

Chapter 39.--MENTALLY ILL, INCAPACITATED AND DEPENDENT PERSONS;SOCIAL WELFARE

Article 18.--DEVELOPMENTAL DISABILITIES REFORM

39-1801. Citation of act. The provisions of K.S.A. 1999 Supp. 39-1801 through 39-1810 shall be known and may be cited as the developmental disabilities reform act.

History: L. 1995, ch. 234, § 1; Jan. 1, 1996.

39-1802. Policy of state. It is the policy of this state to assist persons who have a developmental disability to have:

- (a) Services and supports which allow persons opportunities of choice to increase their independence and productivity and integration and inclusion into the community;
- (b) access to a range of services and supports appropriate to such persons; and
- (c) the same dignity and respect as persons who do not have a developmental disability.

History: L. 1995, ch. 234, § 2; Jan. 1, 1996.

39-1803. Definitions. As used in the developmental disabilities reform act:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of that person's age, cultural group and community.

(b) "Affiliate" means an entity or person that meets standards set out in rules and regulations adopted by the secretary relating to the provision of services and that contracts with a community developmental disabilities organization.

(c) "Community services" means services provided to meet the needs of persons with developmental disabilities relating to work, living in the community, and individualized supports and services.

(d) "Community developmental disability organization" means any community mental retardation facility that is organized pursuant to K.S.A. 19-4001 through 19-4015 and amendments thereto.

(e) "Community service provider" means a community developmental disability organization or affiliate thereof.

(f) "Developmental disability" means:

(1) Mental retardation; or

(2) a severe, chronic disability, which:

(A) Is attributable to a mental or physical impairment, a combination of mental and physical impairments or a condition which has received a dual diagnosis of mental retardation and mental illness;

(B) is manifest before 22 years of age;

(C) is likely to continue indefinitely;

(D) results, in the case of a person five years of age or older, in a substantial limitation in three or more of the following areas of major life functioning: Self-care, receptive and expressive language development and use, learning and adapting, mobility, self-direction, capacity for independent living and economic self-sufficiency;

(E) reflects a need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong, or extended in duration and are individually planned and coordinated; and

(F) does not include individuals who are solely and severely emotionally disturbed or seriously or persistently mentally ill or have disabilities solely as a result of the infirmities of aging.

(g) "Institution" means state institution for the mentally retarded as defined by subsection (c) of K.S.A. 76-12b01 and amendments thereto or intermediate care facility for the mentally retarded of nine beds or more as defined by subsection (a) (4) of K.S.A. 39-923 and amendments thereto.

(h) "Mental retardation" means substantial limitations in present functioning that is manifested during the period from birth to age 18 years and is characterized by significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior including related limitations in two or more of the following applicable adaptive skill areas: Communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

(i) "Secretary" means the secretary of social and rehabilitation services.

History: L. 1995, ch. 234, § 3; Jan. 1, 1996.

39-1804. Implementation of act; powers and duties of secretary of social and rehabilitation

services; reports. (a) Except as otherwise specifically provided in this act and subject to appropriations of federal and state funds, the secretary, after consultation with representatives of community developmental disability organizations, community service providers, families and consumer advocates, shall implement and administer the provisions of the developmental disabilities reform act in accordance with the following policies. Persons with developmental disabilities shall:

(1) Be provided assistance to obtain food, housing, clothing and medical care; protection from abuse, neglect and exploitation; and a range of services and supports which assist in the determination of individual needs; and

(2) receive assistance in determining their needs; be provided information about all service options available to meet those needs; have coordination of services delivered; be assisted and supported in living with their families, or independently; be assisted in finding transportation to support access to the community; and receive individually planned habilitation, education, training, employment and recreation subject to supports and services available in the community of their choice.

(b) To accomplish the policies set forth in subsection (a), the secretary, subject to the provisions of appropriation acts, shall annually propose and implement a plan including, but not limited to, financing thereof which shall: (1) Provide for an organized network of community services for persons with developmental disabilities; (2) maximize the availability of federal resources to supplement state and local funding for such systems; and (3) reduce reliance on separate, segregated settings in institutions or the community for persons with developmental disabilities.

(c) The secretary shall report to the legislature the number of persons with developmental disabilities eligible to receive community services and shall make a progress report on the implementation of the annual plans and the progress made to accomplish a comprehensive community services system for persons with developmental disabilities.

(d) The secretary shall prepare and submit budget estimates for the department of social and rehabilitation services to the division of the budget and the legislature and shall establish and implement policies and procedures within the programs and activities of the department so that funds for state-level programs and activities for persons who are developmentally disabled are allocated between services delivered in institutions and community services.

(e) Subject to the provisions of this act and appropriation acts, the secretary shall administer and disburse funds to each community developmental disability organization for the coordination and provision of community services.

(f) The secretary shall establish procedures and systems to evaluate the results and outcomes of the implementation of this act to assure the attainment of maximum quality and efficient delivery of community services.

History: L. 1995, ch. 234, § 4; Jan. 1, 1996.

39-1805. Powers and duties of community developmental disability organization. In addition to any other power and duty prescribed by law, and subject to appropriations, a community developmental disability organization shall have the power and duty to:

(a) Directly or by subcontract, serve as a single point of application or referral for services, and assist all persons with a developmental disability to have access to and an opportunity to participate in community services, except in those circumstances in which the secretary determines, subject to an immediate hearing before the district court located in the county in which the person with a developmental disability resides, participation in community services is not the appropriate placement for such person because such person is presently likely to cause harm to self or others;

(b) provide either directly or by subcontract, services to persons with a developmental disability, including, but not limited to, eligibility determination; explanation of available services and service providers; case management services, if requested; assistance in establishing new providers, if requested; and advocacy for participation in community services;

(c) organize a council of community members, consumers or their family members or guardians, and community service providers, composed of a majority of consumers or their family members or guardians who shall meet not less than quarterly to address systems issues, including, but not limited to, planning and implementation of services; and develop and implement a method by which consumer complaints, interagency and other intrasystem disputes are resolved;

(d) provide, directly or by subcontract, information about affiliate and referral services to persons with a developmental disability whose particular needs can be met in the community or through government; and

(e) ensure that affiliates have the option to review referrals and waiting lists on a periodic basis to contact potential consumers with information concerning their services.

History: L. 1995, ch. 234, § 5; Jan. 1, 1996.

39-1806. Establishment of system of funding, quality assurance and contracting. To carry out the provisions of this act, the secretary shall establish after consultation with representatives

of community developmental disability organizations and affiliates thereof, and families and consumer advocates:

(a) A system of adequate and reasonable funding or reimbursement for the delivery of community services that:

(1) For persons moving from institutions into the community, directs funding to follow in an amount not less than that which is required to reimburse community service providers for services as set forth in such person's plan for transfer from the institution to community services including expenses of relocation and initiation of services;

(2) consolidates federal and state funding sources;

(3) requires an independent, professional review of the rate structures on a biennial basis resulting in a recommendation to the legislature regarding rate adjustments. Such recommendation shall be adequate to support: (A) A system of employee compensation competitive with local conditions; (B) training and technical support to attract and retain qualified employees; (C) a quality assurance process which is responsive to consumers' needs and which maintains the standards of quality service; (D) risk management and insurance costs; and (E) program management and coordination responsibilities;

(b) a system of quality assurance based on standards set out in rules and regulations adopted by the secretary which insures effective service delivery, fiscal accountability and networking cooperation and which allows community service providers to present evidence of attainment of national accreditation or compliance with state or federal laws or rules and regulations, or both, to indicate compliance with such standards; and

(c) a system of contracting that:

(1) Authorizes open and equitable negotiation between contracting parties or their designated agent or agents;

(2) authorizes mediation by an independent entity chosen by the parties to the contract in the event of contract disputes and if mediation is not completed prior to the end of any existing contract, authorizes an extension of time of such existing contract or entering into a temporary contract;

(3) requires achievement and maintenance of community services standards by community service providers;

(4) includes compensation for community services which meet the individualized needs of persons with developmental disabilities for community services; and

(5) requires community developmental disability organizations to contract with those affiliates from whom a person with a developmental disability chooses services.

History: L. 1995, ch. 234, § 6; Jan. 1, 1996.

39-1807. Failure of community service provider to comply with requirements, standards or laws; inspection and review of operations by secretary; mediation; written plan of correction; civil penalties; emergency orders. Whenever the secretary finds a community service provider has failed to comply with the requirements, standards or rules and regulations established pursuant to this act or any other provision of law, the secretary shall have the power to inspect and review the operations of the community service provider and identify deficiencies. The secretary and such community service provider shall choose an independent entity to mediate any dispute regarding the secretary's finding that such community service provider has failed to comply with such requirements, standards or rules and regulations and the secretary's identified deficiencies. If such mediation is not able to resolve any such dispute and the secretary finds that the community service provider has still failed to comply with such requirements, standards or rules and regulations, the secretary shall require a written plan of correction. If, after notice and an opportunity for hearing pursuant to the Kansas administrative procedure act, the secretary finds the community service provider has failed to carry out the plan of correction within 30 days of the submission of the plan of correction, the secretary may assess a civil penalty in an amount not to exceed \$125 per day for each day the provider has failed to carry out the plan of correction. The secretary may extend the time in which the provider has to comply with the plan of correction for good cause. The secretary may require the community service provider to maintain consumers in place until alternative community services can be secured with reasonable compensation for actual costs and to remove the designation as community service provider, except that in the event the secretary makes written findings of fact that there appears to be a situation involving imminent danger to the health, safety or welfare of the person with a developmental disability unless immediate action is taken, the secretary may issue an emergency order. Such emergency order shall be subject to the same procedures under K.S.A. 77-536 and amendments thereto. Upon entry of such an emergency order, the secretary shall promptly notify the community service provider subject to the order: (1) The content of the order; (2) the reasons therefor; and (3) that upon written request within 15 days after service of the order, the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act. If no hearing is requested and none is ordered by the secretary, the order will remain in effect until it is modified or vacated by the secretary. If a hearing is requested or ordered, the secretary, after notice of and opportunity for hearing to the community service provider subject to the order, by written findings of fact and conclusions of law, shall vacate, modify or make permanent the order.

History: L. 1995, ch. 234, § 7; Jan. 1, 1996.

39-1808. Act does not require community service provider to make certain expenditures. Nothing in this act shall authorize the secretary to require a community service provider to make expenditures not in compliance with contracts or agreements entered into by the governing board

of such provider.

History: L. 1995, ch. 234, § 8; Jan. 1, 1996.

39-1809. Act does not create any entitlement to services. Nothing in this act shall create any entitlement to services.

History: L. 1995, ch. 234, § 9; Jan. 1, 1996.

39-1810. Rules and regulations. The secretary may adopt rules and regulations to carry out the provisions of this act.

History: L. 1995, ch. 234, § 10; Jan. 1, 1996.