

CHAPTER 324

HEALTH CARE POLICY AND FINANCING

SENATE BILL 06-131

BY SENATOR(S) Tochtrop, Isgar, Jones, Kester, Mitchell, Shaffer, Tupa, Boyd, Groff, Williams, and Windels;
also REPRESENTATIVE(S) McFadyen, Buescher, Cloer, Coleman, Green, Jahn, Liston, Madden, Merrifield, Paccione, Riesberg,
Solano, Stafford, Todd, White, and Witwer.

AN ACT**CONCERNING REIMBURSEMENT UNDER THE MEDICAL ASSISTANCE PROGRAM FOR NURSING FACILITY PROVIDERS, AND MAKING AN APPROPRIATION THEREFOR.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds that:

(a) Continuing the cost-based system of reimbursement for class I nursing facility providers by determining a single rate of payment based upon allowable costs for each facility and the limitations thereon could be detrimental to the health care provided to medicaid recipients who reside in nursing facilities participating in Colorado's medicaid program.

(b) It is in the best interests of the state's medicaid recipients and the administration of the medicaid program to conduct a feasibility study on a new medicaid reimbursement system for the state's class I nursing facility providers that is based on a reasonable price that:

(I) Is adjusted for acuity and for meeting the care needs of each medicaid recipient residing at the facility; and

(II) Will promote the performance, efficiency, and economy of class I nursing facility providers.

(c) Given the manner in which certain components of the current cost-based reimbursement system are applied to class I nursing facilities, interim relief should be afforded to some class I nursing facility providers. Interim relief will allow all

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

providers to continue to participate in the medicaid program and provide needed services to eligible recipients throughout all regions of the state while the department of health care policy and financing studies and proposes for adoption by the general assembly a new medicaid reimbursement system for class I nursing facilities.

(d) Interim relief should also be given to certain nursing facility providers through the removal of the statutory cap on increases to their reimbursement rate.

SECTION 2. Part 4 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-410.1. Class I nursing facility reimbursement rates - study - report - repeal. (1) THE STATE DEPARTMENT, IN CONJUNCTION WITH REPRESENTATIVES OF CLASS I NURSING FACILITIES AND ADVOCATE ORGANIZATIONS REPRESENTING RESIDENTS OF CLASS I NURSING FACILITIES WHO ARE MEDICAID RECIPIENTS, SHALL CONDUCT A FEASIBILITY STUDY OF A NEW REIMBURSEMENT SYSTEM FOR CLASS I NURSING FACILITIES. THE STUDY SHALL INCLUDE A STUDY OF A REIMBURSEMENT SYSTEM BASED UPON A PRICING MODEL THAT SHALL BE BASED UPON A REASONABLE PRICE TO BE PAID BY THE STATE DEPARTMENT TO MEET THE NEEDS OF NURSING FACILITY RESIDENTS, A REIMBURSEMENT SYSTEM BASED UPON A PAY FOR PERFORMANCE MODEL, AND ANY OTHER REIMBURSEMENT SYSTEM AS DETERMINED BY THE STATE DEPARTMENT. ON OR BEFORE NOVEMBER 1, 2006, THE STATE DEPARTMENT SHALL FILE WITH THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES AND THE JOINT BUDGET COMMITTEE, OR ANY SUCCESSOR COMMITTEES, A REPORT ON THE STUDY. THE REPORT SHALL INCLUDE BUT NOT BE LIMITED TO RECOMMENDED PROVISIONS OF A NEW REIMBURSEMENT SYSTEM FOR ADOPTION BY THE GENERAL ASSEMBLY AND FOR IMPLEMENTATION BY THE STATE DEPARTMENT FOR THE FISCAL YEAR BEGINNING JULY 1, 2007, AND FOR EACH FISCAL YEAR THEREAFTER.

(2) IF THE STATE DEPARTMENT RECOMMENDS A PRICING MODEL REIMBURSEMENT SYSTEM PURSUANT TO SUBSECTION (1) OF THIS SECTION THE SYSTEM SHALL, AT A MINIMUM, RECOGNIZE AND PROVIDE FOR THE FOLLOWING COMPONENTS:

(a) PAYMENT, AND PERIODIC READJUSTMENTS TO THAT PAYMENT, OF A REASONABLE PRICE TO REIMBURSE A CLASS I NURSING FACILITY PROVIDER FOR THE COST OF CARE AND SERVICES NEEDED BY THAT FACILITY'S MEDICAID RECIPIENTS BASED UPON APPROPRIATE PERCENTAGES OF THE STATEWIDE MEDIAN PER DIEM COSTS IN THE CATEGORIES OF DIRECT AND INDIRECT HEALTH CARE AND ADMINISTRATIVE AND GENERAL EXPENSES. IN DETERMINING THE STATEWIDE MEDIAN PER DIEM FOR HEALTH CARE COSTS, THE PROPOSAL SHALL:

(I) TAKE INTO ACCOUNT THE ACTUAL PATIENT DAYS OF CARE AS OPPOSED TO IMPUTED PATIENT DAYS OF CARE; AND

(II) CONSIDER COST ADJUSTMENTS FOR ACUITY BASED UPON A FACILITY'S CASE-MIX INDEX;

(b) CONSIDER ADJUSTMENTS FOR A FACILITY'S EMPLOYEE AND OTHER LABOR EXPENSES TO TAKE INTO ACCOUNT A FACILITY'S GEOGRAPHIC LOCATION;

(c) INCLUSION OF A QUALITY ALLOWANCE BASED UPON AN APPROPRIATE MEASUREMENT OF A FACILITY'S PATIENT CARE OUTCOMES USING DEVELOPED CRITERIA;

(d) INCLUSION OF AN ADJUSTMENT, AS AN INTEGRAL PART OF A FACILITY'S RATE, FOR A FACILITY THAT HAS MEDICAID RECIPIENTS WHO HAVE MODERATELY SEVERE TO SERIOUSLY IMPAIRED COGNITIVE SKILLS AND WHO REQUIRE BEHAVIORAL MANAGEMENT CARE AND SERVICES.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 3. 26-4-410, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-410. Providers - reimbursement - fees - nursing facility - nursing facility patient program improvement fund - intermediate care facility for the mentally retarded - reimbursement - maximum allowable - nonmonetary incentive program - legislative declaration - repeal. (6) (a) FOR FISCAL YEAR 2006-07, NOTWITHSTANDING THE APPLICATION OF THE LIMITATION SET FORTH IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION, A CLASS I NURSING FACILITY PROVIDER'S TOTAL OVERALL REIMBURSEMENT RATE SHALL BE AT LEAST EIGHTY-FIVE PERCENT OF THE STATEWIDE AVERAGE TOTAL OVERALL REIMBURSEMENT RATE FOR ALL CLASS I FACILITIES PARTICIPATING IN THE MEDICAID PROGRAM; EXCEPT THAT, A CLASS I NURSING FACILITY PROVIDER'S TOTAL OVERALL REIMBURSEMENT RATE SHALL NOT EXCEED ONE HUNDRED TEN PERCENT OF THAT NURSING FACILITY PROVIDER'S TOTAL OVERALL REIMBURSEMENT RATE WHEN COMPARED TO WHAT THAT FACILITY'S RATE WOULD HAVE BEEN ON JULY 1, 2006, IF THIS SUBSECTION (6) HAD NOT BECOME LAW. THE INCREASE IN THE REIMBURSEMENT RATE REQUIRED FOR SOME CLASS I NURSING FACILITY PROVIDERS PURSUANT TO THIS PARAGRAPH (a) SHALL NOT RESULT IN A DECREASE IN THE REIMBURSEMENT RATE FOR ANY OTHER CLASS I NURSING FACILITY PROVIDER.

(b) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE NURSING FACILITY PROVIDERS BENEFITTING BY THIS SUBSECTION (6) USE THE ADDITIONAL REIMBURSEMENT MONEYS ONLY FOR THE OPERATION OF THE FACILITY, INCLUDING BUT NOT LIMITED TO DIRECT NURSING CARE. THE STATE DEPARTMENT SHALL, AS PART OF THE FACILITY'S MEDICAID COST REPORT AUDIT, DETERMINE WHETHER THE FUNDS WERE SUBSTANTIALLY USED FOR SUCH PURPOSE.

(c) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 4. 26-4-410 (5) (b), Colorado Revised Statutes, is amended to read:

26-4-410. Providers - reimbursement - fees - nursing facility - nursing facility patient program improvement fund - intermediate care facility for the mentally retarded - reimbursement - maximum allowable - nonmonetary incentive program - legislative declaration. (5) (b) In the event the general assembly fails to enact legislation by July 1, 2003, specifying when and under what conditions a limitation on the increase in nursing facility health care costs shall be imposed, then for rates effective on and after July 1, 2005, in addition to the

limitations specified in subparagraph (II) of paragraph (d) of subsection (4) of this section, for each class I and class V facility, any increase in health care services costs shall not exceed eight percent per year; EXCEPT THAT, FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, THE EIGHT-PERCENT LIMITATION SHALL NOT APPLY TO A CLASS I FACILITY WITH AN AVERAGE ANNUAL MEDICAID RESIDENT CENSUS THAT EXCEEDS SIXTY-FOUR PERCENT OF THE NUMBER OF ACTUAL RESIDENTS FOR THAT SAME PERIOD. The calculation of the eight percent per year limitation for rates effective on or after July 1, 2005, shall be based on the facility's cost reports, as specified by rule of the medical services board, in the preceding year.

SECTION 5. Appropriation - adjustments to 2006 long bill. For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing, for medical services premiums, for the fiscal year beginning July 1, 2006, is increased by one million one hundred eighty-eight thousand two hundred three dollars (\$1,188,203). Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of one million one hundred eighty-eight thousand two hundred three dollars (\$1,188,203) in federal funds for the implementation of this act. Although these federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

SECTION 6. Relocation of harmonizable provisions. Section 26-4-410.1, Colorado Revised Statutes, as enacted in section 2 of this act will be renumbered as and relocated to section 25.5-6-207, Colorado Revised Statutes, only if Senate Bill 06-219 is enacted and becomes law.

SECTION 7. 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: June 2, 2006