

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0433.01 Richard Sweetman x4333

SENATE BILL 19-238

SENATE SPONSORSHIP

Danielson and Moreno, Bridges, Court, Fenberg, Fields, Garcia, Ginal, Gonzales, Pettersen, Story, Todd, Winter

HOUSE SPONSORSHIP

Kennedy and Duran,

Senate Committees

Health & Human Services
Appropriations

House Committees

Health & Insurance
Appropriations

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.**

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.

HOUSE
2nd Reading Unamended
April 30, 2019

SENATE
3rd Reading Unamended
April 26, 2019

SENATE
Amended 2nd Reading
April 25, 2019

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:

- ! A victim of domestic violence, sexual assault, or a crime of violence;
- ! The subject of a protection order that has been issued by a court against another individual; or
- ! Under extraordinary personal circumstances that require an exception to the disclosure requirement to protect the employee's health, safety, welfare, or privacy interests.

The bill requires the department and the department of public health and environment, on or before July 1, 2020, to establish a process for enforcing initial and ongoing training requirements for persons who provide covered services.

The department is required to request from the federal government an increase of 8.1% to the reimbursement rate for certain services that are delivered to consumers through the home-based and community-based services waivers. For the 2019-20 fiscal year, each agency shall pay 100% of the funding that results from the rate increase as compensation for employees who provide covered services to consumers.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 16 to article
3 6 of title 25.5 as follows:

4 **PART 16**

5 **HOME CARE EMPLOYEES'**

6 **COMPENSATION AND TRAINING**

7 **25.5-6-1601. Definitions.** AS USED IN THIS PART 16, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "COMPENSATION" HAS THE MEANING SET FORTH IN SECTION
10 25.5-6-406 (2)(b)(I).

11 (2) "HEALTH MAINTENANCE ACTIVITIES" HAS THE MEANING SET
12 FORTH IN SECTION 25.5-6-1202 (4).

13 (3) "HOME CARE AGENCY" HAS THE MEANING SET FORTH IN
14 SECTION 25-27.5-102 (3).

15

16 (4) "HOMEMAKER SERVICES" HAS THE MEANING SET FORTH IN

1 SECTION 25.5-6-303 (11).

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

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

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

9

10 **25.5-6-1602. State department to request increase in**
11 **reimbursement rate for certain services.** (1) NOT MORE THAN NINETY
12 DAYS AFTER THE EFFECTIVE DATE OF THIS PART 16, THE STATE
13 DEPARTMENT SHALL REQUEST FROM THE FEDERAL GOVERNMENT AN
14 INCREASE OF EIGHT AND ONE-TENTH PERCENT IN THE REIMBURSEMENT
15 RATE FOR THE FOLLOWING SERVICES DELIVERED TO CONSUMERS THROUGH
16 THE HOME- AND COMMUNITY-BASED SERVICES WAIVERS:

17 (a) HOMEMAKER;

18 (b) HOMEMAKER ENHANCED; AND

19 (c) PERSONAL CARE.

20 (2) FOR THE 2019-20 FISCAL YEAR, EACH HOME CARE ___ AGENCY
21 SHALL PAY ONE HUNDRED PERCENT OF THE FUNDING THAT RESULTS FROM
22 THE RATE INCREASE DESCRIBED IN SUBSECTION (1) OF THIS SECTION AS
23 COMPENSATION FOR EMPLOYEES WHO PROVIDE PERSONAL CARE SERVICES,
24 HOMEMAKER SERVICES, AND IN-HOME SUPPORT SERVICES TO CONSUMERS.
25 THIS COMPENSATION SHALL BE PROVIDED IN ADDITION TO THE RATE OF
26 COMPENSATION THAT THE EMPLOYEE WAS RECEIVING AS OF JUNE 30,
27 2019. FOR AN EMPLOYEE WHO WAS HIRED AFTER JUNE 30, 2019, THE

1 HOME CARE AGENCY SHALL USE THE LOWEST COMPENSATION PAID TO AN
2 EMPLOYEE OF SIMILAR FUNCTIONS AND DUTIES AS OF JUNE 30, 2019, AS
3 THE BASE COMPENSATION TO WHICH THE INCREASE IS APPLIED.

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

11 =====
12 **25.5-6-1603. Minimum wage - wage pass-through requirement**
13 **for certain home care agencies - applicability - reports - recovery.**

14 (1) THIS SECTION APPLIES TO EACH HOME CARE ===== AGENCY THAT
15 RECEIVES REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL
16 ASSISTANCE ACT" FOR THE PROVISION OF PERSONAL CARE SERVICES,
17 HOMEMAKER SERVICES, OR IN-HOME SUPPORT SERVICES.

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

23 (3) FOR ANY INCREASE TO THE REIMBURSEMENT RATES FOR
24 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR IN-HOME SUPPORT
25 SERVICES THAT TAKES EFFECT DURING THE 2020-21 FISCAL YEAR, HOME
26 CARE AGENCIES SHALL USE EIGHTY-FIVE PERCENT OF THE FUNDING
27 RESULTING FROM THE INCREASE TO INCREASE COMPENSATION FOR

1 NONADMINISTRATIVE EMPLOYEES ABOVE THE RATE OF COMPENSATION
2 THAT NONADMINISTRATIVE EMPLOYEES ARE RECEIVING AS OF JUNE 30,
3 2020. HOME CARE AGENCIES MAY USE ANY REMAINING FUNDING
4 RESULTING FROM THE REIMBURSEMENT RATE INCREASE FOR GENERAL AND
5 ADMINISTRATIVE EXPENSES, SUCH AS CHIEF EXECUTIVE OFFICER SALARIES,
6 HUMAN RESOURCES, INFORMATION TECHNOLOGY, OVERSIGHT, BUSINESS
7 MANAGEMENT, GENERAL RECORD KEEPING, BUDGETING AND FINANCE,
8 AND OTHER ACTIVITIES NOT IDENTIFIABLE TO A SINGLE PROGRAM.

9 (4) (a) EACH HOME CARE AGENCY SHALL TRACK AND REPORT HOW
10 IT USED ANY FUNDING RESULTING FROM THE INCREASE IN THE
11 REIMBURSEMENT RATE PURSUANT TO SECTION 25.5-6-1602 OR
12 25.5-6-1603 USING A REPORTING TOOL DEVELOPED BY THE STATE
13 DEPARTMENT. ON OR BEFORE DECEMBER 31, 2020, EACH HOME CARE
14 AGENCY SHALL SUBMIT THE REPORT TO THE STATE DEPARTMENT
15 DEMONSTRATING HOW THE FUNDING WAS USED TO INCREASE
16 COMPENSATION FOR THE 2019-20 FISCAL YEAR. ON OR BEFORE DECEMBER
17 31, 2021, EACH HOME CARE AGENCY SHALL REPORT TO THE STATE
18 DEPARTMENT HOW THE FUNDING WAS USED TO INCREASE OR, IN THE
19 EVENT THAT THERE IS NO REIMBURSEMENT RATE INCREASE, MAINTAIN
20 EACH EMPLOYEE'S COMPENSATION FOR THE 2020-21 FISCAL YEAR. THE
21 STATE DEPARTMENT HAS ONGOING DISCRETION TO REQUEST INFORMATION
22 FROM A HOME CARE AGENCY DEMONSTRATING HOW IT MAINTAINED
23 INCREASES IN COMPENSATION FOR NONADMINISTRATIVE EMPLOYEES
24 BEYOND THE REPORTING PERIOD.

25 (b) EACH HOME CARE AGENCY SHALL MAINTAIN ALL BOOKS,
26 DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE
27 REQUIRED TO SUPPORT THE REPORTING OF PAYROLL INFORMATION FOR

1 INCREASED COMPENSATION TO NONADMINISTRATIVE EMPLOYEES
2 PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION FOR AT LEAST THREE
3 YEARS FROM THE REPORTING DEADLINES DESCRIBED IN SUBSECTION (4)(a)
4 OF THIS SECTION FOR EACH RESPECTIVE FISCAL YEAR. EACH HOME CARE
5 AGENCY SHALL MAKE THE INFORMATION AND MATERIALS AVAILABLE FOR
6 INSPECTION BY THE STATE DEPARTMENT OR ITS DESIGNEES AT ALL
7 REASONABLE TIMES.

8 (5)(a) THE STATE DEPARTMENT MAY RECOUP PART OR ALL OF THE
9 FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE
10 DESCRIBED IN SECTION 25.5-6-1602 OR 25.5-6-1603 IF THE STATE
11 DEPARTMENT DETERMINES THAT A HOME CARE AGENCY:

12 (I) DID NOT USE ONE HUNDRED PERCENT OF ANY FUNDING
13 RESULTING FROM THE RATE INCREASE TO INCREASE COMPENSATION FOR
14 NONADMINISTRATIVE EMPLOYEES, AS REQUIRED BY SECTION 25.5-6-1602
15 (2);

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

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

23 (b) IF THE STATE DEPARTMENT MAKES A DETERMINATION
24 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION, THE STATE
25 DEPARTMENT SHALL NOTIFY THE HOME CARE AGENCY IN WRITING OF THE
26 STATE DEPARTMENT'S INTENTION TO RECOUP FUNDS PURSUANT TO
27 SUBSECTION (5)(a) OF THIS SECTION. A HOME CARE AGENCY HAS

1 FORTY-FIVE DAYS AFTER RECEIVING SUCH NOTICE TO:

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

3 (II) PROVIDE ADDITIONAL INFORMATION TO THE STATE
4 DEPARTMENT DEMONSTRATING COMPLIANCE; OR

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

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

10 (d) THE STATE DEPARTMENT SHALL RECOUP FROM A HOME CARE
11 AGENCY ANY FUNDING RESULTING FROM THE INCREASE IN THE
12 REIMBURSEMENT RATE PURSUANT TO SECTION 25.5-6-1602 OR
13 25.5-6-1603 THAT THE HOME CARE AGENCY RECEIVED BUT DID NOT USE
14 FOR COMPENSATION FOR NONADMINISTRATIVE EMPLOYEES IF:

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

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

20 (III) THE STATE DEPARTMENT DOES NOT ACCEPT THE PLAN OF
21 CORRECTION SUBMITTED BY THE HOME CARE AGENCY PURSUANT TO
22 SUBSECTION (5)(b)(III) OF THIS SECTION. _____

23 **25.5-6-1604. Training for home care ___ agency employees -**
24 **rules - disclosure of employee information required - exemptions.**

25 (1) ON OR BEFORE JANUARY 1, 2020, THE STATE DEPARTMENT AND THE
26 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, IN CONSULTATION
27 WITH STAKEHOLDERS, SHALL ESTABLISH A PROCESS FOR REVIEWING AND

1 ENFORCING INITIAL AND ONGOING TRAINING REQUIREMENTS FOR PERSONS
2 WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES, AND
3 IN-HOME SUPPORT SERVICES FOR WHICH A HOME CARE AGENCY MAY
4 RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL
5 ASSISTANCE ACT", AS SUCH REQUIREMENTS ARE SET FORTH IN THIS
6 SECTION AND IN RULES PROMULGATED BY THE STATE BOARD. THE
7 STAKEHOLDERS MUST INCLUDE, BUT ARE NOT LIMITED TO:

8 (a) ONE OR MORE CONSUMER ADVOCACY ORGANIZATIONS;

9 (b) ONE OR MORE PERSONAL CARE WORKERS;

10 (c) ONE OR MORE WORKER ORGANIZATIONS;

11 (d) ONE OR MORE HOME CARE AGENCIES;

12 (e) ONE OR MORE DISABILITY ADVOCACY ORGANIZATIONS;

13 (f) ONE OR MORE SENIOR ADVOCACY ORGANIZATIONS; AND

14 (g) ONE OR MORE CHILDREN'S ADVOCACY ORGANIZATIONS.

15 (2) THE STAKEHOLDERS WITH WHOM THE DEPARTMENTS CONSULT
16 PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL DISCUSS AND
17 ADVISE THE DEPARTMENTS CONCERNING THE MANNER IN WHICH
18 NONADMINISTRATIVE EMPLOYEES WILL BE NOTIFIED OF THE
19 COMPENSATION INCREASES AND MINIMUM WAGE DESCRIBED IN SECTIONS
20 25.5-6-1602 AND 25.5-6-1603. _____

21 **25.5-6-1605. Exemptions.** (1) NOTWITHSTANDING ANY PROVISION
22 OF THIS PART 16 TO THE CONTRARY, THIS PART 16 DOES NOT APPLY TO
23 SERVICES PROVIDED UNDER:

24 (a) THE CONSUMER-DIRECTED ATTENDANT SUPPORT SERVICES
25 MODEL; OR

26 (b) THE PEDIATRIC PERSONAL CARE BENEFIT.

27 **SECTION 2. Appropriation.** (1) For the 2019-20 state fiscal

1 year, \$5,682,377 is appropriated to the department of health care policy
2 and financing. This appropriation is from the general fund. To implement
3 this act, the department may use this appropriation as follows:

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

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

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

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

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

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

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

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

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

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

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

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