

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

INTRODUCED

LLS NO. 19-0433.01 Richard Sweetman x4333

SENATE BILL 19-238

SENATE SPONSORSHIP

Danielson and Moreno,

HOUSE SPONSORSHIP

Kennedy and Duran,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING HOME CARE SERVICE 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 MAINTAIN PUBLIC**
108 **RECORDS CONCERNING THE HOME CARE WORKFORCE, AND**
109 **INCREASING THE REIMBURSEMENT RATE FOR CERTAIN SERVICES**
110 **PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE**
111 **ACT".**

Bill Summary

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.

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

1 OR A HOME MAKER PROVIDER AGENCY.

2 (5) "HOMEMAKER PROVIDER AGENCY" MEANS AN AGENCY THAT
3 IS CERTIFIED BY THE STATE FISCAL AGENT TO PROVIDE HOMEMAKER
4 SERVICES.

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

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

9 (8) "RESPITE CARE SERVICES" HAS THE MEANING SET FORTH IN
10 SECTION 25.5-6-303 (20).

11 (9) "STATE FISCAL AGENT" MEANS THE AGENCY UNDER CONTRACT
12 TO THE STATE DEPARTMENT FOR THE PURPOSE OF DISBURSING FUNDS TO
13 PROVIDERS OF SERVICES UNDER THE "COLORADO MEDICAL ASSISTANCE
14 ACT".

15 **25.5-6-1602. State department to request increase in**
16 **reimbursement rate for certain services - repeal.** (1) NOT MORE THAN
17 NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PART 16, THE STATE
18 DEPARTMENT SHALL REQUEST FROM THE FEDERAL GOVERNMENT AN
19 INCREASE OF EIGHT AND ONE-TENTH PERCENT IN THE REIMBURSEMENT
20 RATE FOR THE FOLLOWING SERVICES DELIVERED TO CONSUMERS THROUGH
21 THE HOME- AND COMMUNITY-BASED SERVICES WAIVERS:

- 22 (a) HOMEMAKER BASIC;
- 23 (b) HOMEMAKER ENHANCED; AND
- 24 (c) PERSONAL CARE.

25 (2) FOR THE 2019-20 FISCAL YEAR, EACH HOME CARE SERVICE
26 AGENCY SHALL PAY ONE HUNDRED PERCENT OF THE FUNDING THAT
27 RESULTS FROM THE RATE INCREASE DESCRIBED IN SUBSECTION (1) OF THIS

1 SECTION AS COMPENSATION FOR EMPLOYEES WHO PROVIDE PERSONAL
2 CARE SERVICES, HOMEMAKER SERVICES, AND RESPITE CARE SERVICES TO
3 CONSUMERS. EACH HOME CARE SERVICE AGENCY SHALL EXPEND THIS
4 FUNDING ON A PER-EMPLOYEE BASIS, WITH EACH SUCH EMPLOYEE
5 RECEIVING ONE HUNDRED PERCENT OF THE RATE INCREASE THAT IS
6 ASSOCIATED WITH PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR
7 RESPITE CARE SERVICES PROVIDED BY THE EMPLOYEE.

8 (3) ON OR BEFORE AUGUST 1, 2019, EACH HOME CARE SERVICE
9 AGENCY SHALL PROVIDE WRITTEN NOTIFICATION TO EACH
10 NONADMINISTRATIVE EMPLOYEE OF THE AGENCY WHO PROVIDES
11 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR RESPITE CARE
12 SERVICES OF THE COMPENSATION THEY ARE ENTITLED TO PURSUANT TO
13 SUBSECTION (2) OF THIS SECTION.

14 (4) THIS SECTION IS REPEALED, EFFECTIVE AUGUST 1, 2020.

15 **25.5-6-1603. Wage pass-through requirement for certain home**
16 **care service agencies - applicability - reports - penalty.** (1) THIS
17 SECTION APPLIES TO EACH HOME CARE SERVICE AGENCY THAT RECEIVES
18 REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL ASSISTANCE
19 ACT" FOR THE PROVISION OF PERSONAL CARE SERVICES, HOMEMAKER
20 SERVICES, OR RESPITE CARE SERVICES.

21 (2) ON AND AFTER JULY 1, 2020, OF THE TOTAL REIMBURSEMENT
22 THAT A HOME CARE SERVICE AGENCY RECEIVES EACH FISCAL YEAR
23 PURSUANT TO THE "COLORADO MEDICAL ASSISTANCE ACT" FOR THE
24 PROVISION OF PERSONAL CARE SERVICES, HOMEMAKER SERVICES, AND
25 RESPITE CARE SERVICES, THE AGENCY SHALL EXPEND AT LEAST
26 SEVENTY-SEVEN PERCENT AS COMPENSATION FOR NONADMINISTRATIVE
27 EMPLOYEES WHO PROVIDE THE SERVICES. EACH HOME CARE SERVICE

1 AGENCY SHALL EXPEND AT LEAST SUCH AMOUNT ON A PER-EMPLOYEE
2 BASIS, WITH EACH SUCH EMPLOYEE RECEIVING AT LEAST SEVENTY-SEVEN
3 PERCENT OF EACH REIMBURSEMENT THAT IS ASSOCIATED WITH PERSONAL
4 CARE SERVICES, HOMEMAKER SERVICES, OR RESPITE CARE SERVICES
5 PROVIDED BY THE EMPLOYEE.

6 (3) ON OR BEFORE DECEMBER 31, 2020, AND ON OR BEFORE
7 DECEMBER 31 EACH YEAR THEREAFTER, A HOME CARE SERVICE AGENCY
8 DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL SUBMIT AN
9 ELECTRONIC REPORT TO THE STATE DEPARTMENT. THE REPORT MUST
10 INDICATE THE FOLLOWING FOR EACH NONADMINISTRATIVE EMPLOYEE
11 WHO PROVIDED PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR
12 RESPITE CARE SERVICES TO HOME CARE CONSUMERS DURING THE
13 IMMEDIATELY PRECEDING FISCAL YEAR:

14 (a) THE TOTAL AMOUNT OF MONEY THE HOME CARE SERVICE
15 AGENCY RECEIVED AS REIMBURSEMENT PURSUANT TO THE "COLORADO
16 MEDICAL ASSISTANCE ACT" FOR THE PROVISION OF SUCH SERVICES BY
17 THAT EMPLOYEE IN THE IMMEDIATELY PRECEDING FISCAL YEAR;

18 (b) THE TOTAL AMOUNT OF MONEY THE HOME CARE SERVICE
19 AGENCY PROVIDED AS COMPENSATION TO THAT EMPLOYEE FOR THE
20 PROVISION OF SUCH SERVICES DURING THE IMMEDIATELY PRECEDING
21 FISCAL YEAR; AND

22 (c) THE EMPLOYEE'S FULL NAME, HOME ADDRESS, MAILING
23 ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS AND THE MOST
24 RECENT DATE UPON WHICH THE EMPLOYEE COMPLETED THE TRAINING OR
25 SKILLS VALIDATION TEST REQUIRED BY SECTION 25.5-6-1604 (1).

26 (4) (a) EXCEPT AS DESCRIBED IN SUBSECTION (4)(d) OF THIS
27 SECTION, A HOME CARE SERVICE AGENCY SHALL MAINTAIN ALL BOOKS,

1 DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE
2 REQUIRED TO SUPPORT THE REPORTING OF NONADMINISTRATIVE
3 EMPLOYEES' PAYROLL INFORMATION FOR AT LEAST THREE YEARS AFTER
4 THE REPORTING DEADLINES DESCRIBED IN THIS SECTION. HOME CARE
5 SERVICE AGENCIES SHALL MAKE SUCH INFORMATION AND MATERIALS
6 AVAILABLE FOR INSPECTION BY THE STATE DEPARTMENT OR ITS DESIGNEE
7 AT ALL REASONABLE TIMES.

8 (b) EXCEPT AS DESCRIBED IN SUBSECTION (4)(d) OF THIS SECTION,
9 THE STATE DEPARTMENT SHALL ANNUALLY AND RANDOMLY SELECT A
10 PERCENTAGE OF THE HOME CARE SERVICE AGENCIES THAT ARE REQUIRED
11 TO REPORT PURSUANT TO SUBSECTION (3) OF THIS SECTION AND SHALL
12 REVIEW THE SELECTED HOME CARE SERVICE AGENCIES' REPORTS AND ANY
13 NECESSARY DOCUMENTATION TO CONFIRM THE SELECTED AGENCIES'
14 COMPLIANCE WITH THIS SECTION. IF A HOME CARE SERVICE AGENCY FAILS
15 TO SUBMIT SUCH AN ELECTRONIC REPORT, THE AGENCY MAY BE SUBJECT
16 TO A CIVIL PENALTY, ASSESSED BY THE STATE DEPARTMENT, IN AN
17 AMOUNT OF ONE HUNDRED DOLLARS PER DAY UNTIL THE AGENCY REPORTS
18 AS REQUIRED, UP TO A MAXIMUM OF THIRTY THOUSAND DOLLARS.

19 (c) EXCEPT AS DESCRIBED IN SUBSECTION (4)(d) OF THIS SECTION,
20 A HOME CARE SERVICE AGENCY THAT IS FOUND BY THE STATE
21 DEPARTMENT TO HAVE PAID AN EMPLOYEE LESS THAN THE AMOUNT DUE
22 TO THE EMPLOYEE PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL
23 BE REQUIRED TO PAY THE REMAINING AMOUNT OWED TO THE EMPLOYEE
24 AND MAY BE SUBJECT TO A CIVIL PENALTY, ASSESSED BY THE STATE
25 DEPARTMENT, OF UP TO ONE THOUSAND DOLLARS FOR EACH SUCH
26 EMPLOYEE.

27 (d) ON AND AFTER DECEMBER 31, 2021, THE STATE DEPARTMENT

1 SHALL ENFORCE THIS SUBSECTION (4) AND SHALL ASSESS AND COLLECT
2 ANY ASSOCIATED PENALTY IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24,
3 FOR CREDIT TO THE GENERAL FUND. THE STATE DEPARTMENT MAY
4 ENFORCE AND COLLECT SUCH A PENALTY ONLY AFTER THE DECISION TO DO
5 SO IS REACHED IN ACCORDANCE WITH PROCEDURES SET FORTH IN SECTION
6 24-4-105.

7 **25.5-6-1604. Training for home care service agency employees**
8 **- rules - disclosure of employee information required - exemptions.**

9 (1) ON OR BEFORE JULY 1, 2020, THE STATE DEPARTMENT AND THE
10 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL ESTABLISH A
11 PROCESS FOR ENFORCING INITIAL AND ONGOING TRAINING REQUIREMENTS
12 FOR PERSONS WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER
13 SERVICES, AND RESPITE CARE SERVICES FOR WHICH AN AGENCY MAY
14 RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL
15 ASSISTANCE ACT", AS SUCH REQUIREMENTS ARE SET FORTH IN THIS
16 SECTION AND IN RULES PROMULGATED BY THE STATE BOARD. THE
17 PROCESS MUST INCLUDE A REQUIREMENT THAT THE STATE DEPARTMENT
18 OR A DESIGNEE OF THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT
19 SHALL ENSURE THAT EACH SUCH PERSON HAS EITHER:

20 (a) RECEIVED TRAINING IN EACH SUBJECT MATTER AREA FOR
21 WHICH TRAINING IS REQUIRED; OR

22 (b) ACHIEVED A SATISFACTORY SCORE ON A SKILLS VALIDATION
23 TEST, WHICH SCORE MUST EQUAL OR EXCEED A MINIMUM SCORE TO BE
24 ESTABLISHED BY RULES PROMULGATED BY THE STATE BOARD.

25 (2) ON OR BEFORE APRIL 1, 2021, AND ON OR BEFORE APRIL 1 OF
26 EACH YEAR THEREAFTER, EXCEPT AS DESCRIBED IN SUBSECTION (3) OF
27 THIS SECTION, THE STATE DEPARTMENT OR A DESIGNEE OF THE EXECUTIVE

1 DIRECTOR OF THE STATE DEPARTMENT SHALL MAKE PUBLICLY AVAILABLE
2 ON A WEBSITE THE INFORMATION REPORTED TO THE STATE DEPARTMENT
3 PURSUANT TO SECTION 25.5-6-1603 (3)(c), INCLUDING THE NAME AND
4 BUSINESS ADDRESS OF EACH HOME CARE SERVICE AGENCY THAT
5 REPORTED THE INFORMATION. THE STATE DEPARTMENT SHALL MAKE THE
6 INFORMATION AVAILABLE IN A MANNER THAT ALLOWS THE PUBLIC TO
7 VERIFY WHETHER AN EMPLOYEE HAS SATISFACTORILY COMPLETED THE
8 TRAINING OR THE SKILLS VALIDATION TEST DESCRIBED IN SUBSECTION (1)
9 OF THIS SECTION.

10 (3) THE STATE DEPARTMENT SHALL NOT DISCLOSE AN EMPLOYEE'S
11 HOME ADDRESS, MAILING ADDRESS, TELEPHONE NUMBER, OR E-MAIL
12 ADDRESS IF THE EMPLOYEE REQUESTS THAT THE STATE DEPARTMENT NOT
13 DISCLOSE THE INFORMATION AND THE EMPLOYEE INDICATES TO THE STATE
14 DEPARTMENT THAT THE EMPLOYEE IS:

15 (a) A VICTIM OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR A
16 CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2);

17 (b) THE SUBJECT OF A PROTECTION ORDER THAT HAS BEEN ISSUED
18 BY A COURT AGAINST ANOTHER INDIVIDUAL;

19 (c) UNDER EXTRAORDINARY PERSONAL CIRCUMSTANCES THAT
20 REQUIRE AN EXCEPTION TO THE DISCLOSURE REQUIREMENT TO PROTECT
21 THE EMPLOYEE'S HEALTH, SAFETY, WELFARE, OR PRIVACY INTERESTS; OR

22 (d) (I) A FAMILY MEMBER OF A CONSUMER WHO IS RECEIVING
23 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR RESPITE CARE
24 SERVICES FOR WHICH A HOME CARE SERVICE AGENCY RECEIVES
25 REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL ASSISTANCE
26 ACT"; AND

27 (II) THE EMPLOYEE RESIDES IN THE SAME DOMICILE AS SUCH

1 CONSUMER.

2 **25.5-6-1605. Exemptions.** (1) NOTWITHSTANDING ANY PROVISION
3 OF THIS PART 16 TO THE CONTRARY, THIS PART 16 DOES NOT APPLY TO
4 SERVICES PROVIDED UNDER:

5 (a) THE CONSUMER-DIRECTED ATTENDANT SUPPORT SERVICES
6 MODEL; OR

7 (b) THE IN-HOME SUPPORT SERVICES MODEL.

8 **SECTION 2. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.