

**CHAPTER 1114****BRAIN INJURY SERVICES PROGRAM***H.F. 2772*

**AN ACT** creating a brain injury services program and providing for allocation of a previously enacted appropriation.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 135.22B BRAIN INJURY SERVICES PROGRAM.

1. DEFINITIONS. For the purposes of this section:

- a. "Brain injury services waiver" means the state's medical assistance home and community-based services waiver for persons with brain injury implemented under chapter 249A.
- b. "Program administrator" means the division of the department designated to administer the brain injury services program in accordance with subsection 2.

2. PROGRAM CREATED.

a. A brain injury services program is created and shall be administered by a division of the Iowa department of public health in cooperation with counties and the department of human services.

b. The division of the department assigned to administer the advisory council on brain injuries under section 135.22A shall be the program administrator. The division duties shall include but are not limited to serving as the fiscal agent and contract administrator for the program and providing program oversight.

c. The division shall consult with the advisory council on brain injuries, established pursuant to section 135.22A, regarding the program and shall report to the council concerning the program at least quarterly. The council shall make recommendations to the department concerning the program's operation.

3. PURPOSE. The purpose of the brain injury services program is to provide services, service funding, or other support for persons with a brain injury under one of the program components established pursuant to this section.

4. GENERAL REQUIREMENTS — WAIVER ELIGIBLE COMPONENT.

a. The component of the brain injury services program for persons eligible for the brain injury services waiver is subject to the requirements provided in this subsection.

b. If a person is eligible for the brain injury services waiver and is on the waiting list for the waiver but the appropriation for the medical assistance program does not have sufficient funding designated to pay the nonfederal share of the costs to remove the person from the waiting list, the brain injury services program may provide the funding for the nonfederal share of the costs in order for the person to be removed from the waiting list and receive services under the waiver.

c. A person who receives support under the waiver eligible component is not eligible to receive support under the cost-share component of the program.

d. Provision of funding under the waiver eligible component is not an entitlement. Subject to the department of human services requirements for the brain injury services waiver waiting list, the program administrator shall make the final determination whether funding will be authorized under this component.

5. GENERAL REQUIREMENTS — COST-SHARE COMPONENT. The cost-share component of the brain injury services program shall be directed to persons who have been determined to be ineligible for the brain injury services waiver or persons who are eligible for the waiver but funding was not authorized or available to provide waiver eligibility for the persons under the waiver eligible component. The cost-share component is subject to general requirements which shall include but are not limited to all of the following:

a. Services offered are consistent with the services offered through the brain injury services waiver.

b. Each service consumer has a service plan developed prior to service implementation and the service plan is reviewed and updated at least quarterly.

c. All other funding sources for which the service consumer is eligible are utilized to the greatest extent possible. The funding sources potentially available include but are not limited to community resources and public and private benefit programs.

d. The maximum monthly cost of the services provided shall be based on the maximum monthly amount authorized for the brain injury services waiver.

e. Assistance under the cost-share component shall be made available to a designated number of service consumers who are eligible, as determined from the funding available for the cost-share component, on a first-come, first-served basis.

f. Nothing in this section shall be construed or is intended as, or shall imply, a grant of entitlement to services to persons who are eligible for participation in the cost-share component based upon the eligibility provisions adopted consistent with the requirements of this section. Any obligation to provide services pursuant to this section is limited to the extent of the funds appropriated or provided for the cost-share component.

6. COST-SHARE COMPONENT ELIGIBILITY. An individual must meet all of the following requirements in order to be eligible for the cost-share component of the brain injury services program:

a. The individual is age one month through sixty-four years.

b. The individual has a diagnosed brain injury as defined in section 135.22.

c. The individual is a resident of this state and either a United States citizen or a qualified alien as defined in 8 U.S.C. § 1641.

d. The cost-share component's financial eligibility requirements shall be established in administrative rule. In establishing the requirements, the department shall consider the eligibility and cost-share requirements used for the hawk-i program under chapter 514I. The individual must meet the cost-share component's financial eligibility requirements and be willing to pay a cost-share for the cost-share component.

e. The individual does not receive services or funding under any type of medical assistance home and community-based services waiver.

7. COST-SHARE REQUIREMENTS.

a. An individual's cost-share responsibility for services under the cost-share component shall be determined on a sliding scale based upon the individual's family income. An individual's cost-share shall be assessed as a copayment, which shall not exceed thirty percent of the cost payable for the service.

b. The service provider shall bill the department for the portion of the cost payable for the service that is not covered by the individual's copayment responsibility.

8. APPLICATION PROCESS.

a. The application materials for services under both the waiver eligible and cost-share components of the brain injury services program shall use the application form and other materials of the brain injury services waiver. In order to apply for the brain injury services program, the applicant must authorize the department of human services to provide the applicant's waiver application materials to the brain injury services program. The application materials provided shall include but are not limited to the waiver application, and any denial letter, financial assessment, and functional assessment regarding the person.

b. If a functional assessment for the waiver has not been completed due to a person's financial ineligibility for the waiver, the brain injury services program may provide for a functional assessment to determine the person's needs by reimbursing the department of human services for the assessment.

c. The program administrator shall file copies of the individual's application and needs assessment with the program resource facilitator assigned to the individual's geographic area.

d. The department's program administrator shall make a final determination as to whether program funding will be authorized under the cost-share component.

9. SERVICE PROVIDERS AND REIMBURSEMENT. All of the following requirements apply to service providers and reimbursement rates payable for services under the cost-share component:

a. A service provider must either be certified to provide services under the brain injury services waiver or have a contract with a county to provide services and will become certified to provide services under such waiver within a reasonable period of time specified in rule.

b. The reimbursement rate payable for the cost of a service provided under the cost-share component is the rate payable under the medical assistance program. However, if the service provided does not have a medical assistance program reimbursement rate, the rate shall be the amount payable under the county contract.

10. RESOURCE FACILITATION. The program shall utilize resource facilitators to facilitate program services. The resource facilitator shall be available to provide ongoing support for individuals with brain injury in coping with the issues of living with a brain injury and in assisting such individuals in transitioning back to employment and living in the community. The resource facilitator is intended to provide a linkage to existing services and increase the capacity of the state’s providers of services to persons with brain injury by doing all of the following:

- a. Providing brain injury-specific information, support, and resources.
- b. Enhancing the usage of support commonly available to an individual with brain injury from the community, family, and personal contacts and linking such individuals to appropriate services and community resources.
- c. Training service providers to provide appropriate brain injury services.
- d. Accessing, securing, and maximizing the private and public funding available to support an individual with a brain injury.

Sec. 2. 2005 Iowa Acts, chapter 179, section 1, subsection 2, paragraph d, is amended to read as follows:

d. For distribution to ~~counties as cost-share for county coverage of services to adult persons with the Iowa department of public health for the brain injury in accordance with the law enacted as a result of the provisions of 2005 Iowa Acts, House File 876, or other law providing for such coverage to commence service program~~ in the fiscal year beginning July 1, 2006, as provided in accordance with section 135.22B, if enacted by the Eighty-first General Assembly, 2006 Session:

..... \$ 2,426,893

The amount allocated in this paragraph “d” shall be allocated by the Iowa department of public health as follows:

(1) For state cost-share of services provided under section 135.22B:  
..... \$ 2,092,665

(2) For contract resource facilitator services:  
..... \$ 173,125

(3) For a sole source contract with a statewide association representing community providers of mental health, mental retardation, and brain injury services to provide, in collaboration with a statewide organization representing individuals with a brain injury and their families, brain injury training services and recruiting of service providers to increase the capacity within this state to address the needs of individuals with brain injuries and such individuals’ families:

..... \$ 40,000

(4) For reimbursement for needs assessments performed under section 135.22B:  
..... \$ 26,750

(5) For match of federal funding, administrative and personnel costs including salaries, support, maintenance, and miscellaneous purposes:

..... \$ 94,353

Notwithstanding section 8.33, the appropriated moneys allocated in this paragraph “d” that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

Sec. 3. EMERGENCY RULES. The Iowa department of public health may adopt adminis-

trative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph “b”, to implement the provisions of this Act, and the rules shall become effective immediately upon filing or on a later effective date specified in the rules, unless the effective date is delayed by the administrative rules review committee. Any rules adopted in accordance with this section shall not take effect before the rules are reviewed by the administrative rules review committee. The delay authority provided to the administrative rules review committee under section 17A.4, subsection 5, and section 17A.8, subsection 9, shall be applicable to a delay imposed under this section, notwithstanding a provision in those sections making them inapplicable to section 17A.5, subsection 2, paragraph “b”. Any rules adopted in accordance with the provisions of this section shall also be published as notice of intended action as provided in section 17A.4.

Approved May 23, 2006

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## CHAPTER 1115

### MENTAL HEALTH AND DISABILITY SERVICES

*H.F. 2780*

**AN ACT** relating to persons with mental illness, mental retardation, developmental disabilities, or brain injury by addressing purposes and quality standards for services and other support available for such persons, establishing basic financial eligibility standards, addressing state and county financial responsibility for the cost of the services and other support, changing the name of a departmental division, providing for an increase in the reimbursement of certain service providers, and providing effective and applicability dates.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### DIVISION I

#### PURPOSES AND QUALITY STANDARDS

Section 1. Section 125.82, subsection 3, Code 2005, as amended by 2006 Iowa Acts, Senate File 2362,<sup>1</sup> section 1, if enacted, and 2006 Iowa Acts, Senate File 2217,<sup>2</sup> section 30, if enacted, is amended to read as follows:

3. The person who filed the application and a licensed physician, ~~or qualified mental health professional as defined in section 229.1~~ 228.1, or certified alcohol and drug counselor certified by the nongovernmental Iowa board of substance abuse certification who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless the court for good cause finds that their presence or testimony is not necessary. The applicant, respondent, and the respondent’s attorney may waive the presence or telephonic appearance of the licensed physician, ~~or qualified mental health professional, or certified alcohol and drug counselor~~ who examined the respondent and agree to submit as evidence the written report of the licensed physician, ~~or qualified mental health professional, or certified alcohol and drug counselor~~. The respondent’s attorney shall inform the court if the respondent’s attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. “Good cause” for finding that the testimony of the licensed physician, ~~or qualified mental health professional, or certified alcohol and drug counselor~~ who ex-

<sup>1</sup> Chapter 1116 herein

<sup>2</sup> Chapter 1159 herein