

**SENATE BILL No. 332**

By Committee on Public Health and Welfare

1-25

1 AN ACT concerning the developmental disabilities reform act; relating to  
2 home and community-based services; powers, duties and functions of  
3 the secretary for aging and disability services and the secretary of  
4 health and environment; amending K.S.A. 39-1801, 39-1802, 39-1805,  
5 39-1806 and 39-1808 and K.S.A. 2017 Supp. 39-1803 and 39-1804 and  
6 repealing the existing sections; also repealing K.S.A. 2017 Supp. 39-  
7 1811.

8  
9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. (a) In any situation where the secretary for aging and  
11 disability services deems it necessary or proper to delegate any  
12 responsibility under the developmental disabilities reform act, such  
13 responsibility shall only be delegated to community developmental  
14 disability organizations or affiliates thereof.

15 (b) The secretary of health and environment and the secretary for  
16 aging and disability services shall terminate any request to the United  
17 States centers for medicare and medicaid services to administer intellectual  
18 or developmental disability services, community service coordination and  
19 services provided by intermediate care facilities for persons with  
20 intellectual disabilities through a managed care delivery system and shall  
21 cease administering all such services through a managed care delivery  
22 system pursuant to a waiver granted by the federal centers for medicare  
23 and medicaid services under section 1115 or 1915 of the federal social  
24 security act, or any combination thereof. Nothing in this section shall be  
25 construed to prevent the department of health and environment or the  
26 Kansas department for aging and disability services from administering  
27 such services pursuant to a waiver granted by the federal centers for  
28 medicare and medicaid services pursuant to section 1915(c) of the federal  
29 social security act, provided that such services are not administered  
30 through a managed care delivery system.

31 (c) This section shall not impair or otherwise affect the validity of any  
32 contract in existence on the effective date of this act between a managed  
33 care organization and the department of health and environment to provide  
34 state medicaid services.

35 (d) The secretary of health and environment shall submit to the  
36 federal centers for medicare and medicaid services any waiver request,

1 waiver amendment or state plan amendment necessary to implement this  
2 section.

3 (e) This section shall be part of and supplemental to the  
4 developmental disabilities reform act.

5 New Sec. 2. (a) The provisions of the developmental disability reform  
6 act are severable. If any provision of the developmental disabilities reform  
7 act or any application of the developmental disabilities reform act to any  
8 person or circumstance is held invalid, such invalidity shall not affect any  
9 other provisions or applications of the developmental disabilities reform  
10 act that can be given effect without the invalid provision or application.

11 (b) This section shall be part of and supplemental to the  
12 developmental disabilities reform act.

13 Sec. 3. K.S.A. 39-1801 is hereby amended to read as follows: 39-  
14 1801. The provisions of K.S.A. 39-1801 through *39-1806 and 39-1808*  
15 *through 39-1810 and section 1 and section 2, and amendments thereto,*  
16 shall be known and may be cited as the developmental disabilities reform  
17 act.

18 Sec. 4. K.S.A. 39-1802 is hereby amended to read as follows: 39-  
19 1802. It is the policy of this state to assist persons who have a  
20 developmental disability ~~to have by:~~

21 ~~(a) Services and supports which allow persons opportunities of choice~~  
22 ~~to increase their independence and productivity and integration and~~  
23 ~~inclusion into the community~~ *Creating a person-centered system of*  
24 *supports and services that promotes dignity and respect, provides an*  
25 *alternative to institutional care, when appropriate, and provides persons*  
26 *with opportunities for community integration;*

27 (b) *providing access to a range of services and supports appropriate to*  
28 *such persons, including, but not limited to, employment supports,*  
29 *community service coordination, access to health and mental health*  
30 *resources, community living, activities of community integration and*  
31 *integrated transportation; and*

32 ~~(c) the same dignity and respect as persons who do not have a~~  
33 ~~developmental disability~~ *balancing local control of the system with*  
34 *strong partnerships among providers, state agencies, the legislature and*  
35 *other governmental and community services;*

36 (d) *establishing a policy for the necessary and sufficient*  
37 *compensation of services, supports and administration that: Provides*  
38 *choices; allows providers to build capacity; promotes recruitment and*  
39 *retention of a well-trained and qualified workforce sufficient to meet*  
40 *system needs; incentivizes innovation; ensures quality services; and*  
41 *allows for timely access to home and community-based services; and*

42 (e) *regularly gathering data in a consistent manner to allow for the*  
43 *measurement of consumer outcomes and comprehensive system*

1 *sustainability.*

2 Sec. 5. K.S.A. 2017 Supp. 39-1803 is hereby amended to read as  
3 follows: 39-1803. As used in the developmental disabilities reform act:

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

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

11 (c) "Community services" means services provided to meet the needs  
12 of persons with developmental disabilities relating to work, living in the  
13 community; and individualized supports and services, *including*  
14 *coordination of services.*

15 (d) "Community developmental disability organization" means any  
16 community-~~facility~~ *entity* for ~~people~~ *persons* with intellectual disability  
17 that is organized pursuant to K.S.A. 19-4001 through 19-4015, and  
18 amendments thereto.

19 (e) "Community service provider" means *an entity that provides*  
20 *direct community supports and services to persons with intellectual or*  
21 *developmental disabilities and that is affiliated with a community*  
22 *developmental disability organization or affiliate thereof.*

23 (f) "*Coordination of services*" means *the provision of case*  
24 *management services that will assist persons with intellectual and*  
25 *developmental disabilities in gaining access to medical, social, education*  
26 *and other needed services, including, but not limited to:*

27 (1) *Assessment of the person's history and individual needs;*

28 (2) *provision of information and resources regarding the person's*  
29 *rights under state and federal law, including self-direction;*

30 (3) *development of a person-centered support plan that specifies the*  
31 *goals of home and community-based services and the actions necessary to*  
32 *achieve such goals;*

33 (4) *referral to services and activities that meet the person's social,*  
34 *education or other needs; and*

35 (5) *regular monitoring of services and activities provided to the*  
36 *person to ensure that such services and activities are adequate, reflective*  
37 *of the person-centered support plan and to determine if adjustments to*  
38 *such services and activities or the person-centered support plan are*  
39 *necessary.*

40 (g) "Developmental disability" means:

41 (1) Intellectual disability; or

42 (2) a severe, chronic disability, ~~which~~ *that*:

43 (A) Is attributable to a mental or physical impairment, a combination

1 of mental and physical impairments or a condition ~~which~~ *that* has received  
2 a dual diagnosis of intellectual disability and mental illness;

3 (B) is manifest before 22 years of age;

4 (C) is likely to continue indefinitely;

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

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

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

17 ~~(g)~~*(h)* "Institution" means state institution for ~~people~~ *persons* with  
18 intellectual disability as defined by ~~subsection (c)~~ of K.S.A. 76-12b01(c),  
19 and amendments thereto, or intermediate care facility for ~~people~~ *persons*  
20 with intellectual disabilities of nine beds or more as defined by ~~subsection~~  
21 ~~(a)(4)~~ of K.S.A. 39-923(a)(4), and amendments thereto.

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

29 ~~(i)~~*(j)* "Secretary" means the secretary for aging and disability  
30 services.

31 Sec. 6. K.S.A. 2017 Supp. 39-1804 is hereby amended to read as  
32 follows: 39-1804. (a) Except as otherwise specifically provided in this act  
33 and subject to appropriations of federal and state funds, the secretary, after  
34 consultation with representatives of community developmental disability  
35 organizations, community service providers, families and consumer  
36 advocates, shall implement and administer the provisions of the  
37 developmental disabilities reform act in accordance with the following  
38 policies. Persons with developmental disabilities shall:

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

43 (2) receive assistance *from community developmental disability*

1 *organizations or affiliates thereof* in determining their needs; be provided  
2 information about all service options available to meet those needs; have  
3 coordination of services delivered; be assisted and supported in living with  
4 their families, or independently; be assisted in finding transportation to  
5 support access to the community; and receive individually planned  
6 habilitation, education, training, employment and recreation subject to  
7 supports and services available in the community of their choice.

8 (b) To accomplish the policies set forth in subsection (a), the  
9 secretary, subject to the provisions of appropriation acts, shall annually  
10 propose and implement a plan including, but not limited to, financing  
11 thereof which shall: (1) Provide *funding* for an organized network of  
12 community services for persons with developmental disabilities *that shall*  
13 *be developed and managed by community developmental disability*  
14 *organizations*; ~~(2) maximize the availability of~~ *utilize available* federal  
15 resources to supplement state and local funding for such systems; ~~and~~ (3)  
16 *preserve and expand the availability of state funding for services to all*  
17 *persons with developmental disabilities*; and (4) reduce reliance on  
18 separate, segregated settings in institutions or the community for persons  
19 with developmental disabilities.

20 (c) The secretary shall report *annually* to the legislature *regarding*:  
21 The number of persons with developmental disabilities eligible to receive  
22 community services, *including persons who are waiting to receive such*  
23 *services*; *measurement of quality outcomes using indicators specific to*  
24 *intellectual and developmental disabilities developed in consultation with*  
25 *community developmental disability organizations and community service*  
26 *providers*; and ~~shall make a progress report on~~ the implementation of the  
27 annual plans and the progress made to accomplish a comprehensive  
28 community services system for *all* persons with developmental disabilities.

29 (d) The secretary shall prepare and submit budget estimates for the  
30 Kansas department for aging and disability services to the division of the  
31 budget and the legislature and shall establish and implement policies and  
32 procedures within the programs and activities of the department so that  
33 funds for state-level programs and activities for persons ~~who are~~  
34 ~~developmentally disabled~~ *with developmental disabilities* are allocated  
35 between services delivered in institutions and community services,  
36 *including services for persons who may otherwise be ineligible for*  
37 *institutional care*.

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

42 (f) The secretary shall establish procedures and systems to evaluate  
43 the results and outcomes of the implementation of this act to assure the

1 attainment of maximum quality and efficient delivery of community  
2 services.

3 (g) *The secretary shall advise and consult with the Robert G. (Bob)*  
4 *Bethell joint committee on home and community based services and*  
5 *KanCare oversight to develop a plan to eliminate the waiting list for all*  
6 *persons with intellectual and developmental disabilities seeking*  
7 *community services. The secretary shall submit such plan to the*  
8 *legislature on or before December 31, 2019.*

9 Sec. 7. K.S.A. 39-1805 is hereby amended to read as follows: 39-  
10 1805. In addition to any other power and duty prescribed by law, and  
11 subject to appropriations, a community developmental disability  
12 organization shall have the power and duty to:

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

22 (b) *authorize access to and management of waiting lists for all*  
23 *intellectual or developmental disability resources;*

24 (c) provide either directly or by subcontract, services to persons with  
25 a developmental disability, including, but not limited to; *Administration*  
26 *of a functional assessment;* eligibility determination; explanation of  
27 available services and service providers; ~~case management services~~ *access*  
28 *to community service coordination, if requested; access to enhanced*  
29 *funding to provide extraordinary support needs, if necessary;* assistance in  
30 establishing new providers, if requested; and advocacy for participation in  
31 community services;

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

39 ~~(d)~~(e) provide, directly or by subcontract, information about ~~affiliate~~  
40 ~~and referral~~ *all services available* to persons with a developmental  
41 disability whose particular needs can be met in the community or ~~through~~  
42 ~~government~~ *otherwise;* and

43 ~~(e)~~(f) ensure that affiliates have the option to review referrals and

1 waiting lists on a periodic basis to contact potential consumers with  
 2 information concerning their services, *subject to permission from*  
 3 *individual consumers and applicable state and federal laws regarding the*  
 4 *preservation and protection of personal medical records.*

5 Sec. 8. K.S.A. 39-1806 is hereby amended to read as follows: 39-  
 6 1806. To carry out the provisions of this act, ~~the secretary shall establish~~  
 7 ~~after consultation with representatives of community developmental~~  
 8 ~~disability organizations and affiliates thereof, and families and consumer~~  
 9 ~~advocates:~~

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

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

17 (2) ~~consolidates federal and state funding sources;~~

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

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

33 (e) ~~a system of contracting that:~~

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

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

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

43 (4) ~~includes compensation for community services which meet the~~

1 ~~individualized needs of persons with developmental disabilities for~~  
2 ~~community services; and~~

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

6 *(a) The secretary, in consultation and cooperation with other state*  
7 *agencies or officials, as necessary, shall establish reimbursement rates for*  
8 *the delivery of community services to persons with intellectual or*  
9 *developmental disabilities, as follows:*

10 *(1) (A) For the fiscal year ending on June 30, 2019, such*  
11 *reimbursement rates shall be equal to fiscal year 2018 reimbursement*  
12 *rates for community services plus 4%; and*

13 *(B) for the fiscal year ending on June 30, 2020, such reimbursement*  
14 *rates shall be equal to fiscal year 2019 reimbursement rates for*  
15 *community services plus 5%; and*

16 *(2) beginning with the fiscal year ending on June 30, 2021, and each*  
17 *fiscal year thereafter, such reimbursement rates shall be equal to the*  
18 *reimbursement rates for community services during the immediately*  
19 *preceding fiscal year plus the greater of 2% or the annual percentage*  
20 *increase in the consumer price index for urban wage earners and clerical*  
21 *workers for the immediately preceding calendar year as published by the*  
22 *United States department of labor.*

23 *(b) The secretary shall establish, in consultation with community*  
24 *developmental disability organizations, representatives of community*  
25 *service providers, families and consumer advocates:*

26 *(1) A system of quality assurance based on standards established in*  
27 *rules and regulations adopted by the secretary that ensures effective*  
28 *service delivery, fiscal accountability and networking cooperation that*  
29 *allows community service providers to present evidence of relevant*  
30 *national accreditation or compliance with applicable state or federal laws*  
31 *or rules and regulations to indicate compliance with such standards; and*

32 *(2) a system of contracting that:*

33 *(A) Authorizes open and equitable negotiation between contracting*  
34 *parties or the parties' designated agents;*

35 *(B) authorizes mediation by an independent entity chosen by the*  
36 *parties to the contract in the event of contract disputes and, if mediation is*  
37 *not completed prior to the end of any existing contract, authorizes*  
38 *extending such existing contract or executing a temporary contract;*

39 *(C) includes sufficient funding for community services that meet the*  
40 *individualized needs of persons with developmental disabilities for*  
41 *community services, including extraordinary needs; and*

42 *(D) requires community developmental disability organizations to*  
43 *contract with qualified service providers and to create and sustain a*

1 *network of qualified service providers.*

2       Sec. 9. K.S.A. 39-1808 is hereby amended to read as follows: 39-  
3 1808. Nothing in this act shall authorize the secretary to require a  
4 community service provider to make expenditures not in compliance with  
5 contracts or agreements entered into by the governing board of such  
6 provider *or to provide services beyond those determined by such provider*  
7 *and the community developmental disability organization to be reasonable*  
8 *and prudent.*

9       Sec. 10. K.S.A. 39-1801, 39-1802, 39-1805, 39-1806 and 39-1808  
10 and K.S.A. 2017 Supp. 39-1803, 39-1804 and 39-1811 are hereby  
11 repealed.

12       Sec. 11. This act shall take effect and be in force from and after July  
13 1, 2019, and its publication in the statute book.