

CHAPTER 192

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 21-1227

BY REPRESENTATIVE(S) Lontine and Soper, Bennett, Bird, Duran, Hooton, Michaelson Jenet, Ricks, Titone, Mullica, Snyder;
also SENATOR(S) Fields and Kirkmeyer.

AN ACT

CONCERNING MEDICAL ASSISTANCE PROGRAM REQUIREMENTS FOR NURSING FACILITIES, AND, IN CONNECTION THEREWITH, ESTABLISHING A DEMONSTRATION OF NEED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add 25.5-6-209** as follows:

25.5-6-209. Establishment of nursing facility provider demonstration of need - criteria - rules. (1) THE STATE DEPARTMENT, IN MAKING ANY MEDICAID CERTIFICATION DETERMINATION, SHALL ENCOURAGE AN APPROPRIATE ALLOCATION OF PUBLIC HEALTH-CARE RESOURCES AND THE DEVELOPMENT OF ALTERNATIVE OR SUBSTITUTE METHODS OF DELIVERING HEALTH-CARE SERVICES SO THAT ADEQUATE LONG-TERM CARE SERVICES ARE MADE REASONABLY AVAILABLE TO EVERY QUALIFIED RECIPIENT WITHIN THE STATE AT THE APPROPRIATE LEVEL OF CARE, AT THE LOWEST REASONABLE AGGREGATE COST, AND IN THE LEAST RESTRICTIVE SETTING. MEDICAID CERTIFICATION DETERMINATIONS SHALL BE MADE IN ACCORDANCE WITH *OLMSTEAD V. L.C.*, 527 U.S. 581 (1999).

(2) THE STATE DEPARTMENT SHALL DEVELOP, ANALYZE, AND ENFORCE A DEMONSTRATION OF NEED TO DETERMINE THE VIABILITY OF AND REQUIRED NEED FOR EACH NEW NURSING FACILITY PROVIDER SEEKING MEDICAID CERTIFICATION. THE REQUIREMENT DOES NOT APPLY TO A NURSING FACILITY PROVIDER CERTIFIED PRIOR TO JUNE 30, 2021.

(3) IN ORDER TO DETERMINE A VALID DEMONSTRATION OF NEED, THE STATE DEPARTMENT SHALL, AT A MINIMUM, CONSIDER:

(a) STATE DEMOGRAPHY OFFICE DATA ILLUSTRATING THE PRESENT OR IMPENDING NEED WITHIN THE REQUESTING NURSING FACILITY'S GEOGRAPHIC AREA;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) QUALITY AND PERFORMANCE DATA OF THE REQUESTING NURSING FACILITY OR ASSOCIATED NURSING FACILITIES;

(c) BUSINESS CONTINUITY AND SOLVENCY INFORMATION OF THE REQUESTING NURSING FACILITY OR ASSOCIATED NURSING FACILITIES;

(d) INPUT FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT; THE DEPARTMENT OF LOCAL AFFAIRS; THE DEPARTMENT OF REGULATORY AGENCIES; THE DEPARTMENT OF LABOR AND EMPLOYMENT; AND ANY LOCAL GOVERNMENTS, INCLUDING CITIES AND COUNTIES; AND

(e) MEASURABLE INNOVATIVE PRACTICES OF THE REQUESTING NURSING FACILITY.

(4) NO LATER THAN JUNE 30, 2022, THE STATE BOARD SHALL PROMULGATE RULES PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, ADDRESSING THE ESTABLISHMENT OF CRITERIA TO BE USED IN DETERMINING A NURSING FACILITY PROVIDER'S MEDICAID CERTIFICATION. THE STATE BOARD SHALL PUBLICLY CONSIDER AND GATHER INPUT ON THE DEMONSTRATION OF NEED CRITERIA PRIOR TO PROMULGATING RULES. THE STATE DEPARTMENT SHALL CONSIDER INPUT FROM, AT A MINIMUM:

(a) DISABILITY ADVOCACY ORGANIZATIONS;

(b) URBAN NURSING FACILITY PROVIDERS;

(c) RURAL NURSING FACILITY PROVIDERS;

(d) AGING AND OLDER ADULT ADVOCACY ORGANIZATIONS; AND

(e) NURSING FACILITY TRADE ORGANIZATIONS.

SECTION 2. In Colorado Revised Statutes, 25.5-6-201, **amend** (4), (16), and (27); **repeal** (34); and **add** (9.5) as follows:

25.5-6-201. Special definitions relating to nursing facility reimbursement. As used in this part 2, unless the context otherwise requires:

(4) "Appraised value" means the determination by a qualified appraiser who is a member of an institute of real estate appraisers, or its equivalent, of the depreciated cost of replacement of a capital-related asset to its current owner. The depreciated replacement appraisal ~~shall~~ MUST be based on the ~~"Bocch Commercial Underwriter's Valuation System for Nursing Homes"~~ "Bocch Commercial Underwriter's Valuation System for Nursing Homes" A NATIONALLY RECOGNIZED VALUATION SYSTEM DETERMINED BY THE STATE DEPARTMENT. The depreciated cost of replacement appraisal ~~shall~~ MUST be redetermined AT LEAST every four years by new appraisals of the nursing facilities. The new appraisals ~~shall~~ MUST be based upon rules promulgated by the state board.

(9.5) "CASE-MIX GROUP" MEANS THE SYSTEM DETERMINED BY THE STATE DEPARTMENT FOR GROUPING A NURSING FACILITY'S RESIDENTS ACCORDING TO THEIR CLINICAL AND FUNCTIONAL STATUS AS IDENTIFIED FROM DATA SUPPLIED BY THE

FACILITY'S MINIMUM DATA SET AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(16) "Facility population distribution" means the number of Colorado nursing facility residents who are classified into each ~~resource utilization~~ CASE-MIX group as of a specific point in time.

(27) "Nursing weights" means numeric scores assigned to each category of the ~~resource utilization~~ CASE-MIX groups that measure the relative amount of resources required to provide nursing care to a nursing facility provider's residents.

(34) ~~"Resource utilization groups" means the system for grouping a nursing facility's residents according to their clinical and functional statuses as identified from data supplied by the facility's minimum data set as published by the United States department of health and human services.~~

SECTION 3. In Colorado Revised Statutes, 25.5-6-202, **amend** (2); and **add** (12) as follows:

25.5-6-202. Providers - nursing facility provider reimbursement - exemption - rules. (2) The state department shall further adjust and, subject to available appropriations, pay the per diem rate to the nursing facility provider for the cost of direct health-care services based upon the acuity or case-mix of the nursing facility provider residents in order to provide for the resource utilization of its residents. The state department shall determine this adjustment in accordance with each resident's status as identified and reported by the nursing facility provider on its federal medicare and medicaid minimum data set assessment. The state department shall establish a case-mix index for each nursing facility provider according to the ~~resource utilization groups system, using only nursing weights~~ CASE-MIX GROUP DETERMINED BY THE STATE DEPARTMENT. The state department shall calculate nursing weights based upon standard nursing time studies and weighted by facility population distribution and Colorado-specific nursing salary ratios. The state department shall determine an average case-mix index for each nursing facility provider's medicaid residents on a quarterly basis.

(12) THE STATE DEPARTMENT MAY EXEMPT FACILITIES WITH FIVE OR FEWER MEDICAID BEDS FROM THE METHODOLOGY DESCRIBED IN THIS SECTION AND INSTEAD REQUIRE THE FACILITIES TO BE REIMBURSED AT THE STATEWIDE AVERAGE RATE.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 27, 2021