

CHAPTER 319

HEALTH CARE POLICY AND FINANCING

SENATE BILL 19-238

BY SENATOR(S) Danielson and Moreno, Bridges, Court, Fenberg, Fields, Ginal, Gonzales, Pettersen, Story, Todd, Winter, Garcia;
 also REPRESENTATIVE(S) Kennedy and Duran, Arndt, Bird, Bockenfeld, Buckner, Buentello, Caraveo, Cutter, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Gray, Hansen, Herod, Hooton, Jackson, Jaquez Lewis, Kipp, McCluskie, McLachlan, Michaelson Jenet, Mullica, Roberts, Singer, Sirota, Snyder, Sullivan, Tipper, Titone, Valdez A., Valdez D., Weissman.

AN ACT

CONCERNING HOME CARE AGENCIES, AND, IN CONNECTION THEREWITH, REQUIRING CERTAIN AGENCIES TO EXPEND A MINIMUM PERCENTAGE OF THEIR REIMBURSEMENTS FROM THE "COLORADO MEDICAL ASSISTANCE ACT" AS WAGES FOR EMPLOYEES WHO PROVIDE DIRECT CARE, REQUIRING THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO ENFORCE TRAINING REQUIREMENTS AND REQUEST AN INCREASE TO THE REIMBURSEMENT RATE FOR CERTAIN SERVICES PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AND MAKING AN APPROPRIATION.

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

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

**PART 16
 HOME CARE EMPLOYEES'
 COMPENSATION AND TRAINING**

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

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

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

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

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.

(3).

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

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

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

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

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

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

(2) FOR THE 2019-20 FISCAL YEAR, EACH HOME CARE AGENCY SHALL PAY ONE HUNDRED PERCENT OF THE FUNDING THAT RESULTS FROM THE RATE INCREASE DESCRIBED IN SUBSECTION (1) OF THIS SECTION AS COMPENSATION FOR EMPLOYEES WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES, AND IN-HOME SUPPORT SERVICES TO CONSUMERS. THIS COMPENSATION SHALL BE PROVIDED IN ADDITION TO THE RATE OF COMPENSATION THAT THE EMPLOYEE WAS RECEIVING AS OF JUNE 30, 2019. FOR AN EMPLOYEE WHO WAS HIRED AFTER JUNE 30, 2019, THE HOME CARE AGENCY SHALL USE THE LOWEST COMPENSATION PAID TO AN EMPLOYEE OF SIMILAR FUNCTIONS AND DUTIES AS OF JUNE 30, 2019, AS THE BASE COMPENSATION TO WHICH THE INCREASE IS APPLIED.

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

25.5-6-1603. Minimum wage - wage pass-through requirement for certain home care agencies - applicability - reports - recovery. (1) THIS SECTION APPLIES TO EACH HOME CARE AGENCY THAT RECEIVES REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL ASSISTANCE ACT" FOR THE PROVISION OF PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR IN-HOME SUPPORT SERVICES.

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

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

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

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

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

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

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

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

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

(I) CHALLENGE THE DETERMINATION OF THE STATE DEPARTMENT;

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

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

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

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

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

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

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

25.5-6-1604. Training for home care agency employees - rules - disclosure of employee information required - exemptions. (1) ON OR BEFORE JANUARY 1, 2020, THE STATE DEPARTMENT AND THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, IN CONSULTATION WITH STAKEHOLDERS, SHALL ESTABLISH A PROCESS FOR REVIEWING AND ENFORCING INITIAL AND ONGOING TRAINING REQUIREMENTS FOR PERSONS WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES, AND IN-HOME SUPPORT SERVICES FOR WHICH A HOME CARE AGENCY MAY RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL ASSISTANCE ACT", AS SUCH REQUIREMENTS ARE SET FORTH IN THIS SECTION AND IN RULES

PROMULGATED BY THE STATE BOARD. THE STAKEHOLDERS MUST INCLUDE, BUT ARE NOT LIMITED TO:

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

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

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

- (a) THE CONSUMER-DIRECTED ATTENDANT SUPPORT SERVICES MODEL; OR
- (b) THE PEDIATRIC PERSONAL CARE BENEFIT.

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

- (a) \$31,788 for general professional services and special projects;
- (b) \$31,250 for Medicaid management information system maintenance and projects, which amount is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year;
- (c) \$5,115,076 for medical and long-term care services for Medicaid eligible individuals, which amount is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year;
- (d) \$445,035 for adult supported living services, which amount is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year; and
- (e) \$59,228 for children's extensive support services, which amount is subject to

the "(M)" notation as defined in the annual general appropriation act for the same fiscal year.

(2) For the 2019-20 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$5,744,875 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 as follows:

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

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

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

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

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

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, and safety.

Approved: May 28, 2019