

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0433.01 Richard Sweetman x4333

**SENATE BILL 19-238**

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**SENATE SPONSORSHIP**

**Danielson and Moreno,**

**HOUSE SPONSORSHIP**

**Kennedy and Duran,**

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**Senate Committees**

Health & Human Services  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING HOME CARE \_\_\_\_\_ AGENCIES, AND, IN CONNECTION**  
102           **THEREWITH, REQUIRING CERTAIN AGENCIES TO EXPEND A**  
103           **MINIMUM PERCENTAGE OF THEIR REIMBURSEMENTS FROM THE**  
104           **"COLORADO MEDICAL ASSISTANCE ACT" AS WAGES FOR**  
105           **EMPLOYEES WHO PROVIDE DIRECT CARE, REQUIRING THE**  
106           **DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO**  
107           **ENFORCE TRAINING REQUIREMENTS AND REQUEST AN INCREASE**  
108           **TO THE REIMBURSEMENT RATE FOR CERTAIN SERVICES**  
109           **PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE**  
110           **ACT", AND MAKING AN APPROPRIATION.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does*

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

*not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill requires that, on and after July 1, 2019, of the total reimbursement that a home care service agency (agency) receives each fiscal year pursuant to the "Colorado Medical Assistance Act" for the provision of personal care services, homemaker services, and respite care services (covered services), the agency shall expend at least 77% as wages for nonadministrative employees who provide the services. Each agency shall expend at least such amount on a per-employee basis, with each such employee receiving at least 77% of each reimbursement that is associated with covered services provided by the employee.

The bill also directs the department of health care policy and financing (department) to seek an 8.1% increase in the federal reimbursement rate for the relevant service categories and requires home care service agencies to apply the entire amount of that increase to employee compensation during the 2019-20 fiscal year. Agencies are required to notify employees in writing about this increase.

On and after December 31, 2021, an agency that is found to have paid an employee less than the amount due to the employee shall be required to pay the remaining amount owed to the employee and may be subject to a civil penalty, assessed by the department, of up to \$1,000.

Each agency is required to report the following information annually to the department for each nonadministrative employee who provided covered services to home care consumers during the preceding fiscal year:

- ! The total amount of money the agency received as reimbursement for the provision of covered services by that employee in the preceding fiscal year;
- ! The total amount of money the agency provided as wages to that employee for the provision of covered services during the preceding fiscal year; and
- ! The employee's full name, home address, mailing address, telephone number, and e-mail address and the most recent date upon which the employee completed certain training or a skills validation test.

On or before April 1, 2021, and on or before April 1 of each year thereafter, the department or a designee of the executive director of the department is required to make the reported information publicly available on a website. The department shall not disclose an employee's home address, mailing address, telephone number, or e-mail address if the employee requests that the department not disclose the information and the employee indicates to the department that the employee is:



1           (4) "HOMEMAKER SERVICES" HAS THE MEANING SET FORTH IN  
2 SECTION 25.5-6-303 (11).

3           (5) "IN-HOME SUPPORT SERVICE AGENCY" HAS THE MEANING SET  
4 FORTH IN SECTION 25.5-6-1202 (5).

5           (6) "IN-HOME SUPPORT SERVICES" HAS THE MEANING SET FORTH  
6 IN SECTION 25.5-6-1202 (6); EXCEPT THAT THE TERM DOES NOT INCLUDE  
7 HEALTH MAINTENANCE ACTIVITIES.

8           (7) "PERSONAL CARE SERVICES" HAS THE MEANING SET FORTH IN  
9 SECTION 25-27.5-102 (6).

10                   
11           **25.5-6-1602. State department to request increase in**

12 **reimbursement rate for certain services.** (1) NOT MORE THAN NINETY  
13 DAYS AFTER THE EFFECTIVE DATE OF THIS PART 16, THE STATE  
14 DEPARTMENT SHALL REQUEST FROM THE FEDERAL GOVERNMENT AN  
15 INCREASE OF EIGHT AND ONE-TENTH PERCENT IN THE REIMBURSEMENT  
16 RATE FOR THE FOLLOWING SERVICES DELIVERED TO CONSUMERS THROUGH  
17 THE HOME- AND COMMUNITY-BASED SERVICES WAIVERS:

- 18           (a) HOMEMAKER;
- 19           (b) HOMEMAKER ENHANCED; AND
- 20           (c) PERSONAL CARE.

21           (2) FOR THE 2019-20 FISCAL YEAR, EACH HOME CARE     AGENCY  
22 SHALL PAY ONE HUNDRED PERCENT OF THE FUNDING THAT RESULTS FROM  
23 THE RATE INCREASE DESCRIBED IN SUBSECTION (1) OF THIS SECTION AS  
24 COMPENSATION FOR EMPLOYEES WHO PROVIDE PERSONAL CARE SERVICES,  
25 HOMEMAKER SERVICES, AND IN-HOME SUPPORT SERVICES TO CONSUMERS.  
26 EACH HOME CARE        AGENCY SHALL EXPEND THIS FUNDING ON A  
27 PER-EMPLOYEE BASIS, WITH EACH SUCH EMPLOYEE RECEIVING ONE

1 HUNDRED PERCENT OF THE RATE INCREASE THAT IS ASSOCIATED WITH  
2 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR IN-HOME SUPPORT  
3 SERVICES PROVIDED BY THE EMPLOYEE AS COMPENSATION IN ADDITION TO  
4 THE RATE OF COMPENSATION THAT THE EMPLOYEE WAS RECEIVING AS OF  
5 JUNE 30, 2019. FOR AN EMPLOYEE WHO WAS HIRED AFTER JUNE 30, 2019,  
6 THE HOME CARE AGENCY SHALL USE THE LOWEST COMPENSATION PAID TO  
7 AN EMPLOYEE OF SIMILAR FUNCTIONS AND DUTIES AS OF JUNE 30, 2019,  
8 AS THE BASE COMPENSATION TO WHICH THE INCREASE IS APPLIED.

9 (3) WITHIN SIXTY DAYS AFTER THE REQUEST DESCRIBED IN  
10 SUBSECTION (1) OF THIS SECTION IS APPROVED, EACH HOME CARE AGENCY  
11 SHALL PROVIDE WRITTEN NOTIFICATION TO EACH NONADMINISTRATIVE  
12 EMPLOYEE OF THE AGENCY WHO PROVIDES PERSONAL CARE SERVICES,  
13 HOMEMAKER SERVICES, OR IN-HOME SUPPORT SERVICES OF THE  
14 COMPENSATION THEY ARE ENTITLED TO PURSUANT TO SUBSECTION (2) OF  
15 THIS SECTION.

16 \_\_\_\_\_  
17 **25.5-6-1603. Minimum wage - wage pass-through requirement**  
18 **for certain home care agencies - applicability - reports - recovery.**

19 (1) THIS SECTION APPLIES TO EACH HOME CARE \_\_\_\_\_ AGENCY THAT  
20 RECEIVES REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL  
21 ASSISTANCE ACT" FOR THE PROVISION OF PERSONAL CARE SERVICES,  
22 HOMEMAKER SERVICES, OR IN-HOME SUPPORT SERVICES.

23 (2) ON AND AFTER JULY 1, 2020, THE HOURLY MINIMUM WAGE FOR  
24 PERSONS WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES,  
25 OR IN-HOME SUPPORT SERVICES FOR WHICH A HOME CARE AGENCY MAY  
26 RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL  
27 ASSISTANCE ACT" IS TWELVE DOLLARS AND FORTY-ONE CENTS PER HOUR.

1           (3) FOR ANY INCREASE TO THE REIMBURSEMENT RATES FOR  
2 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR IN-HOME SUPPORT  
3 SERVICES THAT TAKES EFFECT DURING THE 2020-21 FISCAL YEAR, HOME  
4 CARE AGENCIES SHALL USE EIGHTY-FIVE PERCENT OF THE FUNDING  
5 RESULTING FROM THE INCREASE TO INCREASE COMPENSATION FOR  
6 NONADMINISTRATIVE EMPLOYEES ABOVE THE RATE OF COMPENSATION  
7 THAT NONADMINISTRATIVE EMPLOYEES ARE RECEIVING AS OF JUNE 30,  
8 2019. HOME CARE AGENCIES MAY USE ANY REMAINING FUNDING  
9 RESULTING FROM THE REIMBURSEMENT RATE INCREASE FOR GENERAL AND  
10 ADMINISTRATIVE EXPENSES, SUCH AS CHIEF EXECUTIVE OFFICER SALARIES,  
11 HUMAN RESOURCES, INFORMATION TECHNOLOGY, OVERSIGHT, BUSINESS  
12 MANAGEMENT, GENERAL RECORD KEEPING, BUDGETING AND FINANCE,  
13 AND OTHER ACTIVITIES NOT IDENTIFIABLE TO A SINGLE PROGRAM.

14           (4) (a) EACH HOME CARE AGENCY SHALL TRACK AND REPORT HOW  
15 IT USED ANY FUNDING RESULTING FROM THE INCREASE IN THE  
16 REIMBURSEMENT RATE PURSUANT TO SECTION 25.5-6-1602 USING A  
17 REPORTING TOOL DEVELOPED BY THE STATE DEPARTMENT. ON OR BEFORE  
18 DECEMBER 31, 2020, EACH HOME CARE AGENCY SHALL SUBMIT THE  
19 REPORT TO THE STATE DEPARTMENT DEMONSTRATING HOW THE FUNDING  
20 WAS USED TO INCREASE COMPENSATION FOR THE 2019-20 FISCAL YEAR.  
21 ON OR BEFORE DECEMBER 31, 2021, EACH HOME CARE AGENCY SHALL  
22 REPORT TO THE STATE DEPARTMENT HOW THE FUNDING WAS USED TO  
23 INCREASE OR, IN THE EVENT THAT THERE IS NO REIMBURSEMENT RATE  
24 INCREASE, MAINTAIN EACH EMPLOYEE'S COMPENSATION FOR THE 2020-21  
25 FISCAL YEAR. THE STATE DEPARTMENT HAS ONGOING DISCRETION TO  
26 REQUEST INFORMATION FROM A HOME CARE AGENCY DEMONSTRATING  
27 HOW IT MAINTAINED INCREASES IN COMPENSATION FOR

1 NONADMINISTRATIVE EMPLOYEES BEYOND THE REPORTING PERIOD.

2 (b) EACH HOME CARE AGENCY SHALL MAINTAIN ALL BOOKS,  
3 DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE  
4 REQUIRED TO SUPPORT THE REPORTING OF PAYROLL INFORMATION FOR  
5 INCREASED COMPENSATION TO NONADMINISTRATIVE EMPLOYEES  
6 PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION FOR AT LEAST THREE  
7 YEARS FROM THE REPORTING DEADLINES DESCRIBED IN SUBSECTION (4)(a)  
8 OF THIS SECTION FOR EACH RESPECTIVE FISCAL YEAR. EACH HOME CARE  
9 AGENCY SHALL MAKE THE INFORMATION AND MATERIALS AVAILABLE FOR  
10 INSPECTION BY THE STATE DEPARTMENT OR ITS DESIGNEES AT ALL  
11 REASONABLE TIMES.

12 (5) (a) THE STATE DEPARTMENT MAY RECOUP PART OR ALL OF THE  
13 FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE  
14 DESCRIBED IN SECTION 25.5-6-1602 IF THE STATE DEPARTMENT  
15 DETERMINES THAT A HOME CARE AGENCY:

16 (I) DID NOT USE ONE HUNDRED PERCENT OF ANY FUNDING  
17 RESULTING FROM THE RATE INCREASE TO INCREASE COMPENSATION FOR  
18 NONADMINISTRATIVE EMPLOYEES, AS REQUIRED BY SECTION 25.5-6-1602  
19 (2);

20 (II) DID NOT USE EIGHTY-FIVE PERCENT OF THE FUNDING  
21 RESULTING FROM THE RATE INCREASE TO INCREASE COMPENSATION FOR  
22 NONADMINISTRATIVE EMPLOYEES, AS REQUIRED BY SUBSECTION (3) OF  
23 THIS SECTION; OR

24 (III) FAILED TO TRACK AND REPORT HOW IT USED ANY FUNDS  
25 RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE AS  
26 REQUIRED BY SUBSECTION (4) OF THIS SECTION.

27 (b) IF THE STATE DEPARTMENT MAKES A DETERMINATION

1 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION, THE STATE  
2 DEPARTMENT SHALL NOTIFY THE HOME CARE AGENCY IN WRITING OF THE  
3 STATE DEPARTMENT'S INTENTION TO RECOUP FUNDS PURSUANT TO  
4 SUBSECTION (5)(a) OF THIS SECTION. A HOME CARE AGENCY HAS  
5 FORTY-FIVE DAYS AFTER RECEIVING SUCH NOTICE TO:

6 (I) CHALLENGE THE DETERMINATION OF THE STATE DEPARTMENT;

7 (II) PROVIDE ADDITIONAL INFORMATION TO THE STATE  
8 DEPARTMENT DEMONSTRATING COMPLIANCE; OR

9 (III) SUBMIT A PLAN OF CORRECTION TO THE STATE DEPARTMENT.

10 (c) THE STATE DEPARTMENT SHALL NOTIFY A HOME CARE AGENCY  
11 IN WRITING OF ITS FINAL DETERMINATION AFTER AFFORDING THE HOME  
12 CARE AGENCY THE OPPORTUNITY TO TAKE ONE OF THE ACTIONS SPECIFIED  
13 IN SUBSECTION (5)(b) OF THIS SECTION.

14 (d) THE STATE DEPARTMENT SHALL RECOUP FROM A HOME CARE  
15 AGENCY ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE  
16 INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SECTION  
17 25.5-6-1602 THAT THE HOME CARE AGENCY RECEIVED BUT DID NOT USE  
18 FOR COMPENSATION FOR NONADMINISTRATIVE EMPLOYEES IF:

19 (I) THE HOME CARE AGENCY FAILS TO RESPOND TO A NOTICE OF  
20 DETERMINATION OF THE STATE DEPARTMENT WITHIN THE TIME PROVIDED  
21 IN SUBSECTION (5)(b) OF THIS SECTION;

22 (II) THE HOME CARE AGENCY IS UNABLE TO PROVIDE  
23 DOCUMENTATION OF COMPLIANCE; OR

24 (III) THE STATE DEPARTMENT DOES NOT ACCEPT THE PLAN OF  
25 CORRECTION SUBMITTED BY THE HOME CARE AGENCY PURSUANT TO  
26 SUBSECTION (5)(b)(III) OF THIS SECTION. \_\_\_\_\_

27 **25.5-6-1604. Training for home care \_\_\_\_\_ agency employees -**

1 **rules - disclosure of employee information required - exemptions.**

2 (1) ON OR BEFORE JANUARY 1, 2020, THE STATE DEPARTMENT AND THE  
3 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, IN CONSULTATION  
4 WITH STAKEHOLDERS, SHALL ESTABLISH A PROCESS FOR REVIEWING AND  
5 ENFORCING INITIAL AND ONGOING TRAINING REQUIREMENTS FOR PERSONS  
6 WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES, AND  
7 IN-HOME SUPPORT SERVICES FOR WHICH A HOME CARE AGENCY MAY  
8 RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL  
9 ASSISTANCE ACT", AS SUCH REQUIREMENTS ARE SET FORTH IN THIS  
10 SECTION AND IN RULES PROMULGATED BY THE STATE BOARD. THE  
11 STAKEHOLDERS MUST INCLUDE, BUT ARE NOT LIMITED TO:

- 12 (a) ONE OR MORE CONSUMER ADVOCACY ORGANIZATIONS;
- 13 (b) ONE OR MORE PERSONAL CARE WORKERS;
- 14 (c) ONE OR MORE WORKER ORGANIZATIONS;
- 15 (d) ONE OR MORE HOME CARE AGENCIES;
- 16 (e) ONE OR MORE DISABILITY ADVOCACY ORGANIZATIONS;
- 17 (f) ONE OR MORE SENIOR ADVOCACY ORGANIZATIONS; AND
- 18 (g) ONE OR MORE CHILDREN'S ADVOCACY ORGANIZATIONS.

19 (2) THE STAKEHOLDERS WITH WHOM THE DEPARTMENTS CONSULT  
20 PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL DISCUSS AND  
21 ADVISE THE DEPARTMENTS CONCERNING THE MANNER IN WHICH  
22 NONADMINISTRATIVE EMPLOYEES WILL BE NOTIFIED OF THE  
23 COMPENSATION INCREASES AND MINIMUM WAGE DESCRIBED IN SECTIONS  
24 25.5-6-1602 AND 25.5-6-1603. \_\_\_\_\_

25 **25.5-6-1605. Exemptions.** (1) NOTWITHSTANDING ANY PROVISION  
26 OF THIS PART 16 TO THE CONTRARY, THIS PART 16 DOES NOT APPLY TO  
27 SERVICES PROVIDED UNDER:

1 (a) THE CONSUMER-DIRECTED ATTENDANT SUPPORT SERVICES  
2 MODEL; OR

3 (b) THE PEDIATRIC CARE BENEFIT.

4 **SECTION 2. Appropriation.** (1) For the 2019-20 state fiscal  
5 year, \$5,682,377 is appropriated to the department of health care policy  
6 and financing. This appropriation is from the general fund. To implement  
7 this act, the department may use this appropriation as follows:

8 (a) \$31,788 for general professional services and special projects;

9 (b) \$31,250 for Medicaid management information system  
10 maintenance and projects, which amount is subject to the "(M)" notation  
11 as defined in the annual general appropriation act for the same fiscal year;

12 (c) \$5,115,076 for medical and long-term care services for  
13 Medicaid eligible individuals, which amount is subject to the "(M)"  
14 notation as defined in the annual general appropriation act for the same  
15 fiscal year;

16 (d) \$445,035 for adult supported living services, which amount is  
17 subject to the "(M)" notation as defined in the annual general  
18 appropriation act for the same fiscal year; and

19 (e) \$59,228 for children's extensive support services, which  
20 amount is subject to the "(M)" notation as defined in the annual general  
21 appropriation act for the same fiscal year.

22 (2) For the 2019-20 state fiscal year, the general assembly  
23 anticipates that the department of health care policy and financing will  
24 receive \$5,744,875 in federal funds to implement this act. The  
25 appropriation in subsection (1) of this section is based on the assumption  
26 that the department will receive this amount of federal funds to be used  
27 as follows:

1           (a) \$31,787 for general professional services and special projects,  
2           which amount is included for informational purposes only;

3           (b) \$93,750 for Medicaid management information system  
4           maintenance and projects;

5           (c) \$5,115,076 for medical and long-term care services for  
6           Medicaid eligible individuals;

7           (d) \$445,035 for adult supported living services; and

8           (e) \$59,227 for children's extensive support services.

9           **SECTION 3. Safety clause.** The general assembly hereby finds,  
10          determines, and declares that this act is necessary for the immediate  
11          preservation of the public peace, health, and safety.