

CHAPTER 250

HEALTH CARE POLICY AND FINANCING

SENATE BILL 08-214

BY SENATOR(S) Shaffer, Boyd, Groff, Isgar, Sandoval, Tapia, Williams, Tochtrop, and Tupa;
also REPRESENTATIVE(S) Frangas, and Kefalas.

AN ACT

CONCERNING LOCAL GOVERNMENT MEDICAID PROVIDER FEES FOR CERTAIN HEALTH CARE PROVIDERS.

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

SECTION 1. 25.5-4-417, Colorado Revised Statutes, is amended to read:

25.5-4-417. Provider fee - medicaid providers - state plan amendment - rules.

(1) For purposes of this section, unless the context otherwise requires:

(a) "Local government" means a county, home rule county, home rule or statutory city, town, territorial charter city, or city and county.

(b) ~~"Outstationing" means the registration of new medicaid recipients by registration clerks located within a hospital instead of by a county department of social services.~~ "PROVIDER FEE" MEANS A LICENSING FEE, ASSESSMENT, OR OTHER MANDATORY PAYMENT THAT IS RELATED TO HEALTH CARE ITEMS OR SERVICES AS SPECIFIED UNDER 42 CFR 433.55.

(c) "Qualified provider" means a ~~nongovernment~~ hospital licensed pursuant to section 25-3-101, C.R.S., or a ~~nongovernment~~ certified home health care agency within the territorial boundaries of the local government.

(2) For the purpose of ~~paying for unreimbursed medicaid costs incurred by qualified providers~~ SUSTAINING OR INCREASING REIMBURSEMENT FOR PROVIDING MEDICAL CARE UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM AND TO LOW-INCOME POPULATIONS, the state department shall amend the state plan effective July 1, 2006. Implementation of the state plan amendment shall be subject to the approval of the federal government. The imposition and collection of a provider fee

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

by a local government pursuant to article 28 of title 29, C.R.S., shall be prohibited without the federal government's approval of a state plan amendment authorizing federal financial participation for the provider fees.

(3) ~~The state department shall define unreimbursed medicaid costs, which shall be adopted in rule by the state board. Unreimbursed medicaid costs shall include but not be limited to the unreimbursed costs for inpatient and outpatient hospital care, emergency hospital care, physician services, prescription drugs, dental services, lab and X ray, durable medical equipment, transportation services, outstationing, and home health care.~~ IN ACCORDANCE WITH THE REDISTRIBUTIVE METHOD SET FORTH IN 42 CFR 433.68 (e) (1) AND (e) (2), THE STATE DEPARTMENT MAY SEEK A WAIVER FROM THE BROAD-BASED PROVIDER FEE REQUIREMENT OR THE UNIFORM PROVIDER FEE REQUIREMENT, OR BOTH, TO EXCLUDE QUALIFIED PROVIDERS FROM THE PROVIDER FEE.

(4) ~~Upon notice of the imposition of a fee by a local government as authorized by article 28 of title 29, C.R.S., the state department shall calculate the unreimbursed medicaid costs for qualified providers within the local government, excluding any specific costs the local government exempts from the calculation pursuant to section 29-28-103 (1) (b), C.R.S.~~ TO THE EXTENT AUTHORIZED BY FEDERAL LAW, THE STATE DEPARTMENT MAY EXCLUDE A GOVERNMENTAL QUALIFIED PROVIDER FROM PAYMENT OF THE PROVIDER FEE, BENEFITS FROM THE PROVIDER FEE, OR ANY FEDERAL FINANCIAL PARTICIPATION DUE TO THE FEE.

(5) TO THE EXTENT AUTHORIZED BY FEDERAL LAW, the state department shall distribute THE PROVIDER FEE AND ANY ASSOCIATED FEDERAL FINANCIAL PARTICIPATION EITHER to a local government that has certified payment to qualified providers ~~the federal financial participation received for eligible unreimbursed medicaid costs of the qualified providers~~ within the local government. GOVERNMENT OR DIRECTLY TO THE QUALIFIED PROVIDERS. THE STATE DEPARTMENT SHALL ESTABLISH REIMBURSEMENT METHODS TO DISTRIBUTE THE PROVIDER FEE AND ASSOCIATED FEDERAL FINANCIAL PARTICIPATION TO QUALIFIED PROVIDERS. THE STATE DEPARTMENT MAY ALTER REIMBURSEMENT METHODS TO QUALIFIED PROVIDERS PARTICIPATING UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM AND COLORADO INDIGENT CARE PROGRAM TO THE EXTENT NECESSARY TO MEET THE FEDERAL REQUIREMENTS AND TO OBTAIN FEDERAL APPROVAL OF THE PROVIDER FEE. THE STATE DEPARTMENT SHALL WORK WITH A STATEWIDE ASSOCIATION OF HOSPITALS ON CHANGES TO REIMBURSEMENT METHODS OR PROVIDER FEES THAT IMPACT HOSPITAL PROVIDERS. THE STATE DEPARTMENT SHALL WORK WITH A STATEWIDE ASSOCIATION OF HOME HEALTH CARE AGENCIES ON CHANGES TO REIMBURSEMENT METHODS OR PROVIDER FEES THAT IMPACT HOME HEALTH CARE AGENCIES.

(6) THE STATE BOARD SHALL ADOPT ANY RULES NECESSARY FOR THE ADMINISTRATION AND IMPLEMENTATION OF THIS SECTION.

SECTION 2. 29-28-101 (1) (e), Colorado Revised Statutes, is amended to read:

29-28-101. Legislative declaration. (1) The general assembly finds and declares that:

(e) It is therefore in the best interest of the state of Colorado to authorize local governments to impose a fee on certain medical providers to assist in financing ~~unreimbursed~~ medicaid costs AND THE DISPROPORTIONATE SHARE HOSPITAL PAYMENTS FOR PROVIDING MEDICAL SERVICES TO LOW-INCOME POPULATIONS.

SECTION 3. 29-28-102 (3) and (4), Colorado Revised Statutes, are amended, and the said 29-28-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

29-28-102. Definitions. As used in this article, unless the context otherwise requires:

(2.5) "PROVIDER FEE" MEANS A LICENSING FEE, ASSESSMENT, OR OTHER MANDATORY PAYMENT THAT IS RELATED TO HEALTH CARE ITEMS OR SERVICES AS SPECIFIED UNDER 42 CFR 433.55.

(3) "Qualified provider" means a ~~nongovernment~~ hospital licensed pursuant to section 25-3-101, C.R.S., or a ~~nongovernment~~ certified home health care agency within the territorial boundaries of a local government.

(4) "~~Unreimbursed medicaid costs~~" means ~~medicaid costs, as defined by the medical services board, created in section 25.5-1-301 (1), C.R.S., that are eligible for federal financial participation pursuant to section 25.5-4-416, C.R.S.~~

SECTION 4. 29-28-103, Colorado Revised Statutes, is amended to read:

29-28-103. Powers of the governing body - medicaid provider fee authorization. (1) (a) ~~The governing body of a local government may impose a fee on a qualified provider located within its territorial boundaries for the purpose of obtaining federal financial participation under the state's medical assistance program, articles 4, 5, and 6 of title 25.5, C.R.S., to reimburse qualified providers for unreimbursed medicaid costs~~ PROVIDER FEE ON HEALTH SERVICES PROVIDED BY QUALIFIED PROVIDERS FOR THE PURPOSE OF OBTAINING FEDERAL FINANCIAL PARTICIPATION UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM, ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., AND THE COLORADO INDIGENT CARE PROGRAM, ARTICLE 3 OF TITLE 25.5, C.R.S. THE PROVIDER FEE SHALL BE USED ONLY TO SUSTAIN OR INCREASE REIMBURSEMENTS FOR PROVIDING MEDICAL CARE UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM AND TO LOW-INCOME POPULATIONS.

(b) (I) ~~The fee imposed shall be set as a percentage of the gross or net revenues of a qualified provider;~~ THE AMOUNT OF THE PROVIDER FEE MAY BE BASED UPON THE AGGREGATE GROSS OR NET REVENUE, AS PRESCRIBED BY THE STATE DEPARTMENT, OR ANY OTHER METHOD ALLOWABLE UNDER FEDERAL LAW, OF ALL QUALIFIED PROVIDERS SUBJECT TO THE PROVIDER FEE, and the amount of the PROVIDER fee shall not exceed the maximum amount of the fee allowed under federal law. ~~consistent with the provisions of 42 U.S.C. sec. 1396b.~~ The local government may exempt revenue categories from the gross or net revenue calculation and the collection of the PROVIDER fee from qualified providers, as authorized by federal law. ~~The local government may exempt cost categories, as defined by the department, from the calculation of unreimbursed medicaid costs as authorized by federal law~~ STATE AND FEDERAL MEDICAID RULES AND REGULATIONS.

(II) Subject to STATE AND federal medicaid rules and regulations, in any given year, a local government may elect to not assess the PROVIDER fee imposed on qualified providers pursuant to this subsection (1) and not make the reimbursements to qualified providers within its territorial boundaries for that year.

(c) Prior to the imposition and collection of the PROVIDER fee, the governing body of the local government shall:

(I) Approve the PROVIDER fee by ordinance or resolution; and

(II) Notify the department that the local government has authorized the imposition of a PROVIDER fee pursuant to this subsection (1).

(2) (a) The local government shall EITHER:

(I) Collect the PROVIDER fee imposed on qualified providers pursuant to subsection (1) of this section; ~~and shall certify to the department the amount that the local government pays the qualified providers for unreimbursed medicaid costs, which shall include the distribution of moneys collected from the fee collected pursuant to this section to qualified providers based on the unreimbursed medicaid costs calculated by the department pursuant to section 25.5-4-416 (4), C.R.S. The local government shall distribute all federal financial participation received for eligible unreimbursed medicaid costs of the qualified providers within the local government's territorial boundaries and all moneys collected from the fee collected pursuant to this section to qualified providers within its territorial boundaries. The distribution shall be made based on the department's calculation of unreimbursed medicaid costs.~~ OR

(II) DIRECT THE QUALIFIED PROVIDERS WITHIN ITS JURISDICTION TO PAY THE PROVIDER FEE IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION DIRECTLY TO THE DEPARTMENT.

(b) IF THE LOCAL GOVERNMENT ELECTS TO COLLECT THE PROVIDER FEE IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE LOCAL GOVERNMENT SHALL EITHER:

(I) TRANSFER THE AMOUNT THAT THE LOCAL GOVERNMENT COLLECTS FROM THE PROVIDER FEE TO THE DEPARTMENT, IN WHICH CASE THE DEPARTMENT SHALL DISTRIBUTE THE PROVIDER FEE AND ALL FEDERAL FINANCIAL PARTICIPATION RECEIVED TO THE QUALIFIED PROVIDERS WITHIN THE TERRITORIAL BOUNDARIES OF THE LOCAL GOVERNMENT PURSUANT TO SECTION 25.5-4-417, C.R.S.; OR

(II) THE LOCAL GOVERNMENT SHALL DISTRIBUTE ALL MONEYS FROM THE PROVIDER FEE COLLECTED PURSUANT TO THIS SECTION AND CERTIFY TO THE DEPARTMENT THE AMOUNT THAT THE LOCAL GOVERNMENT REIMBURSES THE QUALIFIED PROVIDERS FOR PROVIDING MEDICAL CARE UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM AND TO LOW-INCOME POPULATIONS, WHICH SHALL INCLUDE THE DISTRIBUTION OF MONEYS COLLECTED FROM THE PROVIDER FEE COLLECTED PURSUANT TO THIS SECTION. THE LOCAL GOVERNMENT MAY DISTRIBUTE ANY ADDITIONAL MONEYS ELIGIBLE FOR FEDERAL FINANCIAL PARTICIPATION TO QUALIFIED PROVIDERS WITHIN THE TERRITORIAL BOUNDARIES OF THE LOCAL

GOVERNMENT PURSUANT TO SECTION 25.5-4-417, C.R.S.

(c) IF THE LOCAL GOVERNMENT ELECTS TO DIRECT THE QUALIFIED PROVIDERS TO PAY THE PROVIDER FEE IMPOSED PURSUANT TO SUBSECTION (1) OF THIS SECTION DIRECTLY TO THE DEPARTMENT, THE DEPARTMENT SHALL DISTRIBUTE THE PROVIDER FEE AND ALL FEDERAL FINANCIAL PARTICIPATION RECEIVED TO THE QUALIFIED PROVIDERS WITHIN THE TERRITORIAL BOUNDARIES OF THE LOCAL GOVERNMENT PURSUANT TO SECTION 25.5-4-417, C.R.S.

(d) ALL MONEYS RECEIVED BY THE DEPARTMENT PURSUANT TO THIS SUBSECTION (2) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE LOCAL GOVERNMENT PROVIDER FEE CASH FUND, WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS PARAGRAPH (d) AS THE "FUND". THE GENERAL ASSEMBLY MAY MAKE APPROPRIATIONS FROM THE FUND TO THE DEPARTMENT FOR THE DEPARTMENT'S ADMINISTRATIVE COSTS INCURRED IN IMPLEMENTING THIS SECTION. THE DEPARTMENT SHALL DISTRIBUTE THE REMAINING MONEYS IN THE FUND PURSUANT TO THIS SUBSECTION (2). ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION SHALL BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(3) EXCEPT FOR ADMINISTRATIVE COSTS OF THE DEPARTMENT, PROVIDER fees imposed and distributed pursuant to this section from certified home health care agencies and licensed hospitals within the territorial boundaries of a local government shall be kept separate to ensure that the PROVIDER fees collected from certified home health care agencies within the territorial boundaries of the local government are distributed only to certified home health care agencies and the PROVIDER fees collected from licensed hospitals within the territorial boundaries of the local government are distributed only to licensed hospitals.

(4) A local government that elects to impose and collect a PROVIDER fee from qualified providers pursuant to this section shall follow all applicable STATE AND federal medicaid rules and regulations regarding provider fees.

SECTION 5. 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 20, 2008