

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

INTRODUCED

LLS NO. 21-0817.01 Brita Darling x2241

HOUSE BILL 21-1227

HOUSE SPONSORSHIP

Lontine,

SENATE SPONSORSHIP

Fields,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEDICAL ASSISTANCE PROGRAM REQUIREMENTS FOR**
102 **NURSING FACILITIES, AND, IN CONNECTION THEREWITH,**
103 **ESTABLISHING A DEMONSTRATION OF NEED.**

Bill Summary

(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 the department of health care policy and financing (department) to develop, analyze, and enforce a demonstration of need for each new nursing facility provider seeking medicaid certification. The requirement does not apply to a nursing facility provider certified prior to June 30, 2021.

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 the medical services board to promulgate rules, no later than June 30, 2022, addressing the establishment of criteria to be used in determining a nursing facility provider's medicaid certification.

The bill allows the department to exempt nursing facilities with 5 or fewer medicaid beds from the current reimbursement methodology and instead require the facilities to be reimbursed at the statewide average rate.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25.5-6-209 as
3 follows:

4 **25.5-6-209. Establishment of nursing facility provider**
5 **demonstration of need - criteria - rules.** (1) THE STATE DEPARTMENT,
6 IN MAKING ANY MEDICAID CERTIFICATION DETERMINATION, SHALL
7 ENCOURAGE AN APPROPRIATE ALLOCATION OF PUBLIC HEALTH-CARE
8 RESOURCES AND THE DEVELOPMENT OF ALTERNATIVE OR SUBSTITUTE
9 METHODS OF DELIVERING HEALTH-CARE SERVICES SO THAT ADEQUATE
10 LONG-TERM CARE SERVICES ARE MADE REASONABLY AVAILABLE TO
11 EVERY QUALIFIED RECIPIENT WITHIN THE STATE AT THE APPROPRIATE
12 LEVEL OF CARE, AT THE LOWEST REASONABLE AGGREGATE COST, AND IN
13 THE LEAST RESTRICTIVE SETTING. MEDICAID CERTIFICATION
14 DETERMINATIONS SHALL BE MADE IN ACCORDANCE WITH *OLMSTEAD V.*
15 *L.C.*, 527 U.S. 581 (1999).

16 (2) THE STATE DEPARTMENT SHALL DEVELOP, ANALYZE, AND
17 ENFORCE A DEMONSTRATION OF NEED TO DETERMINE THE VIABILITY OF
18 AND REQUIRED NEED FOR EACH NEW NURSING FACILITY PROVIDER SEEKING
19 MEDICAID CERTIFICATION. THE REQUIREMENT DOES NOT APPLY TO A
20 NURSING FACILITY PROVIDER CERTIFIED PRIOR TO JUNE 30, 2021.

21 (3) IN ORDER TO DETERMINE A VALID DEMONSTRATION OF NEED,
22 THE STATE DEPARTMENT SHALL, AT A MINIMUM, CONSIDER:

1 (a) STATE DEMOGRAPHY OFFICE DATA ILLUSTRATING THE PRESENT
2 OR IMPENDING NEED WITHIN THE REQUESTING NURSING FACILITY'S
3 GEOGRAPHIC AREA;

4 (b) QUALITY AND PERFORMANCE DATA OF THE REQUESTING
5 NURSING FACILITY OR ASSOCIATED NURSING FACILITIES;

6 (c) BUSINESS CONTINUITY AND SOLVENCY INFORMATION OF THE
7 REQUESTING NURSING FACILITY OR ASSOCIATED NURSING FACILITIES;

8 (d) INPUT FROM THE DEPARTMENT OF PUBLIC HEALTH AND
9 ENVIRONMENT; THE DEPARTMENT OF LOCAL AFFAIRS; THE DEPARTMENT
10 OF REGULATORY AGENCIES; THE DEPARTMENT OF LABOR AND
11 EMPLOYMENT; AND ANY LOCAL GOVERNMENTS, INCLUDING CITIES AND
12 COUNTIES; AND

13 (e) MEASURABLE INNOVATIVE PRACTICES OF THE REQUESTING
14 NURSING FACILITY.

15 (4) NO LATER THAN JUNE 30, 2022, THE STATE BOARD SHALL
16 PROMULGATE RULES PURSUANT TO THE "STATE ADMINISTRATIVE
17 PROCEDURE ACT", ARTICLE 4 OF TITLE 24, ADDRESSING THE
18 ESTABLISHMENT OF CRITERIA TO BE USED IN DETERMINING A NURSING
19 FACILITY PROVIDER'S MEDICAID CERTIFICATION. THE STATE BOARD SHALL
20 PUBLICLY CONSIDER AND GATHER INPUT ON THE DEMONSTRATION OF NEED
21 CRITERIA PRIOR TO PROMULGATING RULES. THE STATE DEPARTMENT
22 SHALL CONSIDER INPUT FROM, AT A MINIMUM:

23 (a) DISABILITY ADVOCACY ORGANIZATIONS;

24 (b) URBAN NURSING FACILITY PROVIDERS;

25 (c) RURAL NURSING FACILITY PROVIDERS;

26 (d) AGING AND OLDER ADULT ADVOCACY ORGANIZATIONS; AND

27 (e) NURSING FACILITY TRADE ORGANIZATIONS.

1 **SECTION 2.** In Colorado Revised Statutes, 25.5-6-201, **amend**
2 (4), (16), and (27); **repeal** (34); and **add** (9.5) as follows:

3 **25.5-6-201. Special definitions relating to nursing facility**
4 **reimbursement.** As used in this part 2, unless the context otherwise
5 requires:

6 (4) "Appraised value" means the determination by a qualified
7 appraiser who is a member of an institute of real estate appraisers, or its
8 equivalent, of the depreciated cost of replacement of a capital-related
9 asset to its current owner. The depreciated replacement appraisal ~~shall~~
10 MUST be based on ~~the "Boeckh Commercial Underwriter's Valuation~~
11 ~~System for Nursing Homes"~~ A NATIONALLY RECOGNIZED VALUATION
12 SYSTEM DETERMINED BY THE STATE DEPARTMENT. The depreciated cost
13 of replacement appraisal ~~shall~~ MUST be redetermined AT LEAST every four
14 years by new appraisals of the nursing facilities. The new appraisals ~~shall~~
15 MUST be based upon rules promulgated by the state board.

16 (9.5) "CASE-MIX GROUP" MEANS THE SYSTEM FOR GROUPING A
17 NURSING FACILITY'S RESIDENTS ACCORDING TO THEIR CLINICAL AND
18 FUNCTIONAL STATUS AS IDENTIFIED FROM DATA SUPPLIED BY THE
19 FACILITY'S MINIMUM DATA SET AS PUBLISHED BY THE UNITED STATES
20 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

21 (16) "Facility population distribution" means the number of
22 Colorado nursing facility residents who are classified into each ~~resource~~
23 ~~utilization~~ CASE-MIX group as of a specific point in time.

24 (27) "Nursing weights" means numeric scores assigned to each
25 category of the ~~resource-utilization~~ CASE-MIX groups that measure the
26 relative amount of resources required to provide nursing care to a nursing
27 facility provider's residents.

1 (34) ~~"Resource utilization groups" means the system for grouping~~
2 ~~a nursing facility's residents according to their clinical and functional~~
3 ~~statuses as identified from data supplied by the facility's minimum data~~
4 ~~set as published by the United States department of health and human~~
5 ~~services.~~

6 **SECTION 3.** In Colorado Revised Statutes, 25.5-6-202, **amend**
7 (2); and **add** (12) as follows:

8 **25.5-6-202. Providers - nursing facility provider**
9 **reimbursement - exemption - rules.** (2) The state department shall
10 further adjust and, subject to available appropriations, pay the per diem
11 rate to the nursing facility provider for the cost of direct health-care
12 services based upon the acuity or case-mix of the nursing facility provider
13 residents in order to provide for the resource utilization of its residents.
14 The state department shall determine this adjustment in accordance with
15 each resident's status as identified and reported by the nursing facility
16 provider on its federal medicare and medicaid minimum data set
17 assessment. The state department shall establish a case-mix index for
18 each nursing facility provider according to the ~~resource utilization groups~~
19 ~~system, using only nursing weights~~ CASE-MIX GROUP DETERMINED BY THE
20 STATE DEPARTMENT. The state department shall calculate nursing weights
21 based upon standard nursing time studies and weighted by facility
22 population distribution and Colorado-specific nursing salary ratios. The
23 state department shall determine an average case-mix index for each
24 nursing facility provider's medicaid residents on a quarterly basis.

25 (12) THE STATE DEPARTMENT MAY EXEMPT FACILITIES WITH FIVE
26 OR FEWER MEDICAID BEDS FROM THE METHODOLOGY DESCRIBED IN THIS
27 SECTION AND INSTEAD REQUIRE THE FACILITIES TO BE REIMBURSED AT THE

1 STATEWIDE AVERAGE RATE.

2 **SECTION 4. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly; except
5 that, if a referendum petition is filed pursuant to section 1 (3) of article V
6 of the state constitution against this act or an item, section, or part of this
7 act within such period, then the act, item, section, or part will not take
8 effect unless approved by the people at the general election to be held in
9 November 2022 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.