

CHAPTER 140

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 22-1333

BY REPRESENTATIVE(S) Herod and McCluskie, Amabile, Bacon, Bennett, Bird, Caraveo, Cutter, Duran, Esgar, Exum, Froelich, Gonzales-Gutierrez, Hooton, Kennedy, Kipp, Lindsay, Lontine, McCormick, McLachlan, Michaelson Jenet, Mullica, Ricks, Roberts, Sirota, Snyder, Titone, Valdez A., Valdez D., Weissman, Woodrow, Young, Garnett; also SENATOR(S) Zenzinger and Rankin, Bridges, Buckner, Ginal, Gonzales, Hinrichsen, Jaquez Lewis, Kolker, Moreno, Pettersen, Rodriguez, Story, Winter, Fenberg.

AN ACT

CONCERNING AN INCREASE IN THE MINIMUM WAGE FOR NURSING FACILITY EMPLOYEES, 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, 25.5-6-201, **amend** (15.5); **repeal** (20.5); and **add** (37) as follows:

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

(15.5) "Eligible nursing facility provider" means a nursing facility, ~~provider that is located:~~ AS DEFINED IN SECTION 25.5-4-103.

~~(a) Within the jurisdiction of a local government that has increased its local minimum wage above the statewide minimum wage; or~~

~~(b) Adjacent to a local government that has increased its local minimum wage above the statewide minimum wage and the nursing facility has voluntarily agreed to raise the wage of all employees to the same amount and in the same manner as the adjacent local government.~~

~~(20.5) "Local minimum wage enhancement payment" means a supplemental payment to an eligible nursing facility provider that is subject to available appropriations and not a rate enhancement.~~

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.

(37) "WAGE ENHANCEMENT SUPPLEMENTAL PAYMENT" MEANS A SUPPLEMENTAL PAYMENT TO AN ELIGIBLE NURSING FACILITY PROVIDER THAT IS SUBJECT TO AVAILABLE APPROPRIATIONS AND NOT A RATE ENHANCEMENT.

SECTION 2. In Colorado Revised Statutes, **amend** 25.5-6-208 as follows:

25.5-6-208. Nursing facility provider reimbursement - rules - definition.

(1) (a) ~~The SUBJECT TO AVAILABLE APPROPRIATIONS AND FEDERAL MATCHING FUNDS, THE executive director shall, by rule, establish a process for eligible nursing facility providers to apply for a local minimum wage enhancement payment whenever a local government increases its minimum wage above the statewide minimum wage. If a local government increases its minimum wage above the statewide minimum wage, the general assembly shall appropriate enough money to the state department to cover the local minimum wage enhancement payment for all eligible nursing facility providers. Any payment made pursuant to this section must not occur until the local government minimum wage law takes effect.~~ PROVIDING A WAGE ENHANCEMENT SUPPLEMENTAL PAYMENT TO ELIGIBLE NURSING HOME PROVIDERS THAT PAY THEIR EMPLOYEES A WAGE OF AT LEAST FIFTEEN DOLLARS PER HOUR.

(b) The rules must provide:

(I) That wage enhancement SUPPLEMENTAL payments are available to any eligible nursing facility provider; ~~and~~

(II) The form and manner in which an eligible nursing facility provider ~~may apply~~ MUST ATTEST to the state department ~~for wage enhancement payments. The form must require the eligible nursing facility provider to demonstrate the difference between the actual wages of nursing facility provider employees at the time the local government wage increase goes into effect and the locally enacted minimum wage.~~ THAT THE WAGE FOR ALL EMPLOYEES IS FIFTEEN DOLLARS OR MORE PER HOUR;

(III) THE TIMING FOR THE DISTRIBUTION OF THE WAGE ENHANCEMENT SUPPLEMENTAL PAYMENT; AND

(IV) THE CALCULATION METHODOLOGY FOR DETERMINING THE WAGE ENHANCEMENT SUPPLEMENTAL PAYMENT FOR EACH ELIGIBLE NURSING FACILITY PROVIDER.

(2) ~~Subject to available appropriations, a local minimum wage enhancement payment shall be calculated and paid to eligible nursing facility providers by determining the total amount of funding needed to increase the minimum wage of all employees at an eligible nursing facility provider to the locally enacted minimum wage multiplied by the factor of the medicaid census of each provider.~~

(3) (a) ~~Subject to available appropriations, for the purpose of reimbursing an eligible nursing facility provider for a local minimum wage enhancement payment, the state department shall establish and annually readjust a payment schedule.~~

(b) ~~To request a local minimum wage enhancement payment, an eligible nursing facility shall annually submit:~~

~~(f) The difference between the actual wage rate of nursing facility provider employees and the local minimum wage rate applicable to those nursing facility provider employees who are eligible for an increased local minimum wage rate. A nursing facility provider employee's wage rate must equal or exceed the minimum wage rate required by state or federal law.~~

~~(H) The number of eligible nursing facility provider employees by provider, current wage rate of the employees, and wage rate of the employees after a local minimum wage law goes into effect.~~

~~(c) An eligible nursing facility provider shall submit an application with the information required in this section for each year in which the eligible nursing facility provider seeks a local minimum wage enhancement payment.~~

(4) A local minimum wage enhancement SUPPLEMENTAL payment made pursuant to this section is in effect as long as the local minimum wage applicable to eligible nursing facility provider employees performing work within the local jurisdiction exceeds the statewide minimum wage IS LESS THAN FIFTEEN DOLLARS PER HOUR AS SET FORTH IN SECTION 15 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(5) (a) An eligible nursing facility provider that receives a local minimum wage enhancement payment pursuant to this section shall:

~~(f) Use the payments only to increase the compensation for eligible nursing facility provider employees and not for any other expenditures; and~~

~~(H) Track and report how the payments are used for eligible nursing facility employees on an annual basis.~~

~~(b) The executive director may request information from a nursing facility provider that receives a local minimum wage enhancement payment under this section regarding the use of such payment.~~

~~(c) If an eligible nursing facility provider does not use one hundred percent of the local minimum wage enhancement payment received pursuant to this section to increase the compensation for the eligible nursing facility provider's employees, the executive director may recoup any or all of the improperly used payments. The executive director may promulgate rules for the notification, violation, and process regarding an eligible nursing facility's improper use of local minimum wage enhancement payments.~~

(6) Payments received under this section shall offset costs reported on the med-13 cost report when calculating nursing facility provider per diem reimbursement under 10 CCR 2505.

SECTION 3. Appropriation. (1) For the 2022-23 state fiscal year, \$2,389,627 is appropriated to the department of health care policy and financing. 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 2022-23 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$2,389,626 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.

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: April 25, 2022