

CHAPTER 139

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 22-1247

BY REPRESENTATIVE(S) Herod and McCluskie, Ransom, Bernett, Bird, Bockenfeld, Boesenecker, Caraveo, Cutter, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Hooton, Jodeh, Kennedy, Kipp, Lindsay, Lontine, McCormick, McLachlan, Michaelson Jenet, Mullica, Ricks, Soper, Titone, Valdez A., Valdez D., Woodrow, Young;
also SENATOR(S) Hansen and Rankin, Moreno, Buckner, Cooke, Fields, Ginal, Kirkmeyer, Lee, Liston, Pettersen, Priola, Smallwood, Story, Woodward, Zenzinger.

AN ACT

CONCERNING REQUIREMENTS FOR ADDITIONAL SUPPLEMENTAL PAYMENTS FOR NURSING FACILITY PROVIDERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 25.5-6-210 as follows:

25.5-6-210. Additional supplemental payments - nursing facilities - funding methodology - reporting requirement - rules - repeal. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY AND SUBJECT TO AVAILABLE APPROPRIATIONS, FOR THE PURPOSES OF REIMBURSING A MEDICAID-CERTIFIED CLASS I NURSING FACILITY PROVIDER, THE STATE DEPARTMENT SHALL ISSUE ADDITIONAL SUPPLEMENTAL PAYMENTS TO NURSING FACILITY PROVIDERS THAT MEET THE REQUIREMENTS OUTLINED IN THIS SECTION AND THE STATE DEPARTMENT'S SUBSEQUENT REGULATION AS FOLLOWS:

(a) FOR THE 2021-22 STATE FISCAL YEAR, FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY ARE FOR THE PURPOSES OF SUPPORTING NURSING FACILITY PROVIDERS EXPERIENCING INCREASED STAFFING COSTS RESULTING FROM THE COVID-19 PANDEMIC, NURSING FACILITY PROVIDERS WITH HIGH MEDICAID UTILIZATION RATES, OR NURSING FACILITY PROVIDERS CURRENTLY SERVING INDIVIDUALS WITH COMPLEX NEEDS.

(b) PAYMENTS MADE IN ADDITION TO THOSE SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION MAY ALSO BE MADE TO NURSING FACILITY PROVIDERS THAT ACCEPT NEW ADMISSIONS OF MEDICAID-ENROLLMENT INDIVIDUALS WITH COMPLEX NEEDS.

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.

(2) THE STATE DEPARTMENT SHALL ESTABLISH REPORTING AND RESULT TRACKING REQUIREMENTS NECESSARY TO ADMINISTER THE FUNDING OUTLINED IN THIS SECTION. THE STATE DEPARTMENT MAY DENY OR RECOUP FUNDING FROM NURSING FACILITY PROVIDERS THAT ARE NONCOMPLIANT WITH REPORTING REQUIREMENTS OR IF FUNDING IS USED FOR PURPOSES OUTSIDE THE INTENT OF SUPPORTING AND STABILIZING NURSING FACILITY PROVIDERS THAT ARE MEDICAID PROVIDERS.

(3) THE STATE DEPARTMENT SHALL EVALUATE PROVIDER OUTCOMES, INCLUDING CHANGES IN CAPACITY, ASSOCIATED WITH THE PAYMENT OF SUPPLEMENTAL MONEY TO NURSING FACILITY PROVIDERS. THE STATE DEPARTMENT SHALL UTILIZE NURSING FACILITY PROVIDERS' FINANCIAL STATEMENTS AND LABOR AND WAGE RECORDS TO EVALUATE THE RESULTS OF PAYMENTS.

(4) (a) THE STATE DEPARTMENT SHALL PURSUE FEDERAL MATCHING FUNDS. IF FEDERAL MATCHING FUNDS ARE UNAVAILABLE FOR ANY REASON, PAYMENTS OUTLINED IN THIS SECTION MAY BE REDUCED OR RESTRICTED, SUBJECT TO AVAILABLE FUNDING.

(b) FOR THE PURPOSES OF FEDERAL UPPER PAYMENT LIMIT CALCULATIONS, THE STATE DEPARTMENT SHALL PURSUE FEDERAL MATCHING FUNDS FOR PAYMENTS MADE PURSUANT TO THIS SECTION BUT ONLY AFTER SECURING FEDERAL MATCHING FUNDS FOR PAYMENTS OUTLINED IN SECTIONS 25.5-6-203 (2) AND 25.5-6-208.

(5) (a) SUPPLEMENTAL PAYMENTS MADE TO NURSING FACILITY PROVIDERS PURSUANT TO THIS SECTION MUST BE DETERMINED BASED ON THE MOST RECENT AVAILABLE DATA.

(b) PURSUANT TO RULES PROMULGATED BY THE STATE DEPARTMENT, PAYMENTS RECEIVED PURSUANT TO THIS SECTION MUST BE REPORTED AS REVENUE ON THE ANNUAL COST REPORT WHEN CALCULATING NURSING FACILITY PROVIDER PER DIEM REIMBURSEMENT AS DIRECTED BY THE STATE DEPARTMENT.

(6) TO RECEIVE AN ADDITIONAL PAYMENT PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, A NURSING FACILITY PROVIDER SHALL WORK WITH A HOSPITAL TO FACILITATE THE TIMELY DISCHARGE OF MEDICAID MEMBERS FROM THE HOSPITAL INTO THE NURSING FACILITY, SERVE MEDICAID MEMBERS WITH COMPLEX NEEDS, OR ACCEPT COMPASSIONATE RELEASE INDIVIDUALS FROM THE DEPARTMENT OF CORRECTIONS.

(7) ON OR BEFORE NOVEMBER 1, 2022, THE STATE DEPARTMENT SHALL ENGAGE WITH STAKEHOLDERS AND SUBMIT A REPORT AND RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE, THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, AND THE PUBLIC AND BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, CONCERNING SUGGESTED CHANGES FOR PERMANENTLY CHANGING MEDICAID NURSING FACILITY PROVIDER REIMBURSEMENT POLICY IN COLORADO TO PRIORITIZE QUALITY, SUSTAINABILITY, AND SOUND FISCAL STEWARDSHIP TO AVOID FURTHER ONE-TIME CASH INFUSIONS. THE REPORT MUST INCLUDE CHANGES THAT CAN BE MADE TO AFFIRM A NURSING FACILITY PROVIDER'S COMMITMENT TO ACCOUNTABILITY AND MUST INCLUDE, AT A MINIMUM:

(a) INFECTION CONTROL AND CULTURE CHANGE PRACTICES, INCLUDING:

(I) SINGLE OCCUPANCY ROOMS;

(II) SMALLER FACILITY MODELS; AND

(III) INNOVATIVE FACILITY MODELS;

(b) BEHAVIORAL HEALTH NEEDS;

(c) PRACTICES REGARDING INDIVIDUALS WHO HAVE COMPLEX NEEDS REQUIRING HOSPITAL DISCHARGE;

(d) PRACTICES REGARDING CARE AND SERVICES TO COMPASSIONATE RELEASE INDIVIDUALS FROM THE DEPARTMENT OF CORRECTIONS;

(e) OPTIONS FOR DIVERSIFIED FUNDING STREAMS TO ENSURE CONTINUITY OF SERVICES;

(f) COMPETITIVE STAFFING PRACTICES;

(g) THE TIMELINE AND COSTS ASSOCIATED WITH IMPLEMENTING THE RECOMMENDED CHANGES, INCLUDING THE IMPACT ON NURSING FACILITY PROVIDER RATES; AND

(h) IDENTIFICATION OF THE AMOUNT OF SUPPLEMENTAL PAYMENTS TO EACH NURSING FACILITY PROVIDER AND THE OUTCOME EVALUATION REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(8) THE STATE DEPARTMENT SHALL MEET WITH THE FOLLOWING STAKEHOLDERS, AT A MINIMUM, TO SEEK INPUT ON ANY PROPOSED REIMBURSEMENT METHODOLOGY CHANGES AND REPORT AS REQUIRED BY THIS SECTION:

(a) A REPRESENTATIVE FROM AN URBAN NURSING FACILITY PROVIDER;

(b) A REPRESENTATIVE FROM A RURAL NURSING FACILITY PROVIDER;

(c) A REPRESENTATIVE FROM A NURSING FACILITY TRADE ORGANIZATION;

(d) A REPRESENTATIVE FROM A NURSING FACILITY WITH A HIGH MEDICAID UTILIZATION RATE; AND

(e) A REPRESENTATIVE FROM A NURSING FACILITY THAT SERVES INDIVIDUALS WITH COMPLEX NEEDS.

(9) THE STATE BOARD SHALL PROMULGATE ANY RULES NECESSARY TO IMPLEMENT THIS SECTION.

(10) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

SECTION 2. Appropriation. (1) For the 2021-22 state fiscal year, \$17,000,500

is appropriated to the department of health care policy and financing for use by medical services premiums. This appropriation is from the general fund and is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year. To implement this act, the department may use this appropriation for medical and long-term care services for Medicaid-eligible individuals.

(2) For the 2021-22 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$10,000,500 in federal funds to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used for medical and long-term care services for Medicaid-eligible individuals.

(3) Any money appropriated in subsection (1) of this section not expended prior to July 1, 2022, is further appropriated to the department for the 2022-23 state fiscal year for the same purpose.

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

Approved: April 25, 2022