

CHAPTER 268

SOCIAL SERVICES

SENATE BILL 94-133

BY SENATOR Traylor;
also REPRESENTATIVE Anderson.

AN ACT

CONCERNING THE ADMINISTRATION OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AND, IN CONNECTION THEREWITH, CREATING THE MEDICAL SERVICES BOARD AND DEFINING THE RULE-MAKING AUTHORITY OF THE EXECUTIVE DIRECTOR.

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

SECTION 1. Part 1 of article 1 of title 25.5, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

25.5-1-108. Executive director - rules. (1) THE EXECUTIVE DIRECTOR SHALL HAVE AUTHORITY TO PROMULGATE RULES IN CONNECTION WITH THE POLICIES AND PROCEDURES GOVERNING THE ADMINISTRATION OF THE DEPARTMENT INCLUDING, BUT NOT LIMITED TO, RULES CONCERNING THE FOLLOWING:

(a) MATTERS OF INTERNAL ADMINISTRATION OF THE DEPARTMENT, INCLUDING ORGANIZATION, STAFFING, RECORDS, REPORTS, SYSTEMS, AND PROCEDURES;

(b) FISCAL AND PERSONNEL ADMINISTRATION FOR THE DEPARTMENT;

(c) ACCOUNTING AND FISCAL REPORTING POLICIES AND PROCEDURES FOR DISBURSEMENT OF FEDERAL FUNDS, CONTINGENCY FUNDS, AND DISTRIBUTION OF AVAILABLE APPROPRIATIONS;

(d) SUCH OTHER RULES RELATING TO THOSE FUNCTIONS THE EXECUTIVE DIRECTOR IS REQUIRED TO CARRY OUT PURSUANT TO THE PROVISIONS OF THIS TITLE.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT ANY SPECIFIC

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

STATUTORY PROVISION GRANTING RULE-MAKING AUTHORITY IN RELATION TO A SPECIFIC PROGRAM TO THE EXECUTIVE DIRECTOR.

(3) ANY RULES ADOPTED BY THE EXECUTIVE DIRECTOR SHALL NOT CONFLICT WITH THE PLAN FOR RESTRUCTURING THE HEALTH AND HUMAN SERVICES DELIVERY SYSTEM, AS SET FORTH IN ARTICLE 1.7 OF TITLE 24, C.R.S.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW THAT SPECIFIES A DATE BY WHICH RULES ARE TO BE ADOPTED BY THE MEDICAL SERVICES BOARD CREATED IN PART 3 OF THIS TITLE, UNTIL THE MEMBERS OF THE INITIAL MEDICAL SERVICES BOARD HAVE BEEN APPOINTED, THE EXECUTIVE DIRECTOR SHALL NOT ADOPT ANY RULES OR REGULATIONS OTHER THAN TEMPORARY OR EMERGENCY RULES ADOPTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-103 (6), C.R.S.

SECTION 2. Article 1 of title 25.5, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 3
MEDICAL SERVICES BOARD**

25.5-1-301. Medical services board - creation. (1) THERE IS HEREBY CREATED IN THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING A MEDICAL SERVICES BOARD, REFERRED TO IN THIS PART 3 AS THE "BOARD", WHICH SHALL CONSIST OF NINE MEMBERS APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE. THE GOVERNOR SHALL APPOINT PERSONS TO THE BOARD WHO HAVE KNOWLEDGE OF MEDICAL ASSISTANCE PROGRAMS, AND ONE OR MORE OF THE APPOINTMENTS MAY INCLUDE A PERSON OR PERSONS WHO HAVE RECEIVED SERVICES THROUGH PROGRAMS ADMINISTERED BY THE DEPARTMENT WITHIN TWO YEARS OF THE DATE OF APPOINTMENT. NO MORE THAN FIVE MEMBERS OF THE BOARD SHALL BE MEMBERS OF THE SAME POLITICAL PARTY. OF THE NINE MEMBERS APPOINTED TO THE BOARD, AT LEAST ONE SHALL BE APPOINTED FROM EACH CONGRESSIONAL DISTRICT.

(2) MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR FOR A TERM OF FOUR YEARS; EXCEPT THAT, OF THE MEMBERS FIRST APPOINTED, THREE SHALL SERVE FOR A TERM OF TWO YEARS AND THREE SHALL SERVE FOR A TERM OF THREE YEARS.

(3) MEMBERS SHALL RECEIVE NO COMPENSATION BUT SHALL BE REIMBURSED FOR REASONABLE AND NECESSARY ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE BOARD.

(4) VACANCIES ON THE BOARD SHALL BE FILLED BY APPOINTMENT OF THE GOVERNOR FOR THE REMAINDER OF ANY UNEXPIRED TERM.

25.5-1-302. Medical services board - organization. (1) THE BOARD SHALL ELECT FROM ITS MEMBERS A PRESIDENT, A VICE-PRESIDENT, AND SUCH OTHER BOARD OFFICERS AS IT SHALL DETERMINE. ALL BOARD OFFICERS SHALL HOLD THEIR OFFICES AT THE PLEASURE OF THE BOARD.

(2) REGULAR MEETINGS OF THE BOARD SHALL BE HELD NOT LESS THAN ONCE EVERY THREE MONTHS AT SUCH TIMES AS MAY BE FIXED BY RESOLUTION OF THE BOARD. ALL MEETINGS OF THE BOARD, IN EVERY SUIT AND PROCEEDING, SHALL BE

CONSIDERED TO HAVE BEEN DULY CALLED AND REGULARLY HELD AND ALL ORDERS AND PROCEEDINGS OF THE BOARD TO HAVE BEEN AUTHORIZED, UNLESS THE CONTRARY IS PROVEN.

(3) THE BOARD SHALL ADOPT, AND AT ANY TIME MAY AMEND, BYLAWS IN RELATION TO ITS MEETINGS AND THE TRANSACTION OF ITS BUSINESS. A MAJORITY SHALL CONSTITUTE A QUORUM OF THE BOARD. THE VOTE OF A MAJORITY OF THE BOARD SHALL CONSTITUTE THE ACTION OF THE BOARD. THE BOARD SHALL ACT ONLY BY RESOLUTION ADOPTED AT A DULY CALLED MEETING OF THE BOARD, AND NO INDIVIDUAL OF THE BOARD SHALL EXERCISE ANY INDIVIDUAL ADMINISTRATIVE AUTHORITY WITH RESPECT TO THE DEPARTMENT.

25.5-1-303. Powers and duties of the board - scope of authority - rules.

(1) THE BOARD SHALL HAVE THE AUTHORITY SET FORTH IN SUBSECTION (3) OF THIS SECTION OVER THE FOLLOWING PROGRAMS ADMINISTERED BY THE DEPARTMENT:

(a) THE "COLORADO MEDICAL ASSISTANCE ACT", AS SPECIFIED IN ARTICLE 4 OF TITLE 26, C.R.S.;

(b) THE "REFORM ACT FOR THE PROVISION OF HEALTH CARE FOR THE MEDICALLY INDIGENT", AS SPECIFIED IN ARTICLE 15 OF TITLE 26, C.R.S.;

(c) ADULT FOSTER CARE, AS SPECIFIED IN SECTION 26-2-122.3, C.R.S.; AND

(d) HOME CARE ALLOWANCE, AS SPECIFIED IN SECTION 26-2-122.3, C.R.S.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT ANY SPECIFIC STATUTORY PROVISION GRANTING RULE-MAKING AUTHORITY TO THE BOARD IN RELATION TO A SPECIFIC PROGRAM.

(3) THE BOARD SHALL ADOPT RULES IN CONNECTION WITH THE PROGRAMS SET FORTH IN SUBSECTION (1) OF THIS SECTION GOVERNING THE FOLLOWING:

(a) THE IMPLEMENTATION OF LEGISLATIVE AND DEPARTMENTAL POLICIES AND PROCEDURES FOR SUCH PROGRAMS; EXCEPT THAT NO RULES SHALL BE PROMULGATED FOR ANY POLICY OR PROCEDURE WHICH GOVERNS THE ADMINISTRATION OF THE DEPARTMENT AS SPECIFIED IN SECTION 25.5-1-108 (1);

(b) THE ESTABLISHMENT OF ELIGIBILITY REQUIREMENTS FOR PERSONS RECEIVING SERVICES FROM THE DEPARTMENT;

(c) THE ESTABLISHMENT OF THE TYPE OF BENEFITS THAT A RECIPIENT OF SERVICES MAY OBTAIN IF ELIGIBILITY REQUIREMENTS ARE MET, SUBJECT TO THE AUTHORIZATION, REQUIREMENTS, AND AVAILABILITY OF SUCH BENEFITS;

(d) THE REQUIREMENTS, OBLIGATIONS, AND RIGHTS OF CLIENTS AND RECIPIENTS;

(e) THE ESTABLISHMENT OF A PROCEDURE TO RESOLVE DISPUTES WHICH MAY ARISE BETWEEN CLIENTS AND THE DEPARTMENT OR CLIENTS AND VENDORS;

(f) THE REQUIREMENTS, OBLIGATIONS, AND RIGHTS OF VENDORS AND PROVIDERS,

INCLUDING POLICIES AND PROCEDURES RELATED TO VENDOR PAYMENTS WHICH MAY AFFECT CLIENT BENEFITS;

(g) THE ESTABLISHMENT OF A PROCEDURE TO RESOLVE DISPUTES WHICH MAY ARISE BETWEEN VENDORS AND BETWEEN THE DEPARTMENT AND VENDORS.

(4) THE BOARD SHALL PROVIDE ADVICE AND CONSULTATION TO THE STATE BOARD OF HUMAN SERVICES IN CONNECTION WITH THE ADMINISTRATION OF THE OLD AGE PENSION HEALTH AND MEDICAL CARE FUND ESTABLISHED IN SECTION 26-2-117, C.R.S.

(5) AT THE REQUEST OF THE EXECUTIVE DIRECTOR, THE BOARD SHALL ADVISE THE EXECUTIVE DIRECTOR AS TO ANY PROPOSED POLICIES OR RULES GOVERNING PROGRAMS ADMINISTERED BY THE DEPARTMENT THAT ARE NOT SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(6) THE BOARD SHALL HAVE NO AUTHORITY OVER THE REVENUE OF THE DEPARTMENT.

25.5-1-304. Repeal of part. THIS PART 3 IS REPEALED, EFFECTIVE JULY 1, 2000.

CONFORMING AMENDMENTS

SECTION 3. 24-1-119.5, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-1-119.5. Department of health care policy and financing - creation.

(5) THE MEDICAL SERVICES BOARD CREATED IN PART 3 OF ARTICLE 1 OF TITLE 25.5, C.R.S., AND ITS POWERS, DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 1** TRANSFER TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

SECTION 4. 25.5-1-104 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25.5-1-104. Department of health care policy and financing created - executive director - powers, duties, and functions.

(2) The department of health care policy and financing shall consist of an executive director of the department of health care policy and financing, THE MEDICAL SERVICES BOARD, the Colorado health data commission, and such divisions, sections, and other units as shall be established by the executive director pursuant to the provisions of subsection (3) of this section.

SECTION 5. 25.5-1-105 (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25.5-1-105. Transfer of functions - employees - property - records. (6) All rules, regulations, and orders of the department of local affairs, the state department of social services, THE STATE BOARD OF SOCIAL SERVICES, the department of regulatory agencies, and the university of Colorado health sciences center adopted prior to July 1, 1994, in connection with the powers, duties, and functions transferred to the department of health care policy and financing shall continue to be effective until revised, amended, repealed, or nullified pursuant to law. On and after July 1,

1994, THE MEDICAL SERVICES BOARD OR the executive director, WHICHEVER IS APPROPRIATE, shall adopt rules necessary for the administration of the state department and the administration of the programs set forth in part 2 of this article. Any rules adopted by THE MEDICAL SERVICES BOARD OR the executive director, WHICHEVER IS APPROPRIATE, on and after July 1, 1994, shall be consistent with the plan for restructuring the health and human services delivery system, as set forth in article 1.7 of title 24, C.R.S.

SECTION 6. 26-1-103 (5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-1-103. Definitions. As used in this title, unless the context otherwise requires:

(5) "State board" means the state board of human services authorized to act in accordance with the provisions of section 26-1-107; EXCEPT THAT "STATE BOARD" OR "BOARD" FOR THE PURPOSES OF ARTICLES 4 AND 15 OF THIS TITLE AND IN CONNECTION WITH THE ADULT FOSTER CARE PROGRAM AND THE HOME CARE ALLOWANCE PROGRAM MEANS THE MEDICAL SERVICES BOARD ESTABLISHED IN PART 3 OF ARTICLE 1 OF TITLE 25.5, C.R.S.

SECTION 7. 26-1-104 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-1-104. Construction of terms. (2) Whenever any law of this state refers to the state board of public welfare or to the state board of social services, said law shall be construed as referring to the state board of human services; except that said references in connection with any provision of law concerning the "Colorado Medical Assistance Act", health care for the medically indigent, adult foster care, home care allowance or the treatment program for high-risk pregnant women shall be construed as referring to the MEDICAL SERVICES BOARD OR THE executive director of the department of health care policy and financing, WHICHEVER IS APPROPRIATE.

SECTION 8. 26-1-107 (9), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-1-107. State board of human services - powers and duties. (9) On and after July 1, 1994, the state board shall have no authority over the "Colorado Medical Assistance Act", the "Reform Act for the Provision of Health Care for the Medically Indigent", the adult foster care program, the home care allowance program, or the treatment program for high-risk pregnant women. Any reference to the state board in connection with said programs shall be deemed to refer to the MEDICAL SERVICES BOARD OR THE executive director of the department of health care policy and financing, WHICHEVER IS APPROPRIATE.

SECTION 9. 26-2-114 (2) (a), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-2-114. Amount of assistance payments - old age pension. (2) (a) (I) ~~The executive director of~~ MEDICAL SERVICES BOARD in the department of health care policy and financing, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive old age

pension. For the purposes of this subparagraph (I), "adult foster care" means the care and services defined in section 26-2-122.3.

(II) (A) ~~The executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive old age pensions. For the purposes of this subparagraph (II), "home care allowance" means care and services defined in section 26-2-122.3.

(B) Repealed, L. 93, p. 333, § 2, effective April 12, 1993.

SECTION 10. 26-2-119 (1.5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-2-119. Amount of assistance payments - aid to the needy disabled. (1.5) (a) ~~(H)~~ In addition to the amount of assistance available pursuant to subsection (1) of this section, the ~~executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive aid to the needy disabled. For the purposes of this ~~subparagraph~~ ~~(H)~~ PARAGRAPH (a), "adult foster care" means the care and services defined in section 26-2-122.3.

~~(H)~~ (A) (b) In addition to the amount of assistance available pursuant to subsection (1) of this section, the ~~executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive aid to the needy disabled. For the purposes of this ~~subparagraph~~ ~~(H)~~ PARAGRAPH (b), "home care allowance" means care and services defined in section 26-2-122.3.

~~(B)~~ Repealed, L. 93, p. 333, § 3, effective April 12, 1993.

SECTION 11. 26-2-120 (1.5), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-2-120. Amount of assistance payments - aid to the blind. (1.5) (a) ~~(H)~~ In addition to the amount of assistance available pursuant to subsection (1) of this section, the ~~state board~~ MEDICAL SERVICES BOARD, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive aid to the blind. For the purposes of this ~~subparagraph~~ ~~(H)~~ PARAGRAPH (a), "adult foster care" means the care and services defined in section ~~26-1-111(2)(j)~~ 26-2-122.3.

~~(H)~~ (A) (b) In addition to the amount of assistance available pursuant to subsection (1) of this section, the ~~state board~~ MEDICAL SERVICES BOARD, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive aid to the blind. For the purposes of this ~~subparagraph~~ ~~(H)~~ PARAGRAPH (b), "home care allowance" means care and services defined in section ~~26-1-111(2)(e)~~ ~~(H)~~ 26-2-122.3.

~~(B) Repealed, L. 93, p. 333, § 4, effective April 12, 1993.~~

SECTION 12. 26-2-122.3, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-2-122.3. Adult foster care and home care allowance as services under certain public assistance programs - administered by department of health care policy and financing. (1) (a) In addition to the amount of assistance available pursuant to the provisions of this article, the ~~executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive aid to the needy disabled or aid to the blind. For purposes of this paragraph (a), "adult foster care" means that care and service which, in addition to room and board, may include, but is not limited to, personal services, recreational opportunities, transportation, utilization of volunteer services, and special diets. Such care is provided to recipients of federal supplemental security income benefits who are also eligible for the Colorado supplement program for aid to the needy disabled or aid to the blind and who do not require skilled nursing care or intermediate health care and cannot remain in or return to their residences but who need to reside in a supervised nonmedical setting on a twenty-four-hour basis. Those persons with developmental disabilities as defined in section 27-10.5-102, C.R.S., or who are receiving or eligible to receive services pursuant to any provision of title 27, C.R.S., do not qualify for adult foster care under this paragraph (a).

(b) In addition to the amount of assistance available pursuant to paragraph (a) of this subsection (1), the ~~executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive old age pension, aid to the needy disabled, or aid to the blind. For the purposes of this paragraph (b), "home care allowance" is a program that provides payments, subject to available appropriations, to functionally impaired persons who are, or who would be but for their income, eligible to receive old age pension pursuant to section 26-2-114, aid to the needy disabled pursuant to section 26-2-119, or aid to the blind pursuant to section 26-2-120. To be eligible for a home care allowance, a person's monthly gross income shall be less than the applicable monthly grant standard for the old age pension, aid to the needy disabled, or aid to the blind programs, plus the person's authorized monthly home care allowance grant, as determined in accordance with rules promulgated pursuant to this paragraph (b). The payments allow recipients who are in need of long-term care to purchase community-based services as defined in section 26-4-507 (2) (c). Such services may include, but need not be limited to, the supervision of self-administered medications, assistance with activities of daily living as defined in section 26-4-507 (2) (a), and assistance with instrumental activities of daily living as defined in section 26-4-507 (2) (g). The rules adopted by the department of health care policy and financing shall specify, in accordance with the provisions of this section, the services available under the program and shall address eligibility criteria for the home care allowance program which shall be in addition to the eligibility criteria for the old age pension, aid to the needy disabled, or aid to the blind programs. In addition, the rules shall specifically provide for a determination as to the person's functional impairment, the person's unmet need for paid care, and shall address amounts awarded to persons eligible for home care allowance. The rules shall require that eligibility be determined through

the use of a comprehensive and uniform client assessment instrument as defined in section 26-4-507. The ~~executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing may adjust income eligibility criteria, the functional impairment standard, or the amounts awarded to eligible persons or may limit or suspend enrollments as necessary to manage the home care allowance program within the funds appropriated by the general assembly. In addition, the ~~executive director of~~ MEDICAL SERVICES BOARD IN the department of health care policy and financing may adjust which services are available under the program; except that such adjustment shall be consistent with the provisions of this subsection (1).

(2) The department of health care policy and financing shall administer the adult foster care program and the home care allowance program. The executive director OR THE MEDICAL SERVICES BOARD, AS APPROPRIATE, shall promulgate rules necessary for the implementation of this section.

SECTION 13. 26-4-203 (3) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-203. Mandated programs with special state provisions. (3) (b) The ~~state board~~ MEDICAL SERVICES BOARD shall adopt rules necessary for the implementation of this subsection (3), including a rule defining emergency services and an emergency medical condition.

SECTION 14. 26-4-403 (1), (2) (a) (II), and (2) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-403. Recoveries - overpayments - penalties - interest - adjustments - liens. (1) Except as provided in section 26-4-403.3, no recipient or ~~his~~ estate OF THE RECIPIENT shall be liable for the cost or the cost remaining after payment by medicaid, or the cost remaining after payment by medicare or private insurance coverage, whether or not medicaid has made payment, of medical benefits authorized by Title XIX of the social security act, by this title, or by rules promulgated by the ~~state board~~ MEDICAL SERVICES BOARD rendered to ~~him~~ THE RECIPIENT by a provider of medical services authorized to render such service in the state of Colorado, whether or not that provider is enrolled in the Colorado medicaid program, except those contributions required pursuant to section 26-4-518 (1); nor shall recipient income applied pursuant to section 26-4-518 (1) disqualify any recipient, as defined in section 26-2-103 (8), from receiving benefits under this article or public assistance under article 2 of this title. If, at any time during the continuance of medical benefits, the recipient becomes possessed of property having a value in excess of that amount set by law or by the rules and regulations of the state department or receives any increase in income, it is the duty of the recipient to notify the county department thereof, and the county department may, after investigation, either revoke such medical benefits or alter the amount thereof, as the circumstances may require. Any medical assistance paid to which a recipient was not lawfully entitled shall be recoverable from the recipient or ~~his~~ THE estate OF THE RECIPIENT by the county as a debt due the state pursuant to section 26-1-112, but no lien may be imposed against the property of a recipient on account of medical assistance paid or to be paid on ~~his~~ THE RECIPIENT'S behalf under this article, except pursuant to the judgment of a court of competent jurisdiction or as provided by section 26-4-403.3. If any such medical

assistance was obtained fraudulently, interest shall be charged and paid to the county department on the amount of such medical assistance calculated at the legal rate and calculated from the date that payment for medical services rendered on behalf of the recipient is made to the date such amount is recovered.

(2) Any overpayment to a vendor, including those of personal needs funds made pursuant to section 26-4-504, shall be recoverable in the following manner:

(a) (II) If the state department makes a determination that such overpayment has been made for some other reason than the fraud or defalcation by the vendor specified in subparagraph (I) of this paragraph (a), the state department may collect the amount of overpayment, plus interest accruing at the statutory rate from the date the vendor is notified of such overpayment, by the means specified in this subsection (2). Pursuant to the criteria established in rules and regulations promulgated by the ~~state board~~ MEDICAL SERVICES BOARD, the state department may waive the recovery or adjustment of all or part of the overpayment and accrued interest specified in this subparagraph (II) if it would be inequitable, uncollectible, or administratively impracticable. Amounts remaining uncollected for more than five years after the last repayment was made may be considered uncollectible.

(b) In order to collect the amounts specified in paragraph (a) of this subsection (2), the state department may withhold subsequent payments to which the vendor is or becomes entitled and apply the amount withheld as an offset. The ~~state board~~ MEDICAL SERVICES BOARD shall establish in rules the rate at which an overpayment may be offset, with provision for a reduction of such rate upon a good cause shown by the vendor that the rate at which payment will be withheld will result in an undue hardship for the vendor. In determining whether to grant a good cause reduction, the state department shall consider the impact of collecting the amount provided by ~~state board~~ MEDICAL SERVICES BOARD rules on the quality of patient care and the financial viability of the provider. The state department may also take such other steps administratively as are available for the collection of the amounts specified in paragraph (a) of this subsection (2).

SECTION 15. 26-4-403.3 (8), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-403.3. Recovery of assets. (8) Effective upon the implementation of a private-public partnership program for financing long-term care pursuant to section 26-4-506.7, this section shall apply to participants of such program only after excluding from the amount that may otherwise be recovered from such person's estate an amount allowed by rules adopted by the ~~state board~~ MEDICAL SERVICES BOARD in accordance with section 26-4-506.7.

SECTION 16. 26-4-403.7 (4), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-403.7. Automated medical assistance administration. (4) On or before July 1, 1993, and prior to the implementation of the automated system, the executive director of the state department, with input from the pharmacy advisory committee, created in section 26-4-408, shall submit to the state medical assistance and services advisory council created in section 26-4-108, ~~the state board~~, THE MEDICAL SERVICES

BOARD, and the joint budget committee of the general assembly an implementation plan, addressing the items to be determined in subsection (3) of this section.

SECTION 17. 26-4-405, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-405. Vendors - hospital reimbursement. On or after July 1, 1987, the state department shall pay all licensed or certified hospitals under this article, except those hospitals operated by the ~~department of institutions~~ DEPARTMENT OF HUMAN SERVICES, pursuant to a system of prospective payment, generally based on the elements of the medicare system of diagnosis-related groups. While developing the system of prospective payment, the state department shall constitute an advisory committee, whose members shall include hospital providers and be appointed by the executive director. The system of prospective payment shall consider utilizing the system of children's diagnosis-related groups, as developed by the national association of children's hospitals, for pediatric hospitalization, unless the ~~state board~~ MEDICAL SERVICES BOARD finds that such groups are statistically invalid. If the state department determines that the medicare system of diagnosis-related groups has been expanded or revised sufficiently to reasonably apply to additional categories of vendors under this article or if the state department develops a diagnosis-related groups system for additional categories of vendors, which system includes hospitals operated by the department of institutions, then the state department shall begin payment to such categories of vendors under this article pursuant to the system of prospective payment developed under this section. The state department shall develop and administer a system for assuring appropriate utilization and quality of care provided by those vendors who are reimbursed pursuant to the system of prospective payment developed under this section. The state department shall promulgate rules and regulations to provide for the implementation of this section.

SECTION 18. 26-4-407 (3), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-407. Vendors of pharmaceutical services. (3) The ~~state board of social services~~ MEDICAL SERVICES BOARD shall establish specifications in rules in order to provide criteria to health maintenance organizations and prepaid health plans which ensure the accessibility and quality of service to clients and the terms and conditions for pharmaceutical contracts.

SECTION 19. 26-4-410 (2) (c) and (2) (d), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-410. Vendors - nursing facility - nursing facility patient program improvement fund - reimbursement. (2) (c) The ~~state board~~ MEDICAL SERVICES BOARD shall, subject to available appropriations, adopt rules and regulations to determine and pay a reasonable share of the amount by which the reasonable costs of the categories of administration, property, and room and board, excluding food costs, exceed the actual cost in these categories only of each facility. Such reasonable share shall be defined as twenty-five percent of such amount in such categories for each facility, not to exceed twelve percent of the reasonable cost.

(d) There is hereby established within the department a nursing facility patient

program improvement fund. The state department shall pay out of such fund, subject to rules and regulations adopted by the ~~state board~~ MEDICAL SERVICES BOARD and subject to appropriations made for that purpose by the general assembly, moneys to any qualified nursing facility submitting a proposal which would provide medicaid services to a more difficult patient case mix or which would improve quality of care and quality of life within the qualifying facility.

SECTION 20. 26-4-502 (2) (g) and (3), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-502. Special definitions relating to nursing facility reimbursement. As used in this part 5, and for purposes of section 26-4-410, unless the context otherwise requires:

(2) "Health care services" means the following categories of patient support services, including, where applicable, salaries, payroll taxes, workers' compensation payments, training, and other employee benefits:

(g) Other patient support services determined and defined by the ~~state board~~ MEDICAL SERVICES BOARD pursuant to rule and regulation.

(3) "Reasonable cost of services" means the actual cost of providing health care services and food costs to the ninetieth percentile and administration, property, and room and board costs, excluding capital-related assets, as defined in section 26-4-503 (4), and excluding food costs, to the eighty-fifth percentile of medicaid patients in participating nursing homes. Any portion of staff costs directly attributable to administration shall be reimbursed to the eighty-fifth percentile. Food costs shall not include the costs of real or personal property, staff, preparation, or other items related to the food program. The dollar amount per patient day will be established every twelve months in accordance with the rules and regulations of the ~~state board~~ MEDICAL SERVICES BOARD.

SECTION 21. 26-4-506.7 (2) and (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-506.7. Study of private-public partnership for financing long-term care - exemption of countable resources for persons with long-term care policies - authority to implement exemption - rules - repeal. (2) The state department shall study the feasibility of implementing a private-public partnership program for financing long-term care. It is the general assembly's intent that such a program shall be designed to encourage individuals to purchase long-term care insurance by providing under the medical assistance program a full or partial resource exemption and estate recovery waiver for the individual who applies for medical assistance pursuant to this article. The amount of the resource exemption and the extent of the estate recovery waiver shall be set forth in rules adopted by the ~~state board~~ MEDICAL SERVICES BOARD. However, the resource exemption and the amount of assistance which shall not be subject to estate recovery shall be related to the amount of long-term care benefits paid under the insurance policy on behalf of the medical assistance recipient.

(6) If, based on the feasibility study required by subsection (2) of this section, a

determination is made by the executive director of the state department that a private-public partnership program for financing long-term care would be feasible and upon review and approval of the plan by the joint budget committee, the state department shall implement and administer such a program. The program shall be implemented no later than July 1, 1994, and shall be consistent with the general assembly's intent expressed in subsection (2) of this section. The ~~state board of social services~~ MEDICAL SERVICES BOARD and the division of insurance shall adopt rules necessary for the implementation of the program, in accordance with section 24-4-103, C.R.S. The division of insurance rules shall be consistent with standards recommended in the feasibility study.

SECTION 22. 26-4-507 (2) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-507. Long-term care placements - comprehensive and uniform client assessment instrument - long-term care access study. (2) As used in this section and in sections 26-4-521 to 26-4-525, unless the context otherwise requires:

(b) "Case management services" means the assessment of a long-term care client's needs, the development and implementation of a care plan for such client, the coordination and monitoring of long-term care service delivery, the direct delivery of services as provided by this article or by rules adopted by the ~~state board~~ MEDICAL SERVICES BOARD pursuant to this article, the evaluation of service effectiveness, and the reassessment of such client's needs, all of which shall be performed by a single entry point as defined in paragraph (k) of this subsection (2).

SECTION 23. 26-4-508 (3) (b) and (3) (c) (II), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-508. Baby and kid care program - creation - eligibility. (3) (b) The percentage level of the federal poverty line, as defined pursuant to 42 U.S.C. sec. 9902 (2), used to determine eligibility under this subsection (3) shall be one hundred thirty-three percent. If the federal government establishes a new federal minimum percentage level of the federal poverty line used to determine eligibility under this subsection (3) that is different from the level set in this paragraph (b), the state department is authorized to meet such federal minimum level without requiring additional legislation; however, such minimum federal level shall be established by rule and regulation by the ~~state board of social services~~ MEDICAL SERVICES BOARD.

(c) (II) The percentage level of the federal poverty line, as defined pursuant to 42 U.S.C. sec. 9902 (2), used to determine eligibility under this paragraph (c) shall be one hundred percent. If the federal government establishes a new federal minimum percentage level of the federal poverty line used to determine eligibility under this paragraph (c) that is different from the level set in this subparagraph (II), the state department is authorized to meet such federal minimum level without requiring additional legislation; however, such minimum federal level shall be established by rule and regulation by the ~~state board of social services~~ MEDICAL SERVICES BOARD.

SECTION 24. 26-4-509 (3) (a) (II), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-509. Disabled children care program - eligibility criteria - documentation requirements - report to the general assembly. (3) (a) "Eligible disabled children" means any children eighteen years of age and under who:

(II) Have gross incomes which do not exceed three hundred percent of the current federal supplemental security income benefit level. The amount of parental or spousal income and resources which shall be attributable to a child's gross income for purposes of eligibility shall be set forth in rules and regulations promulgated by the ~~state board~~ MEDICAL SERVICES BOARD and shall be in relation to the parent's or spouse's financial responsibility for such child; and

SECTION 25. 26-4-519 (10), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-519. Program of all-inclusive care for the elderly - services - eligibility - repeal. (10) The ~~state board of social services~~ MEDICAL SERVICES BOARD shall promulgate such rules and regulations, pursuant to article 4 of title 24, C.R.S., as are necessary to implement this section.

SECTION 26. The introductory portion to 26-4-520 (1) and 26-4-520 (1) (a) and (1) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-520. Hospice care. (1) The medical assistance program in this state shall include hospice care. Except as otherwise provided in subsection (2) of this section, hospice care shall be provided for a period of up to two hundred ten days in accordance with rules and regulations adopted by the ~~state board~~ MEDICAL SERVICES BOARD, which rules and regulations shall comply with section 1905 of the social security act, 42 U.S.C. sec. 1396d, and shall include at least the following requirements:

(a) That a person shall obtain a certified medical prognosis indicating a life expectancy of six months or less, which certification shall comply with rules and regulations adopted by the ~~state board~~ MEDICAL SERVICES BOARD;

(b) That a person shall execute a waiver of other medical benefits available under this article, which election shall be executed in accordance with rules and regulations adopted by the ~~state board~~ MEDICAL SERVICES BOARD;

SECTION 27. 26-4-522 (1), (2) (a) (I), (2) (a) (II), (2) (a) (V), (3) (c) (XI), (3) (c) (XIII), and (4) (b), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-522. Single entry point system - authorization - phases for implementation - services provided. (1) **Authorization.** The ~~state board~~ MEDICAL SERVICES BOARD is hereby authorized to adopt rules providing for the establishment of a single entry point system that consists of single entry point agencies throughout the state for the purpose of enabling persons eighteen years of age or older in need of long-term care to access appropriate long-term care services.

(2) **Implementation schedule.** (a) The rules shall provide for implementation of

the system through four phases, with the final implementation of a statewide single entry point system no later than July 1, 1995, as follows:

(I) Planning - selection criteria - district designations. ~~(A) On or before September 1, 1991,~~ The state department shall provide the ~~state board~~ MEDICAL SERVICES BOARD with a final plan for the implementation of a statewide single entry point system.

~~(B) No later than December 31, 1991,~~ The ~~state board~~ MEDICAL SERVICES BOARD, with recommendations from the advisory committee created in section 26-4-523 and based on the state department's plan, shall adopt final rules concerning the designation and changing of single entry point districts and the selection and establishment of single entry point agencies, including minimum and maximum criteria and a process for making said designation, changes, and selections, and shall provide that districts may be single counties or combinations of contiguous counties. The rules shall also provide for voluntary participation by counties in the single entry point system until July 1, 1995, at which time all counties of the state shall be required to participate in the single entry point system.

(II) Single entry point districts - designation. ~~No later than January 10, 1992,~~ The county commissioners of the several counties of the state shall be provided with information from the state department of the district selection process with specific notice that the designation of a district shall be submitted by the county commissioners no later than March 31, 1992. The selection by the several county commissioners shall be approved by the executive director of the state department if such selection meets the criteria established by the ~~state board~~ MEDICAL SERVICES BOARD in accordance with subparagraph (I) of this paragraph (a). Any change regarding the designated district shall be made in accordance with rules established by the ~~state board~~ MEDICAL SERVICES BOARD for changing districts.

(V) A board of county commissioners' recommendation for a single entry point agency pursuant to subparagraphs (III) and (IV) of this paragraph (a) shall not be denied by the state department if the recommended entity meets the criteria for a single entry point agency, as adopted by the ~~state board~~ MEDICAL SERVICES BOARD in accordance with sub-subparagraph (B) of subparagraph (I) of this paragraph (a). Said criteria shall not include a prerequisite that an entity be a case management agency for a home and community-based service program.

(3) Single entry point agencies - service programs - functions. (c) The major functions of a single entry point shall include, but need not be limited to, the following:

(XI) Recovering overpayment of benefits in accordance with rules adopted by the ~~state board~~ MEDICAL SERVICES BOARD;

(XIII) Rendering state certified services, as provided by ~~state board~~ MEDICAL SERVICES BOARD rules, as a qualified and state certified agency.

(4) State certification of a single entry point agency - quality assurance standards. (b) The ~~state board~~ MEDICAL SERVICES BOARD shall adopt rules for the establishment of a quality assurance program for the purpose of monitoring the

quality of services provided to clients and for recertifying single entry point agencies. The rules shall provide for: Procedures to evaluate the quality of services provided by the agency; an assessment of the agency's compliance with program requirements, including compliance with case management standards, which standards shall be adopted by the state department; an assessment of an agency's performance of administrative functions, including reasonable costs per client, timely responses, managing programs in one consolidated unit, on-site visits to clients, community coordination and outreach, and client monitoring; a determination as to whether targeted populations are being identified and served; and an evaluation concerning financial accountability.

SECTION 28. 26-4-523 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-523. Long-term care advisory committee. (1) There is hereby established a long-term care advisory committee to the state department for the purpose of making recommendations to the ~~state board~~ MEDICAL SERVICES BOARD regarding criteria for the designation of single entry point districts and the selection of single entry point agencies, standards for quality assurance and case management, methods for reducing paperwork in processing applicants and clients and for obtaining services for clients expeditiously, and the evaluation of the single entry point system for the purpose of reporting to the general assembly in accordance with section 26-4-524. The advisory committee shall consist of not less than thirteen members to be appointed by the executive director of the state department, but shall at least include representatives of the collective group of county commissioners in the state, consumer representatives, and service provider representatives. The committee shall elect its own chairperson. Members of the advisory committee shall serve without compensation.

SECTION 29. 26-4-603 (5) (a) (I), (5) (b), and (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-603. Definitions. As used in this subpart 1 and subpart 3 of this part 6, unless the context otherwise requires:

(5) (a) (I) "Case management agency", before July 1, 1995, and for counties not participating in the single entry point system pursuant to sections 26-4-521 to 26-4-525, means an agency designated by the board of county commissioners and certified by the state department to provide case management functions, which functions are reimbursable under this article, within a geographic area of the state consisting of one or more counties. Such functions shall be provided by the agency under a contract executed with the state department. The state department shall establish procedures for the designation, certification, and decertification of case management agencies and requirements for performance and staffing of the agencies. Such procedures and requirements shall be set forth in rules and regulations promulgated by the ~~state board~~ MEDICAL SERVICES BOARD or shall be included in the contracts executed by the state department. The state department may designate an agency as a case management agency when the agency designated by the board of county commissioners fails to meet the standards or conditions of certification or performance specified in state department rules or regulations or in the contract. When there is no certified case management agency in a geographic area, the state

department may provide case management services, for a period not to exceed six months, directly or by delegation of the responsibilities to another agency. The assumption of case management services by the state department shall be renewable for additional six-month periods if, by the end of a six-month period, the board of county commissioners has failed to designate an agency which meets certification or performance standards as specified in rules and regulations or in the contract for services.

(b) "Case management agency", for counties participating in the single entry point system pursuant to sections 26-4-521 to 26-4-525 and this part 6 before July 1, 1995, and for all counties on and after said date, means a public or private, nonprofit or for profit agency that meets all applicable state and federal requirements and is certified by the state department to provide case management functions reimbursable under this article, within a geographic area of the state consisting of one or more counties. Such functions shall be provided by the agency under a contract executed with the state department or other state designated agency. The state department shall establish procedures for the designation, certification, and decertification of case management agencies and requirements for performance and staffing of the agencies. Such procedures and requirements shall be set forth in rules and regulations promulgated by the ~~state board~~ MEDICAL SERVICES BOARD or shall be included in the contracts executed by the state department.

(6) "Case management services" means functions performed by a case management agency, including: The assessment of a client's needs, the development and implementation of a case plan for the client, the coordination and monitoring of service delivery, the direct delivery of services as provided by this part 6 or by rules adopted by the ~~state board~~ MEDICAL SERVICES BOARD, the evaluation of service effectiveness, and the reassessment of the client's needs. Case management services shall be reimbursed as an administrative expense.

SECTION 30. 26-4-624 (3), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-624. Duties of the department of health care policy and financing.

(3) The ~~state board of social services~~ EXECUTIVE DIRECTOR AND THE MEDICAL SERVICES BOARD shall promulgate such rules and regulations regarding this subpart 2 as are necessary to fulfill the obligations of the department of ~~social services~~ HEALTHCARE POLICY AND FINANCING as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended. Such rules and regulations may include, but shall not be limited to, determination of the level of care requirements for long-term care, patient payment requirements, clients' rights, medicaid eligibility, and appeal rights associated with these requirements.

SECTION 31. 26-4-648, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-648. Rules and regulations. The ~~state board~~ EXECUTIVE DIRECTOR AND THE MEDICAL SERVICES BOARD shall promulgate such rules and regulations, pursuant to article 4 of title 24, C.R.S., as are necessary to implement this subpart 3.

SECTION 32. 26-4-655 (4), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-655. Duties of the department of human services and the department of health care policy and financing. (4) The ~~state board of social services~~ EXECUTIVE DIRECTOR AND THE MEDICAL SERVICES BOARD shall promulgate such rules and regulations regarding this subpart 4 as are necessary to fulfill the obligations of the department of ~~social services~~ HEALTH CARE POLICY AND FINANCING as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended. Such rules and regulations may include, but shall not be limited to, determination of the level of care requirements for community-supported living arrangement services, patient payment requirements, the rights of persons receiving services, medicaid eligibility, and appeal rights associated with these requirements.

SECTION 33. 26-4-675 (1), (5), and (6), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-675. Implementation of program for mentally ill authorized - federal waiver - duties of the department of health care policy and financing and the department of human services. (1) The state department is hereby authorized to seek any necessary waiver from the federal government to develop and implement a home and community-based services program for persons with major mental illnesses. The program shall be designed to provide home and community-based services to eligible persons. Eligibility may be limited to persons who meet the level of services provided in a nursing facility and services for eligible persons may be established in ~~state board of social services~~ MEDICAL SERVICES BOARD rules to the extent such eligibility criteria and services are authorized or required by federal waiver.

(5) The ~~state board of social services~~ EXECUTIVE DIRECTOR AND THE MEDICAL SERVICES BOARD shall promulgate such rules and regulations regarding this subpart 5 as are necessary to fulfill the obligations of the department of ~~social services~~ HEALTH CARE POLICY AND FINANCING as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal "Social Security Act", as amended.

(6) The department of ~~institutions~~ HUMAN SERVICES shall promulgate such rules as are necessary to perform its function pursuant to this subpart 5. Such rules shall be promulgated in accordance with section 24-4-103, C.R.S., and shall be consistent with the ~~state board of social services~~ rules OF THE EXECUTIVE DIRECTOR AND THE MEDICAL SERVICES BOARD.

SECTION 34. 26-4-703 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-703. Cost-containment and utilization control plan. (2) The executive director of the state department, in developing cost-containment and utilization control measures, shall, on a regular basis, consult fully with the members of the state medical assistance and services advisory council created in section 26-4-108, representatives of affected provider and client organizations throughout the state,

members of the joint budget committee and the health, environment, welfare, and institutions committees of the general assembly, and the ~~state board of social services~~ MEDICAL SERVICES BOARD.

SECTION 35. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 36. Effective date. This act shall take effect July 1, 1994.

SECTION 37. 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 31, 1994