

Senator Daniel Hemmert proposes the following substitute bill:

LIMITED SUPPORT SERVICES WAIVER AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Norman K. Thurston

LONG TITLE

General Description:

This bill relates to the provision of services for individuals with disabilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the allocation of appropriations to the Division of Services for People with Disabilities; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-5-101, as last amended by Laws of Utah 2018, Chapter 404

62A-5-102, as last amended by Laws of Utah 2019, Chapter 104

Be it enacted by the Legislature of the state of Utah:



26 Section 1. Section **62A-5-101** is amended to read:

27 **62A-5-101. Definitions.**

28 As used in this chapter:

29 (1) "Approved provider" means a person approved by the division to provide
30 home-based services.

31 (2) "Board" means the Utah State Developmental Center Board created under Section
32 [62A-5-202.5](#).

33 (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in
34 nature, including a cerebral vascular accident.

35 (b) "Brain injury" does not include a deteriorating disease.

36 (4) "Designated intellectual disability professional" means:

37 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
38 who:

39 (i) (A) has at least one year of specialized training in working with persons with an
40 intellectual disability; or

41 (B) has at least one year of clinical experience with persons with an intellectual
42 disability; and

43 (ii) is designated by the division as specially qualified, by training and experience, in
44 the treatment of an intellectual disability; or

45 (b) a clinical social worker, certified social worker, marriage and family therapist, or
46 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
47 Practice Act, who:

48 (i) has at least two years of clinical experience with persons with an intellectual
49 disability; and

50 (ii) is designated by the division as specially qualified, by training and experience, in
51 the treatment of an intellectual disability.

52 (5) "Deteriorating disease" includes:

53 (a) multiple sclerosis;

54 (b) muscular dystrophy;

55 (c) Huntington's chorea;

56 (d) Alzheimer's disease;

57 (e) ataxia; or

58 (f) cancer.

59 (6) "Developmental center" means the Utah State Developmental Center, established in
60 accordance with Part 2, Utah State Developmental Center.

61 (7) "Director" means the director of the Division of Services for People with
62 Disabilities.

63 (8) "Direct service worker" means a person who provides services to a person with a
64 disability:

65 (a) when the services are rendered in:

66 (i) the physical presence of the person with a disability; or

67 (ii) a location where the person rendering the services has access to the physical
68 presence of the person with a disability; and

69 (b) (i) under a contract with the division;

70 (ii) under a grant agreement with the division; or

71 (iii) as an employee of the division.

72 (9) (a) "Disability" means a severe, chronic disability that:

73 (i) is attributable to:

74 (A) an intellectual disability;

75 (B) a condition that qualifies a person as a person with a related condition, as defined
76 in 42 C.F.R. 435.[~~1009~~]1010;

77 (C) a physical disability; or

78 (D) a brain injury;

79 (ii) is likely to continue indefinitely;

80 (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a
81 substantial functional limitation in three or more of the following areas of major life activity:

82 (I) self-care;

83 (II) receptive and expressive language;

84 (III) learning;

85 (IV) mobility;

86 (V) self-direction;

87 (VI) capacity for independent living; or

- 88 (VII) economic self-sufficiency; or
89 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
90 limitation in three or more of the following areas:
91 (I) memory or cognition;
92 (II) activities of daily life;
93 (III) judgment and self-protection;
94 (IV) control of emotions;
95 (V) communication;
96 (VI) physical health; or
97 (VII) employment; and
98 (iv) requires a combination or sequence of special interdisciplinary or generic care,
99 treatment, or other services that:
100 (A) may continue throughout life; and
101 (B) must be individually planned and coordinated.
102 (b) "Disability" does not include a condition due solely to:
103 (i) mental illness;
104 (ii) personality disorder;
105 (iii) deafness or being hard of hearing;
106 (iv) visual impairment;
107 (v) learning disability;
108 (vi) behavior disorder;
109 (vii) substance abuse; or
110 (viii) the aging process.
111 (10) "Division" means the Division of Services for People with Disabilities.
112 (11) "Eligible to receive division services" or "eligibility" means qualification, based
113 on criteria established by the division [~~in accordance with Subsection 62A-5-102(4)~~], to receive
114 services that are administered by the division.
115 (12) "Endorsed program" means a facility or program that:
116 (a) is operated:
117 (i) by the division; or
118 (ii) under contract with the division; or

119 (b) provides services to a person committed to the division under Part 3, Admission to
120 an Intermediate Care Facility for People with an Intellectual Disability.

121 (13) "Licensed physician" means:

122 (a) an individual licensed to practice medicine under:

123 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

124 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

125 (b) a medical officer of the United States Government while in this state in the
126 performance of official duties.

127 (14) "Limited support services" means services that are administered by the division to
128 individuals with a disability:

129 (a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for
130 Medicare and Medicaid Services that permits the division to limit services to an individual who
131 is eligible to receive division services; and

132 (b) through a program that:

133 (i) was not operated by the division on or before January 1, 2020; and

134 (ii) (A) limits the kinds of services that an individual may receive; or

135 (B) sets a maximum total dollar amount for program services provided to each
136 individual.

137 [~~14~~] (15) "Physical disability" means a medically determinable physical impairment
138 that has resulted in the functional loss of two or more of a person's limbs.

139 [~~15~~] (16) "Public funds" means state or federal funds that are disbursed by the
140 division.

141 [~~16~~] (17) "Resident" means an individual under observation, care, or treatment in an
142 intermediate care facility for people with an intellectual disability.

143 [~~17~~] (18) "Sustainability fund" means the Utah State Developmental Center
144 Long-Term Sustainability Fund created in Section [62A-5-206.7](#).

145 Section 2. Section **62A-5-102** is amended to read:

146 **62A-5-102. Division of Services for People with Disabilities -- Creation --**

147 **Authority -- Direction -- Provision of services.**

148 (1) There is created within the department the Division of Services for People with
149 Disabilities, under the administrative direction of the executive director of the department.

150 (2) In accordance with this chapter, the division has the responsibility to plan and
151 deliver an appropriate array of services and supports to persons with disabilities and their
152 families in this state.

153 (3) Within appropriations from the Legislature, the division shall provide services to
154 any ~~[person]~~ individual with a disability who is eligible to receive division services.

155 (4) (a) ~~[Starting on July 1, 2013;]~~ Except as provided in Subsection (4)(c), any new
156 appropriations designated to serve eligible ~~[persons]~~ individuals waiting for services from the
157 division shall be ~~[allocated as set forth in this section. (b) Eighty-five percent of the money~~
158 ~~appropriated in Subsection (4)(a) shall be]~~ allocated, as determined by the division by rule
159 based on the:

- 160 (i) severity of the disability;
- 161 (ii) urgency of the need for services;
- 162 (iii) ability of a parent or guardian to provide the ~~[person]~~ individual with appropriate
163 care and supervision; and
- 164 (iv) length of time during which the ~~[person]~~ individual has not received services from
165 the division.

166 ~~[(c) Fifteen percent of the money appropriated in Subsection (4)(a) shall be allocated~~
167 ~~for respite services, and the division shall:]~~

168 ~~[(i) establish rules to identify a person whose only need is respite services;]~~

169 ~~[(ii) allocate money under this Subsection (4)(c) to the people described in Subsection~~
170 ~~(4)(c)(i) based on random selection; and]~~

171 ~~[(iii) if all persons described in Subsection (4)(c)(i) have been served and there is~~
172 ~~money remaining for respite care under this Subsection (4)(c), the division shall use the~~
173 ~~remaining money as described in Subsection (4)(b).]~~

174 ~~[(d)]~~ (b) Funds from Subsection (4)~~[(b)]~~(a) that are not spent by the division at the end
175 of the fiscal year may be used as set forth in Subsection (7).

176 (c) Subsections (4)(a) and (b) do not apply to any new appropriations designated to
177 provide limited support services.

178 (5) The division:

179 (a) has the functions, powers, duties, rights, and responsibilities described in Section
180 [62A-5-103](#); and

181 (b) is authorized to work in cooperation with other state, governmental, and private
182 agencies to carry out the responsibilities described in Subsection (5)(a).

183 (6) Within appropriations authorized by the Legislature, and to the extent allowed
184 under Title XIX of the Social Security Act, the division shall ensure that the services and
185 support that the division provides to [~~any person~~] an individual with a disability:

- 186 (a) are provided in the least restrictive and most enabling environment;
- 187 (b) ensure opportunities to access employment; and
- 188 (c) enable reasonable personal choice in selecting services and support that:
 - 189 (i) best meet individual needs; and
 - 190 (ii) promote:
 - 191 (A) independence;
 - 192 (B) productivity; and
 - 193 (C) integration in community life.

194 (7) (a) Appropriations to the division are nonlapsing.

195 (b) After an individual stops receiving services under this section, the division shall use
196 the funds that paid for the individual's services to provide services under this section to another
197 eligible individual in an intermediate care facility transitioning to division services, if the funds
198 were allocated under a program established under Section 26-18-3 to transition individuals
199 with intellectual disabilities from an intermediate care facility.

200 (c) Except as provided in Subsection (7)(b), if an individual receiving services under
201 Subsection (4)[~~(b) or (c)~~](a) ceases to receive those services, the division shall use the funds
202 that were allocated to that individual to provide services to another eligible individual waiting
203 for services as described in Subsection (4)[~~(b)~~](a).

204 (d) Funds unexpended by the division at the end of the fiscal year may be used only for
205 one-time expenditures unless otherwise authorized by the Legislature.

- 206 (e) A one-time expenditure under this section:
 - 207 (i) is not an entitlement;
 - 208 (ii) may be withdrawn at any time; and
 - 209 (iii) may provide short-term, limited services, including:
 - 210 (A) respite care;
 - 211 (B) service brokering;

- 212 (C) family skill building and preservation classes;
- 213 (D) after school group services; and
- 214 (E) other professional services.