

SB0044S01 compared with SB0044

~~text~~ shows text that was in SB0044 but was deleted in SB0044S01.

Inserted text shows text that was not in SB0044 but was inserted into SB0044S01.

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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 ~~new~~ appropriations to the Division of Services for People with Disabilities; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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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:

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

62A-5-101. Definitions.

As used in this chapter:

- (1) "Approved provider" means a person approved by the division to provide home-based services.
- (2) "Board" means the Utah State Developmental Center Board created under Section 62A-5-202.5.
- (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.
 - (b) "Brain injury" does not include a deteriorating disease.
- (4) "Designated intellectual disability professional" means:
 - (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
 - (i) (A) has at least one year of specialized training in working with persons with an intellectual disability; or
 - (B) has at least one year of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or
 - (b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
 - (i) has at least two years of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in

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the treatment of an intellectual disability.

(5) "Deteriorating disease" includes:

- (a) multiple sclerosis;
- (b) muscular dystrophy;
- (c) Huntington's chorea;
- (d) Alzheimer's disease;
- (e) ataxia; or
- (f) cancer.

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

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

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

(a) when the services are rendered in:

- (i) the physical presence of the person with a disability; or
- (ii) a location where the person rendering the services has access to the physical

presence of the person with a disability; and

- (b) (i) under a contract with the division;
- (ii) under a grant agreement with the division; or
- (iii) as an employee of the division.

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

(i) is attributable to:

- (A) an intellectual disability;
- (B) a condition that qualifies a person as a person with a related condition, as defined

in 42 C.F.R. 435.[~~1009~~]1010;

(C) a physical disability; or

(D) a brain injury;

(ii) is likely to continue indefinitely;

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

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- (I) self-care;
- (II) receptive and expressive language;
- (III) learning;
- (IV) mobility;
- (V) self-direction;
- (VI) capacity for independent living; or
- (VII) economic self-sufficiency; or
- (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial

limitation in three or more of the following areas:

- (I) memory or cognition;
- (II) activities of daily life;
- (III) judgment and self-protection;
- (IV) control of emotions;
- (V) communication;
- (VI) physical health; or
- (VII) employment; and
- (iv) requires a combination or sequence of special interdisciplinary or generic care,

treatment, or other services that:

- (A) may continue throughout life; and
- (B) must be individually planned and coordinated.
- (b) "Disability" does not include a condition due solely to:
 - (i) mental illness;
 - (ii) personality disorder;
 - (iii) deafness or being hard of hearing;
 - (iv) visual impairment;
 - (v) learning disability;
 - (vi) behavior disorder;
 - (vii) substance abuse; or
 - (viii) the aging process.
- (10) "Division" means the Division of Services for People with Disabilities.
- (11) "Eligible to receive division services" or "eligibility" means qualification, based

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on criteria established by the division [~~in accordance with Subsection 62A-5-102(4)~~], to receive services that are administered by the division.

(12) "Endorsed program" means a facility or program that:

(a) is operated:

(i) by the division; or

(ii) under contract with the division; or

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

(13) "Licensed physician" means:

(a) an individual licensed to practice medicine under:

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

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

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

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

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

(b) through a program that:

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

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

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

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

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

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

~~(17)~~ (18) "Sustainability fund" means the Utah State Developmental Center

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Long-Term Sustainability Fund created in Section 62A-5-206.7.

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

62A-5-102. Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

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

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

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

(4) (a) [~~Starting on July 1, 2013,~~] Except as provided in Subsection (4)(f)(c), ~~beginning~~ on July 1, 2013, any new appropriations designated to serve eligible [persons] individuals waiting for services from the division shall be ~~allocated as set forth in this section.~~

~~_____ (b) Eighty-five percent of the money appropriated in Subsection (4)(a) shall be~~ allocated, as determined by the division by rule based on the:

(i) severity of the disability;

(ii) urgency of the need for services;

(iii) ability of a parent or guardian to provide the [person] individual with appropriate care and supervision; and

(iv) length of time during which the [person] individual has not received services from the division.

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

~~(i) establish rules to identify {} a person {} an individual whose only need is respite services;~~

~~(ii) allocate money under this Subsection (4)(c) to the {} people {} individuals described in Subsection (4)(c)(i) based on random selection; and~~

~~(iii) if all {} persons {} individuals described in Subsection (4)(c)(i) have been served and there is money remaining for respite care under this Subsection (4)(c), the division shall~~

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~~use the remaining money as described in Subsection (4)(b).~~

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

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

(5) The division:

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

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

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

(a) are provided in the least restrictive and most enabling environment;

(b) ensure opportunities to access employment; and

(c) enable reasonable personal choice in selecting services and support that:

(i) best meet individual needs; and

(ii) promote:

(A) independence;

(B) productivity; and

(C) integration in community life.

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

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

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

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

(e) A one-time expenditure under this section:

- (i) is not an entitlement;
- (ii) may be withdrawn at any time; and
- (iii) may provide short-term, limited services, including:
 - (A) respite care;
 - (B) service brokering;
 - (C) family skill building and preservation classes;
 - (D) after school group services; and
 - (E) other professional services.