

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM Robin J. Smart, JBC Staff (303-866-4955)
DATE February 15, 2022
SUBJECT LLS 22-0850 (Additional Requirements Nursing Facility Funding)

LLS 21-0850 directs the Department of Health Care Policy and Financing to issue supplemental payments in FY 2021-22 to skilled nursing facilities that are Medicaid providers. It also establishes reporting and result tracking requirements and requires the Department to engage stakeholders in developing recommendations for changes to the current nursing home reimbursement requirements. The Department is required to seek the federal match within the upper payment limit. JBC highlights the following issues in the current bill draft.

Page 1, lines 1 through 3 specifies that additional payments may be made to nursing facility providers “that admit Medicaid-enrolled individuals with newly identified complex needs.” JBC staff does not believe the current language is clear. The intent of this provision is to specify that additional payments may be made to facilities when the facility admits a new client who has complex needs (i.e. difficult to place clients who are released from hospitals or from the Department of Corrections). **Staff recommends clarifying this provision.**

Page 3, lines 16 through 19 require a General Fund reduction for federal funds received in excess of \$10,000,500. The Department has requested that the total funds made available to nursing facilities through the implementation of this bill be limited to \$27 million. Because the bill includes an appropriation of \$17,000,500 General Fund, requiring the reduction of General Fund equivalent to federal funds received above \$10.0 million, will set the \$27 million limit. This provision contradicts the current appropriation clause in the bill.

Page 6, lines 10 through 21 provide a General Fund appropriation of \$17,000,500, and reflect the assumption that the Department will receive a federal match in the same amount. The current clause does not contain an “(M)” notation. JBC staff recommends considering the following:

- If the JBC wishes to provide up to \$34 million to implement this bill, the appropriation clause will not need to be changed; however the provision that requires a reduction in General Fund for federal funds received above \$10 million will need to be struck from the bill.
- If the JBC wishes to limit the total funds for implementation of this bill to \$27 million, JBC staff recommends changing the appropriation clause to read:

(1) For the 2021-22 state fiscal year, \$17,000,500 is appropriated to the department of health care policy and financing for use by medical services premiums. This appropriation is from the general fund and is subject to the “(M)” notation as defined in the annual general appropriation act for the same fiscal year. To implement this act, the department may use this appropriation for medical and long-term care services for Medicaid-eligible individuals.

(2) For the 2021-22 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$10,000,500 in federal funds to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used for medical and long-term care services for Medicaid-eligible individuals.

(3) Any money appropriated in subsection (1) of this section not expended prior to July 1, 2022, is further appropriated to the department for the 2022-23 state fiscal year for the same purpose.

JBC staff requests permission to work with the drafter to make any necessary changes to the bill draft prior to introduction.

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
2.11.22

DRAFT

LLS NO. 22-0850.01 Jane Ritter x4342

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Additional Requirements Nursing Facility Funding"

A BILL FOR AN ACT

101 **CONCERNING REQUIREMENTS FOR ADDITIONAL SUPPLEMENTAL**
102 **PAYMENTS FOR NURSING FACILITY PROVIDERS, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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/>.)

Joint Budget Committee. The bill directs the department of health care policy and financing (department) to do the following, with respect to nursing facility providers (nursing facilities):

- Issue additional supplemental payments as directed for the 2021-22 state fiscal year;

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Establish reporting and result tracking requirements necessary to administer additional supplemental funding;
- Pursue federal matching funds to reduce the state share of costs to the maximum amount possible; and
- Engage with stakeholders to produce a report including ways to improve methodology, practices regarding care and services to compassionate release individual from the department of corrections, and funding for nursing facilities. The department shall submit the report to the joint budget committee on or before November 1, 2022.

The bill grants the department authority to promulgate rules as necessary for implementation of the payments and their supporting requirements.

The supplemental payments and their supporting requirements are repealed, effective July 1, 2023.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25.5-6-210 as
3 follows:

4 **25.5-6-210. Additional supplemental payments - nursing**
5 **facilities - funding methodology - reporting requirement - rules -**
6 **repeal.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
7 CONTRARY AND SUBJECT TO AVAILABLE APPROPRIATIONS, FOR THE
8 PURPOSES OF REIMBURSING A MEDICAID-CERTIFIED CLASS I NURSING
9 FACILITY PROVIDER, THE STATE DEPARTMENT MAY ISSUE ADDITIONAL
10 SUPPLEMENTAL PAYMENTS AS FOLLOWS:

11 (a) FOR THE 2021-22 STATE FISCAL YEAR, FUNDS APPROPRIATED
12 BY THE GENERAL ASSEMBLY ARE FOR THE PURPOSES OF SUPPORTING
13 NURSING FACILITY PROVIDERS EXPERIENCING INCREASED STAFFING COSTS
14 RESULTING FROM THE COVID-19 PANDEMIC, NURSING FACILITY
15 PROVIDERS WITH HIGH MEDICAID UTILIZATION RATES, OR NURSING
16 FACILITY PROVIDERS SERVING INDIVIDUALS WITH COMPLEX NEEDS.

17 (b) PAYMENTS MADE IN ADDITION TO THOSE SPECIFIED IN

1 SUBSECTION (1)(a) OF THIS SECTION MAY ALSO BE MADE TO NURSING
2 FACILITY PROVIDERS THAT ADMIT MEDICAID-ENROLLED INDIVIDUALS WITH
3 NEWLY IDENTIFIED COMPLEX NEEDS.

4 (2) THE STATE DEPARTMENT SHALL ESTABLISH REPORTING AND
5 RESULT TRACKING REQUIREMENTS NECESSARY TO ADMINISTER THE
6 FUNDING OUTLINED IN THIS SECTION. THE STATE DEPARTMENT MAY DENY
7 OR RECOUP FUNDING FROM NURSING FACILITY PROVIDERS THAT ARE
8 NONCOMPLIANT WITH REPORTING REQUIREMENTS OR IF FUNDING IS USED
9 FOR PURPOSES OUTSIDE THE INTENT OF SUPPORTING AND STABILIZING
10 NURSING FACILITY PROVIDERS THAT ARE MEDICAID PROVIDERS.

11 (3) THE STATE DEPARTMENT SHALL EVALUATE PATIENT AND
12 PROVIDER OUTCOMES ASSOCIATED WITH THE PAYMENT OF SUPPLEMENTAL
13 MONEY TO NURSING FACILITY PROVIDERS. THE DEPARTMENT SHALL
14 UTILIZE NURSING FACILITY PROVIDER'S FINANCIAL STATEMENTS AND
15 LABOR AND WAGE RECORDS TO EVALUATE THE RESULTS OF PAYMENTS.

16 (4) (a) THE STATE DEPARTMENT SHALL PURSUE FEDERAL
17 MATCHING FUNDS. FOR ANY FEDERAL FUNDS RECEIVED EXCEEDING TEN
18 MILLION FIVE HUNDRED DOLLARS, THE STATE SHARE OF COSTS MUST BE
19 REDUCED BY AN EQUIVALENT AMOUNT.

20 (b) FOR THE PURPOSES OF FEDERAL UPPER PAYMENT LIMIT
21 CALCULATIONS, THE STATE DEPARTMENT SHALL PURSUE FEDERAL
22 MATCHING FUNDS FOR PAYMENTS MADE PURSUANT TO THIS SECTION BUT
23 ONLY AFTER SECURING FEDERAL MATCHING FUNDS FOR PAYMENTS
24 OUTLINED IN SECTIONS 25.5-6-203 (2) AND 25.5-6-208.

25 (c) IF FEDERAL MATCHING FUNDS ARE UNAVAILABLE FOR ANY
26 REASON, PAYMENTS OUTLINED IN THIS SECTION MAY BE REDUCED OR
27 RESTRICTED, SUBJECT TO AVAILABLE FUNDING.

1 (5) (a) SUPPLEMENTAL PAYMENTS MADE TO NURSING FACILITY
2 PROVIDERS PURSUANT TO THIS SECTION MUST BE DETERMINED BASED ON
3 THE MOST RECENT AVAILABLE DATA.

4 (b) PURSUANT TO RULES PROMULGATED BY THE STATE
5 DEPARTMENT, PAYMENTS RECEIVED PURSUANT TO THIS SECTION MUST
6 OFFSET COSTS REPORTED ON THE ANNUAL COST REPORT WHEN
7 CALCULATING NURSING FACILITY PROVIDER PER DIEM REIMBURSEMENT.

8 (6) TO RECEIVE AN ADDITIONAL PAYMENT PURSUANT TO
9 SUBSECTION (1)(b) OF THIS SECTION, A NURSING FACILITY PROVIDER
10 SHALL COMMIT TO ADDITIONAL RESPONSIBILITY BY WORKING TO
11 DISCHARGE MEDICAID MEMBERS FROM A HOSPITAL INTO THE NURSING
12 FACILITY, SERVE MEDICAID MEMBERS WITH BEHAVIORAL HEALTH NEEDS,
13 OR ACCEPT COMPASSIONATE RELEASE INDIVIDUALS FROM THE
14 DEPARTMENT OF CORRECTIONS.

15 (7) ON OR BEFORE NOVEMBER 1, 2022, THE STATE DEPARTMENT
16 SHALL ENGAGE WITH STAKEHOLDERS AND SUBMIT A REPORT AND
17 RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE, THE HEALTH AND
18 HUMAN SERVICES COMMITTEE OF THE SENATE, AND THE PUBLIC AND
19 BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF
20 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, CONCERNING
21 SUGGESTED CHANGES FOR PERMANENTLY CHANGING MEDICAID NURSING
22 FACILITY PROVIDER REIMBURSEMENT POLICY IN COLORADO TO PRIORITIZE
23 QUALITY, SUSTAINABILITY, AND SOUND FISCAL STEWARDSHIP TO AVOID
24 FURTHER ONE-TIME CASH INFUSIONS. THE REPORT MUST INCLUDE
25 CHANGES THAT CAN BE MADE TO AFFIRM A NURSING FACILITY PROVIDER'S
26 COMMITMENT TO ACCOUNTABILITY AND MUST INCLUDE, AT A MINIMUM:

27 (a) INFECTION CONTROL AND CULTURE CHANGE PRACTICES,

1 INCLUDING:

2 (I) SINGLE OCCUPANCY ROOMS;

3 (II) SMALLER FACILITY MODELS; AND

4 (III) INNOVATIVE FACILITY MODELS;

5 (b) BEHAVIORAL HEALTH NEEDS;

6 (c) PRACTICES REGARDING INDIVIDUALS WHO HAVE COMPLEX
7 NEEDS REQUIRING HOSPITAL DISCHARGE;

8 (d) PRACTICES REGARDING CARE AND SERVICES TO
9 COMPASSIONATE RELEASE INDIVIDUALS FROM THE DEPARTMENT OF
10 CORRECTIONS;

11 (e) OPTIONS FOR DIVERSIFIED FUNDING STREAMS TO ENSURE
12 CONTINUITY OF SERVICES;

13 (f) COMPETITIVE STAFFING PRACTICES;

14 (g) THE TIMELINE AND COSTS ASSOCIATED WITH IMPLEMENTING
15 THE RECOMMENDED CHANGES, INCLUDING THE IMPACT ON NURSING
16 FACILITY PROVIDER RATES; AND

17 (h) IDENTIFICATION OF THE AMOUNT OF SUPPLEMENTAL PAYMENTS
18 TO EACH NURSING FACILITY PROVIDER AND THE OUTCOME EVALUATION
19 REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

20 (8) THE STATE DEPARTMENT SHALL MEET WITH THE FOLLOWING
21 STAKEHOLDERS, AT A MINIMUM, TO SEEK INPUT ON ANY PROPOSED
22 REIMBURSEMENT METHODOLOGY CHANGES AND REPORT AS REQUIRED BY
23 THIS SECTION:

24 (a) A REPRESENTATIVE FROM AN URBAN NURSING FACILITY
25 PROVIDER;

26 (b) A REPRESENTATIVE FROM A RURAL NURSING FACILITY
27 PROVIDER;

1 (c) A REPRESENTATIVE FROM A NURSING FACILITY TRADE
2 ORGANIZATION;

3 (d) A REPRESENTATIVE FROM A NURSING FACILITY WITH A HIGH
4 MEDICAID UTILIZATION RATE; AND

5 (e) A REPRESENTATIVE FROM A NURSING FACILITY THAT SERVES
6 INDIVIDUALS WITH COMPLEX NEEDS.

7 (9) THE STATE BOARD SHALL PROMULGATE ANY RULES NECESSARY
8 TO IMPLEMENT THIS SECTION.

9 (10) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2023.

10 **SECTION 2. Appropriation.** (1) For the 2021-22 state fiscal
11 year, \$17,000,500 is appropriated to the department of health care policy
12 and financing for use by medical services premiums. This appropriation
13 is from the general fund. To implement this act, the department may use
14 this appropriation for medical and long-term care services for
15 Medicaid-eligible individuals.

16 (2) For the 2021-22 state fiscal year, the general assembly
17 anticipates that the department of health care policy and financing will
18 receive \$17,000,500 in federal funds to implement this act. The
19 appropriation in subsection (1) of this section is based on the assumption
20 that the department will receive this amount of federal funds to be used
21 for medical and long-term care services for Medicaid-eligible individuals.

22 (3) Any money appropriated in subsection (1) of this section not
23 expended prior to July 1, 2022, is further appropriated to the department
24 for the 2022-23 state fiscal year for the same purpose.

25 **SECTION 3. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, or safety.