SENATE BILL 19-238

INTRODUCED

LLS NO. 19-0433.01 Richard Sweetman x4333

SENATE SPONSORSHIP
Danielson and Moreno,

HOUSE SPONSORSHIP
Kennedy and Duran,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

CONCERNING HOME CARE SERVICE 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 maintain public
records concerning the home care workforce, and
increasing the reimbursement rate for certain services
provided under the "Colorado Medical Assistance
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.
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:

1. The total amount of money the agency received as reimbursement for the provision of covered services by that employee in the preceding fiscal year;
2. 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
3. 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.

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 SERVICE EMPLOYEES' COMPENSATION AND TRAINING

25.5-6-1601. Definitions. As used in this part 16, unless the context otherwise requires:

(1) "Compensation" includes wages, payroll taxes, unemployment insurance, and workers' compensation.

(2) "Home care agency" has the meaning set forth in section 25-27.5-102 (3).

(3) "Home care consumer" has the meaning set forth in section 25-27.5-102 (4).

(4) "Home care service agency" means a home care agency
OR A HOMEMAKER PROVIDER AGENCY.

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

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

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

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

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

25.5-6-1602. State department to request increase in reimbursement rate for certain services - repeal. (1) NOT MORE THAN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PART, 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 BASIC;
(b) HOMEMAKER ENHANCED; AND
(c) PERSONAL CARE.

(2) FOR THE 2019-20 FISCAL YEAR, EACH HOME CARE SERVICE 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 RESPITE CARE SERVICES TO CONSUMERS. EACH HOME CARE SERVICE AGENCY SHALL EXPEND THIS FUNDING ON A PER-EMPLOYEE BASIS, WITH EACH SUCH EMPLOYEE RECEIVING ONE HUNDRED PERCENT OF THE RATE INCREASE THAT IS ASSOCIATED WITH PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR RESPITE CARE SERVICES PROVIDED BY THE EMPLOYEE.

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

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

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

(2) ON AND AFTER JULY 1, 2020, OF THE TOTAL REIMBURSEMENT THAT A HOME CARE SERVICE 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, THE AGENCY SHALL EXPEND AT LEAST SEVENTY-SEVEN PERCENT AS COMPENSATION FOR NONADMINISTRATIVE EMPLOYEES WHO PROVIDE THE SERVICES. EACH HOME CARE SERVICE
AGENCY SHALL EXPEND AT LEAST SUCH AMOUNT ON A PER-EMPLOYEE BASIS, WITH EACH SUCH EMPLOYEE RECEIVING AT LEAST SEVENTY-SEVEN PERCENT OF EACH REIMBURSEMENT THAT IS ASSOCIATED WITH PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR RESPITE CARE SERVICES PROVIDED BY THE EMPLOYEE.

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

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

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

(c) 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 THE TRAINING OR SKILLS VALIDATION TEST REQUIRED BY SECTION 25.5-6-1604 (1).

(4) (a) EXCEPT AS DESCRIBED IN SUBSECTION (4)(d) OF THIS SECTION, A HOME CARE SERVICE AGENCY SHALL MAINTAIN ALL BOOKS,
DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE REQUIRED TO SUPPORT THE REPORTING OF NONADMINISTRATIVE EMPLOYEES' PAYROLL INFORMATION FOR AT LEAST THREE YEARS AFTER THE REPORTING DEADLINES DESCRIBED IN THIS SECTION. HOME CARE SERVICE AGENCIES SHALL MAKE SUCH INFORMATION AND MATERIALS AVAILABLE FOR INSPECTION BY THE STATE DEPARTMENT OR ITS DESIGNEE AT ALL REASONABLE TIMES.

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

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

(d) ON AND AFTER DECEMBER 31, 2021, THE STATE DEPARTMENT
SHALL ENFORCE THIS SUBSECTION (4) AND SHALL ASSESS AND COLLECT ANY ASSOCIATED PENALTY IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, FOR CREDIT TO THE GENERAL FUND. THE STATE DEPARTMENT MAY ENFORCE AND COLLECT SUCH A PENALTY ONLY AFTER THE DECISION TO DO SO IS REACHED IN ACCORDANCE WITH PROCEDURES SET FORTH IN SECTION 24-4-105.

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

(1) On or before July 1, 2020, the State Department and the Department of Public Health and Environment shall establish a process for enforcing initial and ongoing training requirements for persons who provide personal care services, homemaker services, and respite care services for which an 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 process must include a requirement that the State Department or a designee of the Executive Director of the State Department shall ensure that each such person has either:

(a) Received training in each subject matter area for which training is required; or

(b) Achieved a satisfactory score on a skills validation test, which score must equal or exceed a minimum score to be established by rules promulgated by the State Board.

(2) On or before April 1, 2021, and on or before April 1 of each year thereafter, except as described in subsection (3) of this section, the State Department or a designee of the Executive
DIRECTOR OF THE STATE DEPARTMENT SHALL MAKE PUBLICLY AVAILABLE ON A WEBSITE THE INFORMATION REPORTED TO THE STATE DEPARTMENT PURSUANT TO SECTION 25.5-6-1603 (3)(c), INCLUDING THE NAME AND BUSINESS ADDRESS OF EACH HOME CARE SERVICE AGENCY THAT REPORTED THE INFORMATION. THE STATE DEPARTMENT SHALL MAKE THE INFORMATION AVAILABLE IN A MANNER THAT ALLOWS THE PUBLIC TO VERIFY WHETHER AN EMPLOYEE HAS SATISFACTORILY COMPLETED THE TRAINING OR THE SKILLS VALIDATION TEST DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

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

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

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

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

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

(II) THE EMPLOYEE RESIDES IN THE SAME DOMICILE AS SUCH
CONSUMER.

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 IN-HOME SUPPORT SERVICES MODEL.

SECTION 2. 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.