

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Robin J. Smart, JBC Staff (303-866-4955)  
DATE February 4, 2022  
SUBJECT LLS 22-0850 (Additional Requirements Nursing Facility Funding)

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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 staff highlights the following areas of concern in the current bill draft:

- Page 2, lines 9 and 10 add language to statute allowing the Department to make supplemental payments to nursing homes. It does not specify a timeframe which may imply that the Department may do this (within available appropriations) at any point in the future. **JBC staff recommends adding a repeal date to the bill.**
- Page 2, lines 12 through 15 identify the uses of the funds, but do not specify that a portion of the funding to be paid to providers that serve a disproportionate number of high needs members. **JBC staff recommends including language in the bill that states that there are three categories of providers that will receive funding: 1) Medicaid providers, in general; 2) Medicaid providers whose caseload is comprised of a majority of Medicaid clients; and 3) Medicaid providers that serve a disproportionate number of high needs members.**
- Page 4, lines 19 through 21 appear to duplicate the language in lines 25 through 27. **JBC staff recommends striking lines 19 through 21.**
- Page 4, line 26, strike “the results of”
- Page 5, line 2, strike “when developing the new” and substitute “to seek input on any proposed”
- Appropriation clause: The current appropriation clause includes:
  - A FY 2021-22 appropriation of \$34.0 million total funds, including \$17.0 million General Fund. Of this amount
    - \$17.6 million for supplemental payments to Medicaid providers;
    - \$14.0 million for supplemental payments to providers with the highest percentage of Medicaid clients; and
    - \$2.4 million to be used to pay for incentives.
  - The clause includes a provision granting roll-forward authority for the appropriated funds.
  - The current appropriation in the bill is made to Medical Services Premiums and is limited by the (M) headnote.
    - Page 3, lines 14 through 16 make it clear that payments may be reduced or restricted if federal matching funds are unavailable.
    - Due to the (M) headnote, if the funds are appropriated in this line item, the General Fund that will be available for supplemental payments will be reduced commiserate with the reduction in federal funds. **Is this the Joint Budget Committee’s intent?**

Second Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

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2.3.22

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LLS NO. 22-0850.01 Jane Ritter x4342

COMMITTEE BILL

Joint Budget Committee

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**BILL TOPIC:** "Additional Requirements Nursing Facility Funding"

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**A BILL FOR AN ACT**

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

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**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 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 with recommendations on ways to improve methodology and funding for nursing facilities and submit it to the joint budget committee on or before November 1, 2022.

The bill grants authority to promulgate rules as necessary for implementation of the act.

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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 (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY  
7 AND SUBJECT TO AVAILABLE APPROPRIATIONS, FOR THE PURPOSES OF  
8 REIMBURSING A MEDICAID-CERTIFIED CLASS I NURSING FACILITY  
9 PROVIDER, THE STATE DEPARTMENT MAY ISSUE ADDITIONAL  
10 SUPPLEMENTAL PAYMENTS. FOR THE 2021-22 STATE FISCAL YEAR, FUNDS  
11 APPROPRIATED BY THE GENERAL ASSEMBLY ARE FOR THE PURPOSES OF  
12 SUPPORTING NURSING FACILITIES WITH HIGH MEDICAID UTILIZATION,  
13 ADMISSION FOR INDIVIDUALS WITH COMPLEX NEEDS, AND ADDITIONAL  
14 SUPPORT FOR INCREASED STAFFING COSTS RESULTING FROM THE  
15 COVID-19 PANDEMIC.

16 (2) THE STATE DEPARTMENT SHALL ESTABLISH REPORTING AND  
17 RESULT TRACKING REQUIREMENTS NECESSARY TO ADMINISTER THE  
18 FUNDING OUTLINED IN THIS SECTION. THE STATE DEPARTMENT MAY DENY  
19 OR RECOUP FUNDING FROM NURSING FACILITY PROVIDERS THAT ARE  
20 NONCOMPLIANT WITH REPORTING REQUIREMENTS OR IF FUNDING IS USED

1 FOR PURPOSES OUTSIDE THE STATED INTENT.

2 (3) THE STATE DEPARTMENT SHALL EVALUATE PATIENT AND  
3 PROVIDER OUTCOMES ASSOCIATED WITH THE PAYMENT OF SUPPLEMENTAL  
4 MONEY TO NURSING FACILITY PROVIDERS.

5 (4) (a) THE STATE DEPARTMENT SHALL PURSUE FEDERAL  
6 MATCHING FUNDS AND REDUCE THE STATE SHARE OF COSTS BY THE  
7 MAXIMUM AMOUNT AVAILABLE UNDER FEDERAL UPPER PAYMENT  
8 LIMITATIONS.

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

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

17 (5) PAYMENTS RECEIVED PURSUANT TO THIS SECTION MUST OFFSET  
18 COSTS REPORTED ON THE MED-13 COST REPORT WHEN CALCULATING  
19 NURSING FACILITY PROVIDER PER DIEM REIMBURSEMENT PURSUANT TO  
20 RULES PROMULGATED BY THE STATE DEPARTMENT.

21 (6) TO RECEIVE THE ADDITIONAL REIMBURSEMENT, A NURSING  
22 FACILITY PROVIDER SHALL COMMIT TO ADDITIONAL RESPONSIBILITY BY  
23 WORKING TO DISCHARGE MEDICAID MEMBERS FROM A HOSPITAL INTO THE  
24 NURSING FACILITY AND SERVE MEDICAID MEMBERS WITH BEHAVIORAL  
25 HEALTH NEEDS.

26 (7) ON OR BEFORE NOVEMBER 1, 2022, THE STATE DEPARTMENT  
27 SHALL ENGAGE WITH STAKEHOLDERS AND SUBMIT A REPORT AND

1 RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE, THE HEALTH AND  
2 HUMAN SERVICES COMMITTEE OF THE SENATE, AND THE PUBLIC AND  
3 BEHAVIORAL HEALTH AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF  
4 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, CONCERNING  
5 SUGGESTED CHANGES FOR PERMANENTLY CHANGING MEDICAID NURSING  
6 FACILITY PROVIDER REIMBURSEMENT POLICY IN COLORADO TO PRIORITIZE  
7 QUALITY, SUSTAINABILITY, AND SOUND FISCAL STEWARDSHIP TO AVOID  
8 FURTHER ONE-TIME CASH INFUSIONS. THE REPORT MUST RECOMMEND  
9 CHANGES THAT CAN BE MADE TO AFFIRM A NURSING FACILITY PROVIDER'S  
10 COMMITMENT TO ACCOUNTABILITY AND MUST INCLUDE, AT A MINIMUM:

11 (a) INFECTION CONTROL AND CULTURE CHANGE PRACTICES,  
12 INCLUDING:

13 (I) SINGLE OCCUPANCY ROOMS;

14 (II) SMALLER FACILITY MODELS; AND

15 (III) INNOVATIVE FACILITY MODELS;

16 (b) BEHAVIORAL HEALTH NEEDS;

17 (c) PRACTICES REGARDING INDIVIDUALS WHO HAVE COMPLEX  
18 NEEDS REQUIRING HOSPITAL DISCHARGE;

19 (d) REPORTING ON THE PAYMENTS AND OUTCOMES REALIZED BY  
20 PATIENTS AND NURSING FACILITY PROVIDERS AS A RESULT OF THE  
21 PAYMENTS;

22 (e) OPTIONS FOR DIVERSIFIED FUNDING STREAMS TO ENSURE  
23 CONTINUITY OF SERVICES;

24 (f) COMPETITIVE STAFFING PRACTICES; AND

25 (g) IDENTIFICATION OF THE AMOUNT OF SUPPLEMENTAL PAYMENTS  
26 TO EACH NURSING FACILITY PROVIDER AND THE RESULTS OF THE OUTCOME  
27 EVALUATION REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

1           (8) THE STATE DEPARTMENT SHALL CONSIDER MEETING WITH THE  
2 FOLLOWING STAKEHOLDERS, AT A MINIMUM, WHEN DEVELOPING THE NEW  
3 REIMBURSEMENT METHODOLOGY AND REPORT REQUIRED BY THIS SECTION:

4           (a) A REPRESENTATIVE FROM AN URBAN NURSING FACILITY  
5 PROVIDER;

6           (b) A REPRESENTATIVE FROM A RURAL NURSING FACILITY  
7 PROVIDER; AND

8           (c) A REPRESENTATIVE FROM A NURSING FACILITY TRADE  
9 ORGANIZATION.

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

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

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

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

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