abuse, or sexual abuse of a person with a developmental disability;

(c) A definition of family and a determination of whether a family member who acts as a caregiver to a person with a developmental disability should be included on the registry;

(d) Due process considerations for individuals whose names are on the registry or are going to be placed on the registry, including the right to be advised of any allegations and an opportunity to be heard, request a hearing, and be represented by legal counsel;

(e) The need for thorough and fair investigations, including who would perform the investigations and uniform standards and training for those investigators;

(f) Any statutes that need modification due to the creation of a registry;

(g) Information technology needs and personnel services associated with the creation, implementation, and ongoing administration of a registry;



(h) The costs associated with creating and implementing a registry, including whether federal funds or other potential funding sources may be available to cover any portion of such costs; and

(i) A process and timeline to phase in a registry.

## PART 2

### STATE COUNCIL ON DEVELOPMENTAL DISABILITIES

**27-10.5-201. Legislative declaration.** The general assembly finds that state and local agencies provide a variety of services and supports to persons with developmental disabilities including institutional care, residential, social, and income maintenance services, diagnostic and health-related services, and educational and other programs. Because these services and supports are supported by many diverse agencies and organizations and because congress, through the federal "Developmental Disabilities Services and Facilities Construction Act", and amendments thereto, has called for the establishment of state councils to provide coordination and planning in the field of developmental disabilities, the general assembly declares that there is need to establish a state council on developmental disabilities to be responsible for the coordination of services and supports to the persons with developmental disabilities and to serve as an advocate for such persons. The general assembly further finds that there is need to carefully define the duties and responsibilities of a state council on developmental disabilities.

**27-10.5-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(1) "Developmental disability" means a severe, chronic disability of a person nine years of age or older which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is manifested before the person attains age twenty-two;

(c) Results in substantial functional limitations in three or more of the following areas of major life activity:

(I) Self-care;

(II) Receptive and expressive language;

(III) Learning;

(IV) Mobility;

(V) Self-direction;

(VI) Capacity for independent living; and

(VII) Economic self-sufficiency; and

(d) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services and supports which are of lifelong or extended duration and are individually planned and coordinated; except that such term when applied to infants and young children means individuals from birth to age nine years, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services or supports are not provided.

(2) "State plan" means the state plan for developmental disabilities established pursuant to the provisions of section 27-10.5-204 and as required by the federal "Developmental Disabilities Services and Facilities Construction Act", and amendments thereto, including the "Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978", Pub.L. 95-602.

(3) "State council" means the Colorado developmental disabilities council established pursuant to section 27-10.5-203.

**27-10.5-203. Establishment of state council.** (1) There is hereby created, within the office of the executive director of the department of human services, the Colorado developmental disabilities council. The powers, duties, and functions of the state council are transferred by a **type 1** transfer, as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S., to the department of human services. The state council shall operate in accordance with the federal "Developmental Disabilities Assistance and Bill of Rights Act of 2000", 42 U.S.C. sec. 15001 et seq.

(2) The state council shall consist of twenty-four members appointed by the governor for three-year terms; except that of the members first appointed, one-third shall be appointed for one-year terms, one-third shall be appointed for two-year terms, and one-third shall be appointed for three-year terms. Vacancies shall be filled by appointment for the unexpired term.

(3) The state council shall at all times include in its membership representatives of the principal state agencies, including the state agency that administers funds provided under the federal "Rehabilitation Act of 1973", the state agency that administers funds provided under the federal "Individuals with Disabilities Education Act", the state agency that administers funds provided under the federal "Older Americans Act of 1965", and the state agency that administers funds provided under Titles V and XIX of the federal "Social Security Act" for persons with developmental disabilities; university centers for excellence in developmental disabilities education, research, and service; nongovernmental agencies; and private nonprofit groups concerned with services and supports for persons with developmental disabilities.

(4) At least one-half of the membership of the state council shall consist of persons who:

- (a) Are persons with developmental disabilities;
- (b) Are parents or guardians of such persons; or
- (c) Are family members or guardians of persons with mentally impairing developmental disabilities, and who are not employees of a state agency which receives funds or provides services and supports under this part 2, and who are not employees implementing programs under the federal "Social Security Act" or of any other entity which receives funds or provides services and supports under this part 2.

(5) Of the members of the state council described in subsection (4) of this section:

- (a) At least one-third shall be persons with developmental disabilities;
- (b) At least one-third shall be individuals described in paragraph (c) of subsection (4) of this section, and at least one of such individuals shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

(6) Members of the state council shall serve without compensation but shall be entitled to reimbursement for their expenses while attending regular and special meetings of the state council.

(7) The state council shall operate in accordance with bylaws adopted by a quorum of its membership.

(8) For the purposes of holding meetings of the council, a quorum shall be a simple majority of the council membership in attendance.

**27-10.5-204. Development of the state plan.** The state council shall develop a five-year state plan for developmental disabilities in accordance with the federal "Developmental Disabilities Assistance and Bill of Rights Act of 2000", 42 U.S.C. sec. 15024. The state plan shall include establishment of goals and priorities for meeting the needs of persons with developmental disabilities, including recommendations concerning state program operations and funding for a comprehensive system of services and supports to persons with developmental disabilities. The state plan shall be prepared in compliance with federal requirements and shall designate the state agency responsible for administration of the state plan. The state council shall submit the state plan to the governor for approval.

**27-10.5-205. Powers and duties.** (1) The state council shall:

- (a) Monitor the plans and programs of state agencies established and administered pursuant to the state plan;
- (b) Review budgets and other programs and proposals for funding services and supports to persons with developmental disabilities;
- (c) Review programs that provide services and supports to persons with

developmental disabilities under contracts with state agencies and community centered boards as authorized by the state plan;

(d) Encourage cooperation and coordination of services and supports of public and private agencies including home care services and assist in the elimination of unnecessary and duplicative programs and procedures;

(e) Identify gaps in services and supports to persons with developmental disabilities and monitor programs for deinstitutionalization of such persons;

(f) Serve in an advisory capacity to the governor and the general assembly on matters affecting persons with developmental disabilities;

(g) Meet at least quarterly and as often as necessary to fulfill its duties and responsibilities;

(h) Have all powers necessary to carry out the provisions of this part 2.

**27-10.5-206. State council employees.** Subject to available appropriations, the executive director of the department of human services may employ such personnel as are required by the state council, pursuant to the provisions of section 13 of article XII of the state constitution. The executive director of the department of human services will appoint the staff director to the state council, accepting the recommendations of the council.

**27-10.5-207. Cooperation of departments.** The departments of human services, public health and environment, and education shall cooperate with the state council in the development of and implementation of the recommendations made within the state plan. Said departments shall provide documents and other assistance requested by the state council or its representatives which are essential for the state council to meet its federal and state statutory requirements.

**27-10.5-208. Service provision system evaluation. (Repealed)**

### PART 3

#### REGIONAL CENTERS

**27-10.5-301. Regional centers for persons with developmental disabilities.** There are hereby established state regional centers in Wheat Ridge, Pueblo, and Grand Junction. The essential object of such regional centers shall be to provide state operated services and supports to persons with developmental disabilities.

**27-10.5-302. Directors.** The executive director shall appoint, pursuant to section 13 of article XII of the state constitution, a director for each regional center. Persons appointed must be skilled and trained administrators with experience related to the needs of persons with developmental disabilities. The director of each regional center shall appoint such other employees in accordance with section 13 of article XII of the state constitution as are necessary to carry out the functions of the regional center.

**27-10.5-303. Annual reports - publications.** The director of each regional center shall report to the executive director at such times and on such matters as the executive director may require. Publications of each regional center circulated in quantity outside the department shall be subject to the approval and control of the executive director.

**27-10.5-304. Admissions.** (1) There may be admitted to any regional center persons with developmental disabilities who have been ordered placed in a regional center pursuant to section 27-10.5-110, if the applicant or legal guardian is a bona fide resident of Colorado.  
(2) (Deleted by amendment, L. 92, p. 1391, § 40, effective July 1, 1992.)

**27-10.5-305. Endowment fund.** There is hereby authorized the regional center endowment fund. Any parent, person, corporation, or institution may contribute to said endowment fund. The bylaws to be provided by the department of human services shall prescribe the different endowments; but the investments from said endowment fund shall be in state, county, or city bonds or in first mortgages on improved realty for not more than forty percent of the actual value of such realty.

**27-10.5-306. Gifts - receipt and disposition.** Each regional center is hereby authorized to receive gifts, legacies, devises, and conveyances of property, real or personal, that may be made, given, or granted to or for such regional center. If the gifts are not prescribed, the director, with approval of the executive director, shall exercise such authority and make such disposition of the gift property as may be for the best interest of said regional center.

**27-10.5-307. Expenditures.** No moneys shall be paid by the state treasurer out of any other appropriation for, or moneys belonging to, a regional center, except upon warrants of the controller upon vouchers in favor of the persons to whom the state is indebted on account

of said regional center and certified by the director of said regional center.

**27-10.5-308. Buildings - Pueblo. (Repealed)**

**27-10.5-309. Lease of property at regional center - regional center enterprise fund - creation. (Repealed)**

PART 4

FAMILY SUPPORT SERVICES

**27-10.5-401. Legislative declaration.** (1) It is the intent of the general assembly that the service delivery system for individuals with developmental disabilities emphasize community living for persons with developmental disabilities and provide supports to individuals that enable them to enjoy typical lifestyles. One way to accomplish this is to recognize that families are the greatest resource available to individuals who have a developmental disability and that families must be supported in their role as primary care givers. The general assembly finds that supporting families in their effort to care for their family members at home is more efficient, cost-effective, and humane than maintaining people with developmental disabilities in out-of-home residential settings. In recognition of the importance of families, the general assembly states that the following principles should be used as guidelines in developing programs to support families who have children with disabilities:

(a) Families of individuals with developmental disabilities are best able to determine their own needs and should be empowered to make decisions concerning necessary, desirable, and appropriate services and supports;

(b) Families must receive the services and supports necessary to care for their children at home;

(c) Family support must be responsive to the needs of the entire family unit;

(d) Family support must be sensitive to the unique strengths and needs of individual families;

(e) Family support must build on existing social networks and natural sources of support;

(f) Family support is needed throughout the lifespan of the individual who is disabled;

(g) Family support must encourage the inclusion of people with developmental disabilities within the community;

(h) Family support services must be flexible enough to accommodate unique needs of families as they evolve over time;

(i) Family support services must be consistent with the cultural preferences and orientations of individual families;

(j) Family support services should be comprehensive and coordinated across the numerous agencies likely to provide resources, supports, or services to families;

(k) Family support services should be based on the principles of sharing ordinary places, developing meaningful relationships, learning things that are useful, making choices, as well as increasing the status and enhancing the reputation of people served;

(l) Supports should be developed by the state that are necessary, desirable, and appropriate to support families;

(m) Developmental disabilities programs and policies must enhance the development of the individual with a developmental disability and the family;

(n) State programs should provide sufficient services and supports to enable families to keep their family members with developmental disabilities at home;

(o) A comprehensive, coordinated system of supports to families effectively uses existing resources and minimizes gaps in supports to families and individuals in all areas of the state;

(p) Services and supports provided through the family support program shall be closely coordinated with early intervention services and shall foster collaboration and cooperation with all agencies providing services and supports to infants and preschool children; and

(q) Any rights, entitlements, services, or supports created by this part 4 are not to be considered a limitation, modification, or infringement on any existing rights, entitlements, services, or supports, otherwise expressly provided by this article.

(2) In addition, the general assembly recognizes that the department has for several years developed and maintained a family resource service program that provides support services to families of children with developmental disabilities who are at risk of out-of-home placement. Because of the success of this program the general assembly recommends that this valuable program be continued and expanded so that more families in this state are able to receive appropriate services, supports, and assistance needed to stabilize the family unit. In recognition of the basic goal to support families, on an individual family basis, in maintaining a person with a developmental disability at home and in recognition of the principles stated in subsection (1) of this section, the general assembly declares that its purpose in enacting this part 4 is to create, subject to annual appropriation, a comprehensive statewide family support service program.

**27-10.5-402. Purpose.** The purpose of the family support services program created in this part 4 is to provide support to families in their role as primary care givers for a family

member with a developmental disability.

**27-10.5-403. Definitions. (Repealed)**

**27-10.5-404. Administration - duties of department.** (1) Subject to annual appropriation by the general assembly, the department shall administer the family support services program and shall coordinate family support services with other existing services provided to families and individuals. Family support services shall be provided in a manner which develops comprehensive, responsive, and flexible support to families in their role as the primary care givers for a family member with a developmental disability.

(2) The department is authorized to contract with community centered boards and other service providers approved by the department to provide family support services in accordance with this part 4. Programs developed shall be flexible in order to address individual family needs.

(3) In administering the family support services program, the department shall have the following duties:

(a) To design the program;

(b) To pursue a family support model 200 waiver for approval by the federal health care financing administration in order to utilize medicaid funds for the provision of family support services, implemented subject to appropriation;

(c) To develop and promulgate rules and regulations pursuant to section 27-10.5-407, with consultation from service providers, including representatives of families of persons with developmental disabilities;

(d) To allocate funds;

(e) To coordinate training and provide technical assistance to community centered boards and service providers;

(f) To monitor and evaluate the program;

(g) To coordinate contracts, expenditures, and billing of the program; and

(h) To recommend changes in the program.

(4) Subject to annual appropriation by the general assembly, out of the appropriation to the department of human services for community programs in the general appropriation act, the department is authorized to use up to seven percent of such appropriation allocated for family support services to pay for administrative costs within the department and the community centered boards.

**27-10.5-405. Family support councils.** (1) The department shall assure that each community centered board establishes a family support council in each community centered



board designated service area. The family support councils shall consist of professionals, interested citizens, family members of persons with a developmental disability, and persons with a developmental disability with a majority of the council being made up of family members.

(2) The family support council shall:

(a) Provide direction and assistance to the community centered board in the development of a family support plan for the designated service area;

(b) Make recommendations regarding other family supports or services not specifically listed in this part 4;

(c) Monitor the implementation of the supports or services provided pursuant to the plan;

(d) Provide a written report to the department of its involvement in the duties specified in this subsection (2).

**27-10.5-406. Authorized family support services.** (1) The family support services included in this program include, but are not limited to, family support grants, family support services coordination, information and referral, educational materials, emergency and outreach services, and other individual and family centered assistance services such as:

(a) Medical and dental expenses not covered by medical or health insurance or other programs;

(b) Insurance expenses;

(c) Respite, child care, and sitter services;

(d) Mobility aids; adaptive equipment; assistive technology, including the cost of therapies essential for a child's development, as prescribed by a physician or specialized therapist; and home adaptations;

(e) Home health services and therapies;

(f) Family counseling, training, and support groups;

(g) Recreation and leisure needs;

(h) Transportation;

(i) Special diets, clothing, materials, and equipment;

(j) Homemaker services.

**27-10.5-407. Rules and regulations.** (1) The department shall develop rules and regulations concerning:

(a) Further definition of services and supports to be provided by the family support services program described in this part 4;

(b) The requirements for eligibility for services and supports;

(c) The manner of providing services and supports; and

(d) The size, makeup, and duties of family support councils.

## PART 5

### COLORADO FAMILY SUPPORT LOAN FUND

**27-10.5-501. Legislative declaration.** The general assembly hereby finds and declares that there is a need to establish a Colorado family support loan fund to assist families in obtaining family support services for those families who choose to maintain a dependent family member with a developmental disability in their home setting.

**27-10.5-502. Colorado family support loan fund - creation - loans to families.** (1) There is hereby created in the state treasury a fund to be known as the Colorado family support loan fund, referred to in this part 5 as the "fund", which shall be administered by the department and which shall consist of moneys appropriated to the fund by the general assembly, interest earned on loans made out of the fund, and any moneys received pursuant to subsection (5) of this section.

(2) Moneys in the fund shall be continuously appropriated to the department for the purposes of this part 5. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain in the fund and shall not be credited or transferred to the general fund or any other fund. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund.

(3) The department is authorized to make loans, up to a maximum amount of eight thousand dollars, out of the moneys in the fund to eligible families in order to enable them to obtain family short-term support services or equipment as defined in section 27-10.5-406. For purposes of this section, "families" has the same meaning as defined in section 27-10.5-102 (15). The department shall only approve loans to families who maintain a person or persons with a developmental disability at home. The department may establish whatever terms and conditions it deems appropriate in making such loans. The loan amount and any interest assessed to families shall be paid back to the department. All moneys received from families to pay back loans, including the interest assessed thereon, shall be transmitted to the state treasurer, who shall credit the same to the fund. All moneys in the fund may be used by the department to make loans as provided in this subsection (3).

(4) Subject to annual appropriation by the general assembly, the department of human services is hereby authorized to transfer from the appropriation for community programs in the general appropriation act up to three percent of such appropriation allocated for family short-term support services or equipment to the Colorado family support loan fund. Any

moneys received as a result of this subsection (4) shall be transmitted to the state treasurer and credited to the fund.

(5) The department is hereby authorized to receive contributions, grants, services, in-kind donations, and property from federal agencies, local governments, or private sources for use in carrying out the purposes of this part 5. Any moneys received as a result of this subsection (5) shall be transmitted to the state treasurer and credited to the fund.

**27-10.5-503. Duties of the department with regard to the fund.** (1) The department has the following duties with regard to the fund:

- (a) To develop rules and regulations and guidelines for the administration of the fund;
- (b) To adopt eligibility requirements for access to the fund;
- (c) To develop application and review criteria for the approval of loans from the fund;
- (d) To establish a low-cost fixed interest rate to be applied to all loans made from the fund;
- (e) To determine effective ways to communicate the availability of the fund to eligible families;
- (f) To account for the expenditures and to develop a system to ensure timely payback of any loans made pursuant to this part 5;
- (g) To perform a yearly audit of the fund; and
- (h) To take other measures as needed to ensure the intent and success of this part 5.

## PART 6

### STUDY OF SELF-SUFFICIENCY TRUSTS

**27-10.5-601. (Repealed)**

## PART 7

### COORDINATED SYSTEM OF PAYMENT FOR EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS

**27-10.5-701. Legislative declaration.** (1) The general assembly hereby finds that:

- (a) There is an urgent and substantial need to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first three years of life;

(b) The longer a child's developmental delays are not addressed, the more developmental difficulties the child will experience in the future, the less prepared the child will be for school, the more special education needs the child is likely to have, and the more costly those problems will be to address;

(c) The capacity of families to meet the special needs of their infants and toddlers with disabilities needs to be supported and enhanced;

(d) Colorado's system for providing early intervention services to eligible infants and toddlers from birth through two years of age with significant developmental delays and disabilities relies on multiple sources of funding;

(e) The early childhood and school readiness commission, which was the successor of the child care commission, was created in the 2004 legislative session to study, review, and evaluate the development of plans for creating a comprehensive early childhood system;

(f) The early childhood and school readiness commission extensively studied and evaluated issues regarding early intervention services for infants and toddlers who have delays in development and learned that there is no coordinated system of payment for early intervention services, resulting in the provision of disjunctive or interrupted services to eligible children and inadequate reimbursement of early intervention service providers;

(g) The early childhood and school readiness commission was also informed that many eligible children are covered as dependents by their parents' health care plans, but some of the plans may deny benefits for early intervention services, thereby eliminating a source of private funds for the payment of early intervention services;

(h) Pursuant to part C of the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., there is an urgent and substantial need to facilitate the coordination of payment for early intervention services from federal, state, local, and private sources, including public medical assistance and private insurance coverage;

(i) Existing levels of local, state, federal, and private funding may be more efficiently used, more children may be served, and a higher quality of services may be provided if the existing early intervention system is modified to create a more coherent and coordinated system of payment for early intervention services;

(j) The involvement of a child's primary health care provider and other health care providers is an essential component of effective planning for the provision of early intervention services; and

(k) The provision of early intervention services is intended only to meet the developmental needs of an infant or toddler and not to replace other needed medical services that are recommended by the child's primary health care provider.

**27-10.5-702. Definitions.** As used in this part 7, unless the context otherwise requires:

(1) "Administrative unit" means a school district, a board of cooperative services, or the state charter school institute that is providing educational services to exceptional children and that is responsible for the local administration of the education of exceptional children pursuant to article 20 of title 22, C.R.S.

(2) "Carrier" shall have the same meaning as set forth in section 10-16-102 (8), C.R.S.

(3) "Certified early intervention service broker" or "broker" means a community centered board or other entity designated by the department to perform the duties and functions specified in section 27-10.5-708 in a particular designated service area. Notwithstanding the provisions of section 27-10.5-104 (4), if the department is unable to designate a community centered board or other entity to serve as the broker for a particular designated service area, the department shall serve as the broker for the designated service area and may contract directly with early intervention service providers to provide early intervention services to eligible children in the designated service area.

(4) "Child find" means the program component of IDEA that requires states to find, identify, locate, evaluate, and serve all children with disabilities, from birth to twenty-one years of age. Child find includes:

(a) Part C child find, which is the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children from birth through two years of age; and

(b) Part B child find, which is the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children from three to twenty-one years of age.

(5) "Coordinated system of payment" means the policies and procedures developed by the department, in cooperation with the departments of education, health care policy and financing, and public health and environment, the division of insurance in the department of regulatory agencies, private health insurance carriers, and certified early intervention service brokers, to ensure that available public and private sources of funds to pay for early intervention services for eligible children are accessed and utilized in an efficient manner.

(6) "Department" means the department of human services.

(7) "Early intervention services" means services as defined by the department in accordance with part C that are authorized through an eligible child's IFSP and are provided to families at no cost or through the application of a sliding fee schedule. Early intervention services, as specified in an eligible child's IFSP, shall qualify as meeting the standard for medically necessary services as used by private health insurance and as used by public medical assistance, to the extent allowed pursuant to section 25.5-1-124, C.R.S.

(8) "Early intervention state plan" means the state plan for a comprehensive and coordinated system of early intervention services required pursuant to part C.

(9) "Eligible child" means an infant or toddler, from birth through two years of age, who, as defined by the department in accordance with part C, has significant delays in development or has a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development or who is eligible for services pursuant to

section 27-10.5-102 (11) (c).

(10) "Evaluation" means:

(a) For the purposes of part C child find, the procedures used to determine a child's initial and continuing eligibility for part C child find, including but not limited to:

(I) Determining the status of the child in each of the developmental areas;

(II) Identifying the child's unique strengths and needs;

(III) Identifying any early intervention services that might serve the child's needs; and

(IV) Identifying priorities and concerns of the family and any resources to which the family has access.

(b) For the purposes of part B child find, the procedures used under IDEA for children with disabilities to determine whether a child has a disability and the nature and extent of special education and related services that the child will need.

(11) "Individualized family service plan" or "IFSP" means a written plan developed pursuant to 20 U.S.C. sec. 1436 and 34 CFR 303.340 that authorizes the provision of early intervention services to an eligible child and the child's family. An IFSP shall serve as the individualized plan, pursuant to section 27-10.5-102 (20) (c), for a child from birth through two years of age.

(12) "Multidisciplinary team" means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities defined in 34 CFR 303.322 and development of the child's IFSP.

(13) "Part B" means the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children with disabilities from three to twenty-one years of age.

(14) "Part C" means the early intervention program for infants and toddlers who are eligible for services under part C of the federal "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq.

(15) "Private health insurance" means a health coverage plan, as defined in section 10-16-102 (22.5), C.R.S., that is purchased by individuals or groups to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, as defined in section 10-16-102 (22), C.R.S., provided to a person entitled to receive benefits or services under the health coverage plan.

(16) "Public medical assistance" means medical services that are provided by the state through the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., or the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., or other public medical assistance funding sources to qualifying individuals.

(17) "Qualified early intervention service provider" or "qualified provider" means a person or agency, as defined by the department by rule in accordance with part C, who provides early intervention services and is listed on the registry of early intervention service providers pursuant to section 27-10.5-708 (1) (a).

(18) "Service coordination" means the activities carried out by a service coordinator to assist and enable an eligible child and the eligible child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the early intervention program.

(19) "State interagency coordinating council" means the council that is established pursuant to part C and appointed by the governor to advise and assist the lead agency designated or established under part C.

**27-10.5-703. Administration - duties of department - rules.** (1) Subject to annual appropriation from the general assembly, the department shall administer early intervention services and shall coordinate early intervention services with existing services provided to eligible infants and toddlers from birth through two years of age and their families.

(2) The department shall promulgate rules, pursuant to section 27-10.5-103, as necessary for the implementation of this section and to ensure that all IDEA timelines and requirements are met, including but not limited to administrative remedies if the timelines and requirements are not met.

(3) In administering early intervention services, the department shall have and perform the following duties:

(a) To design early intervention services in a manner consistent with part C;

(b) To develop and promulgate rules after consultation with the state interagency coordinating council;

(c) To ensure eligibility determination for a child with disabilities from birth through two years of age, based in part on information received concerning the screening and evaluation performed by an administrative unit pursuant to section 22-20-118, C.R.S.;

(d) To ensure that an individualized family service plan is developed for infants and toddlers from birth through two years of age who are eligible for early intervention services. The IFSP shall be developed in compliance with part C and in coordination with part C child find evaluations where applicable, including the mandatory IFSP meeting at which the family receives information concerning the results of the child find evaluation performed by an administrative unit pursuant to section 22-20-118, C.R.S. The initial IFSP shall be developed in collaboration with a representative from the administrative unit that participated in the child's screening and evaluation performed pursuant to section 22-20-118, C.R.S. The representative shall participate in the initial meeting for the development of the child's IFSP.

(e) To allocate moneys;

(f) To coordinate training and provide technical assistance to community centered boards, service providers, and other constituents who are involved in the delivery of early intervention services to infants and toddlers from birth through two years of age;

(g) To monitor and evaluate early intervention services provided through this part 7;  
and

(h) To coordinate contracts, expenditures, and billing for early intervention services provided through this part 7.

**27-10.5-704. Child find - responsibilities - interagency operating agreements - rules.** (1) The department shall have the following responsibilities and duties for children from birth through two years of age who are referred for early intervention services:

(a) To develop and implement, in coordination with community centered boards, service agencies, governmental units, and the departments of education, public health and environment, and health care policy and financing, a statewide plan for public education, outreach, and awareness efforts related to child find and the availability of early intervention services;

(b) To ensure that referrals from the community are accepted and families are assisted in connecting with the appropriate agency for intake and case management services;

(c) To ensure that intake and case management services are provided after a referral has been made by working with community centered boards as the single entry point for a family into the developmental disabilities system, as described in section 27-10.5-102 (3);  
and

(d) To work with community centered boards, administrative units, and the department of education to assist a child with disabilities as he or she transitions from the developmental disabilities system into the public education system at no later than three years of age as required by IDEA.

(2) To facilitate the implementation of part C child find activities that are the responsibility of the department pursuant to this part 7 and to implement an effective and collaborative system of early intervention services, the department shall enter into any necessary interagency operating agreements at the state level, and community centered boards and other local agencies shall enter into any necessary interagency operating agreements at the local level.

(3) To facilitate the implementation of part C child find and the use of medicaid funds, the department and community centered boards may, when appropriate, share information with the department of education, the department of health care policy and financing, or administrative units that offer child find services pursuant to section 22-20-118, C.R.S., so long as each department or local agency acts in compliance with the federal "Health Insurance Portability and Accountability Act of 1994", 42 U.S.C. sec. 1320d.

**27-10.5-705. Authorized services - conditions of funding - purchases of services - rules.** (1) The department shall promulgate rules as are necessary, in accordance with this



part 7 and consistent with section 27-10.5-104.5, to implement the purchase of early intervention services directly or through community centered boards or certified early intervention service brokers.

(2) Community centered boards, certified early intervention service brokers, and service agencies receiving moneys pursuant to section 27-10.5-708 shall comply with all of the provisions of this article and the rules promulgated pursuant to this article.

(3) Community centered boards and certified early intervention service brokers shall obtain or provide early intervention services, subject to available appropriations, including but not limited to:

(a) Service coordination with families of eligible infants and toddlers from birth through two years of age. The purpose of service and support coordination shall be to enable a family to utilize service systems to meet its needs in an effective manner and increase the family's confidence and competence. Service coordination is to be rendered in an interagency context that emphasizes interagency collaboration. A family shall have, to the extent possible, a choice as to who shall perform certain facets of service coordination as established in the family's individualized family service plan.

(b) Coordination of early intervention services with local agencies and other community resources at the local level to avoid duplication and fragmentation of early intervention services. A community centered board shall:

(I) Coordinate with the local interagency effort regarding outreach, identification, screening, multidisciplinary assessment, and eligibility determination for families served by the community centered board who requested the services;

(II) Coordinate with the local family support services program; and

(III) Coordinate with other appropriate state agencies providing programs for infants and toddlers.

(4) The department is authorized to use up to three percent of the amount of the appropriation for early intervention services for training and technical assistance to ensure that the latest developments for early intervention services are rapidly integrated into service provision throughout the state.

**27-10.5-706. Coordinated system of payment for early intervention services - duties of departments.** (1) In order to implement the provisions of this part 7, the department, as lead agency for part C child find, shall be responsible for the following, subject to available appropriations:

(a) Establishing an early intervention state plan for a statewide, comprehensive system of early intervention services in accordance with part C child find;

(b) Establishing an interagency operating agreement between the department and the departments of education, health care policy and financing, and public health and environment regarding the responsibilities of each department to assist in the development

and implementation of a statewide, comprehensive system of early intervention services and a coordinated system of payments for early intervention services;

(c) Developing, in cooperation with the department of education, the department of health care policy and financing, the department of public health and environment, the division of insurance in the department of regulatory agencies, private health insurance carriers, and certified early intervention service brokers, a coordinated system of payment of early intervention services using public and private moneys;

(d) Certifying community centered boards or other entities as determined by the department as early intervention service brokers for early intervention services provided pursuant to this part 7; and

(e) Ensuring an appropriate allocation of payment responsibilities for early intervention services among federal, state, local, and private sources, including public medical assistance and private insurance coverage.

(2) Any additional source of moneys that may become available for the payment of early intervention services on or after July 1, 2008, as a result of the development and implementation of a statewide, comprehensive system of early intervention services and a coordinated system of payments for early intervention services shall not replace or reduce any other federal or state moneys available for the payment of early intervention services on or before July 1, 2008.

(3) Nothing in this part 7 shall be construed to inhibit, encumber, or control the use of local moneys, including county grants, revenues from local mill levies, and private grants and contributions, that a community centered board or county government may elect to allocate for the benefit of eligible children.

(4) In developing a coordinated system of payment, the department shall not directly or indirectly create a new entitlement for early intervention services funded from the state general fund. However, this subsection (4) shall not prohibit any adjustments to public medical assistance required by section 25.5-1-124, C.R.S.

**27-10.5-707. Cooperation among state agencies - implementing coordinated payment system - revisions to rules.** (1) The departments of education, health care policy and financing, and public health and environment shall cooperate with the department to implement the provisions of this part 7 and each department shall:

(a) Assign a representative in accordance with part C child find to advise and assist the department in the development and implementation of the early intervention services system;

(b) Participate in the ongoing review of funding practices for early intervention services and develop or revise procedures for a coordinated system of payment for early intervention services;

(c) Use uniform forms and procedures for billing the costs of early intervention

services to public medical assistance, as specified in the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., or the "Children's Basic Health Plan Act", article 8 of title 25.5, C.R.S., as appropriate, and private health insurance, as specified in part 1 of article 16 of title 10, C.R.S.;

(d) Coordinate revisions to existing rules that are necessary to implement this part 7; and

(e) Perform other tasks and functions necessary for the implementation of this part 7.

(2) The division of insurance in the department of regulatory agencies shall provide assistance to the department related to the requirements and implementation of section 10-16-104 (1.3), C.R.S., and insurance laws and rules related to billing and claims handling.

**27-10.5-708. Certified early intervention service brokers - duties - payment for early intervention services - fees.** (1) For each designated service area in the state, the certified early intervention service broker for the area shall:

(a) Establish a registry of qualified early intervention service providers to provide early intervention services to eligible children in the designated service area. The certified early intervention service broker for a designated service area may provide early intervention services directly or may subcontract the provision of services to other qualified providers on the registry.

(b) Accept and process claims for reimbursement for early intervention services provided under this part 7 by qualified providers;

(c) Negotiate for the payment of early intervention services provided to eligible children in the designated service area by qualified providers, to the extent permissible under federal law; and

(d) Ensure payment to a qualified provider for early intervention services rendered by the qualified provider.

(2) Certified early intervention service brokers shall use procedures and forms determined by the department to document the provision or purchase of early intervention services on behalf of eligible children. Invoices or insurance claims for early intervention services shall be submitted based on the available funding source for each eligible child and the reimbursement rate for the appropriate federal, state, local, or private funding sources, including public medical assistance and private health insurance.

(3) The department shall establish a schedule of fees to be charged by certified early intervention service brokers for providing broker services under this part 7. In developing the fee schedule, the department shall obtain input from certified early intervention service brokers and shall consider the duties of brokers under this part 7, the expenses incurred by brokers, and the relevant market conditions.

(4) Use of a certified early intervention broker is voluntary; except that private health

insurance carriers that are included under section 10-16-104 (1.3), C.R.S., shall be required to make payment in trust under section 27-10.5-709. Nothing in this part 7 shall prohibit a qualified provider of early intervention services from directly billing the appropriate program of public medical assistance or a participating provider, as defined in section 10-16-102 (28.5), C.R.S., or from directly billing a private health insurance carrier for services rendered under this part 7 for insurance plans that are not included under section 10-16-104 (1.3), C.R.S.

(5) To the extent requested by the department, certified early intervention service brokers shall participate in ongoing reviews of funding practices for early intervention services and the development or revision of procedures for a coordinated system of payment for early intervention services.

**27-10.5-709. Payment from private health insurance for early intervention services - trust fund.** (1) Private health insurance carriers that are required to make payment of benefits for early intervention services for which coverage is required pursuant to section 10-16-104 (1.3), C.R.S., shall pay benefits to the department in trust for payment to a broker or provider for early intervention services provided to an eligible child. Upon notification from the department that a child is eligible, the child's private health insurance carrier shall have thirty days to make payment to the department.

(2) (a) When a private health insurance carrier makes payments of benefits for an eligible child to the department in trust, those moneys shall be deposited in the early intervention services trust fund, which trust fund is hereby created in the state treasury. Except as provided in paragraph (b) of this subsection (2), the principal of the trust fund shall only be used to pay certified early intervention service brokers or qualified early intervention service providers for early intervention services provided to the eligible child for whom the moneys were paid to the department in trust by the private health insurance carrier. Except as provided in paragraph (b) of this subsection (2), the principal of the trust fund shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution, and such moneys shall be deemed custodial funds that are not subject to appropriation by the general assembly.

(b) (I) For the 2008-09 fiscal year and each fiscal year thereafter, the general assembly shall make appropriations to the department from the principal of the early intervention services trust fund for the direct and indirect costs of administering this section. Any moneys appropriated to the department pursuant to this paragraph (b) shall constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(II) All interest derived from the deposit and investment of moneys in the early intervention services trust fund shall be credited to the trust fund, may be appropriated to the department in accordance with this paragraph (b), and shall constitute state fiscal year

spending for purposes of section 20 of article X of the state constitution.

(c) Within ninety days after the department determines that a child is no longer an eligible child for purposes of section 10-16-104 (1.3), C.R.S., the department shall notify the carrier that the child is no longer eligible and that the carrier is no longer required to provide the coverage required by said section for that child. Any moneys deposited in the trust fund on behalf of an eligible child that are not expended on behalf of the child before the child becomes ineligible shall be returned to the carrier that made the payments in trust for the child.

(3) No later than March 1, 2009, and no later than April 1 each year thereafter, the department shall provide a report to each private health insurance carrier that has made payments of benefits for an eligible child to the department in trust. The report shall specify the total amount of benefits paid to brokers or qualified providers for services provided to the eligible child during the prior calendar year, including the amount paid to each broker or qualified provider and the services provided to the eligible child. The report required by this subsection (3) shall be provided at least annually and more often, as determined by the department and the carrier.

**27-10.5-710. Annual report - cooperation from certified early intervention service brokers and qualified providers.** (1) By November 1, 2008, and by November 1 each year thereafter, the department shall submit an annual report to the general assembly regarding the various funding sources used for early intervention services, the number of eligible children served, the average cost of early intervention services, and any other information the department deems appropriate. The department shall submit the report to the joint budget committee as part of the department's annual budget request. The department shall also submit the report to the health and human services committees and the education committees of the senate and house of representatives, or any successor committees.

(2) The department shall request, and certified early intervention service brokers and qualified early intervention service providers shall provide, information regarding early intervention services that the department needs to prepare the annual report required by this section or other required federal or state reports.

## PART 8

### OUTCOME-BASED SUPPORTED EMPLOYMENT SYSTEM FOR INTEGRATED EMPLOYMENT SERVICES FOR PERSONS WITH DISABILITIES, INCLUDING DEVELOPMENTAL DISABILITIES

**27-10.5-801. Pilot program - creation - goals - implementation - reporting.** (1) (a) There is hereby created a pilot program in the division to implement an outcome-based employment model for persons with developmental disabilities and recommend a payment system for supported employment services in Colorado for persons with developmental disabilities.

(b) The goal of the pilot program shall be to increase the efficiency of statewide employment services for persons with developmental disabilities by connecting funding for employment services to employment outcomes, including but not limited to increased employment opportunities for and long-term success of integrated employment services for persons with developmental disabilities.

(c) The department shall develop the pilot program in consultation with the following individuals and entities:

- (I) Community centered boards;
  - (II) Providers of supported employment services other than community centered boards;
  - (III) Persons currently receiving supported employment services;
  - (IV) The division of vocational rehabilitation;
  - (V) The division for developmental disabilities in the department of human services;
- and

(VI) Other experts in the field as identified by the department or the participants in this paragraph (c).

(d) On or before March 30, 2009, the department shall implement the pilot program. Prior to implementing the pilot program, the department shall submit a report to the joint budget committee and to the health and human services committees of the house of representatives and the senate on the specific details of the pilot program and how resources of the department will be directed to implement the pilot program. The pilot program shall end on or before March 30, 2011.

(e) On or before April 30, 2011, the department shall submit a report evaluating the pilot program to the joint budget committee and to the health and human services committees of the house of representatives and the senate, or any successor committees, the governor, and the lieutenant governor. The report shall include any costs or savings that were or are projected to be realized as a result of implementing the pilot program or the proposed payment system for supported employment services for persons with developmental disabilities. The report shall also include a summary of the number of jobs obtained for persons with developmental disabilities and the number of jobs retained by those individuals at three months, six months, and nine months following the initial placement.

(2) The department is authorized to implement recommendations of the pilot program within available appropriations.

(3) As used in this part 8, unless the context otherwise requires, "division" means the division of vocational rehabilitation in the department of human services.

## PART 9

### STATE EMPLOYMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES

**27-10.5-901. Legislative declaration.** (1) The general assembly hereby finds that:

(a) Persons with developmental disabilities represent a population that has long been underutilized and often denied employment opportunities within state government, partially due to hiring personnel's perceptions and understanding of the operation and requirements of the state personnel system;

(b) Some state agencies are unaware of the avenues that are available within the state personnel system by which state agencies can hire and provide training and support for persons with developmental disabilities; and

(c) Many persons with developmental disabilities, when provided appropriate training and support, can develop sufficient skills and competencies to more than adequately fulfill job expectations in employment positions in state government.

(2) Therefore, it is the intent of the general assembly to create the state employment program for persons with developmental disabilities to encourage and provide incentives for state agencies to give meaningful employment opportunities to persons with developmental disabilities and to improve the state's practices in employing, supervising, and supporting persons with developmental disabilities.

**27-10.5-902. State employment program for persons with disabilities - creation - rules.** (1) There is hereby created within the department the state employment program for persons with developmental disabilities, referred to in this part 9 as the "program". The department shall design and implement the program to coordinate the hiring of interested persons with developmental disabilities into appropriate and meaningful state employment opportunities. The goal of the program is to identify for persons with developmental disabilities permanent and stable employment opportunities that are integrated within and appropriately meet the service goals of state agencies. The department of human services shall collaborate with the department of personnel in designing the program.

(2) (a) On or before July 1, 2008, the executive directors of the department of human services and the department of personnel shall jointly convene a working group to study and recommend how the state's policies and practices in employing, supervising, and supporting persons with developmental disabilities can be improved in order to effectively and successfully implement the program. The executive directors shall include in the working group persons with expertise in implementing the statutes and rules pertaining to the state personnel system, persons with expertise in interpreting and implementing the federal

"Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12101 et seq., and persons with experience in employing and placing for employment persons with developmental disabilities.

(b) The working group shall complete its work and make recommendations to the executive directors of the department of human services and the department of personnel by January 1, 2009. The recommendations of the working group may include, but need not be limited to:

(I) Modifications to rules, statutes, or the state constitution to improve the success of persons with developmental disabilities who are employed through the program; and

(II) Identification or clarification of the roles and responsibilities of persons in the department of human services and the department of personnel in implementing the program efficiently and successfully.

(3) (a) If the working group finds that implementation of the program may require statutory or constitutional changes, the department of human services and the department of personnel shall not implement the program until the general assembly has considered and rejected said changes or until after a bill enacting said statutory changes or a referred measure enacting said constitutional changes has become law.

(b) After the conditions specified in paragraph (a) of this subsection (3) are met, or if the working group finds that neither statutory nor constitutional changes are necessary for implementation of the program, the state board of human services and the state personnel board shall promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., as follows:

(I) The state board of human services shall promulgate rules as necessary for implementation of the program within the department of human services; and

(II) The state personnel board shall promulgate rules pertaining to the state personnel system as necessary for implementation of the program.

(4) Following promulgation of rules pursuant to subsection (3) of this section and in accordance with said rules and the provisions of this section, the department of human services, in collaboration with the department of personnel, shall implement the program. A state agency that seeks to employ a person with developmental disabilities through the program shall be responsible for hiring and supervision of the person and payment of the person's salary and benefits. The department, through the program, shall provide guidance to the hiring state agency regarding any additional issues that are pertinent to the person's employment.

(5) Following adoption of the rules specified in subsection (3) of this section, the department shall regularly provide information to state agencies to explain and promote the program. Upon full implementation of the program, each state agency is strongly encouraged to participate in the program by identifying meaningful and appropriate employment positions for persons with developmental disabilities and working with the department to hire persons with developmental disabilities for these positions.



PART 10

GENERAL PROVISIONS

**27-10.5-1001. (Repealed)**