

CHAPTER 270

HEALTH CARE POLICY AND FINANCING

SENATE BILL 23-289

BY SENATOR(S) Bridges and Zenzinger, Kirkmeyer, Cutter, Exum, Ginal, Hansen, Moreno, Priola, Sullivan;
also REPRESENTATIVE(S) Bird and Sirota, Bockenfeld, Amabile, Bacon, Boesenecker, Brown, Dickson, Duran, English, Garcia,
Gonzales-Gutierrez, Hamrick, Jodeh, Kipp, Lieder, Lindsay, Lindstedt, Mabrey, Michaelson Jenet, Ricks, Sharbini, Snyder, Story,
Valdez, Velasco, Woodrow, Young, McCluskie.

AN ACT

**CONCERNING SEEKING AN AMENDMENT TO THE MEDICAID STATE PLAN TO IMPLEMENT THE
COMMUNITY FIRST CHOICE OPTIONAL BENEFIT.**

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

SECTION 1. In Colorado Revised Statutes, **add** part 19 to article 6 of title 25.5
as follows:

**PART 19
COMMUNITY FIRST CHOICE**

25.5-6-1901. Definitions. AS USED IN THIS PART 19, UNLESS THE CONTEXT
OTHERWISE REQUIRES:

(1) "ELECTRONIC MONITORING" MEANS THE INSTALLATION, PURCHASE, OR
RENTAL OF ELECTRONIC MONITORING DEVICES THAT ENABLE AN INDIVIDUAL TO
SECURE HELP IN THE EVENT OF AN EMERGENCY; PROVIDE THE INDIVIDUAL
REMINDERS ABOUT MEDICAL APPOINTMENTS, TREATMENT, OR MEDICATION
SCHEDULES; ARE REQUIRED BECAUSE OF THE INDIVIDUAL'S ILLNESS, IMPAIRMENT,
OR DISABILITY; AND INCLUDE PERSONAL EMERGENCY RESPONSE SYSTEMS AND
MEDICATION REMINDERS THROUGH AN AUTOMATED MEDICATION DISPENSING
SYSTEM.

(2) "HEALTH MAINTENANCE ACTIVITIES" MEANS ROUTINE AND REPETITIVE
HEALTH-RELATED TASKS FURNISHED TO A MEMBER IN THE COMMUNITY OR IN THE
MEMBER'S HOME THAT ARE NECESSARY FOR THE HEALTH AND NORMAL BODILY
FUNCTIONING THAT A PERSON WITH A DISABILITY IS PHYSICALLY UNABLE TO CARRY

*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through
words or numbers indicate deletions from existing law and such material is not part of the act.*

OUT. "HEALTH MAINTENANCE ACTIVITIES" INCLUDES SKILLED TASKS TYPICALLY PERFORMED BY A CERTIFIED NURSING ASSISTANT OR A LICENSED NURSE THAT DOES NOT REQUIRE THE CLINICAL ASSESSMENT AND JUDGMENT OF A LICENSED NURSE.

(3) "HOMEMAKER SERVICES" MEANS GENERAL HOUSEHOLD ACTIVITIES PROVIDED BY AN ATTENDANT IN A MEMBER'S HOME TO MAINTAIN A HEALTHY AND SAFE ENVIRONMENT FOR THE MEMBER THROUGH HANDS-ON ASSISTANCE, SUPERVISION, OR CUEING. "HOMEMAKER SERVICES" MUST ONLY BE PROVIDED IN THE MEMBER'S PRIMARY LIVING SPACE AND MULTIPLE ATTENDANTS SHALL NOT BE REIMBURSED FOR DUPLICATING SUCH SERVICES.

(4) "PERSONAL CARE SERVICES" MEANS SERVICES THAT ARE FURNISHED TO A MEMBER TO MEET THE MEMBER'S PHYSICAL, MAINTENANCE, AND SUPPORTIVE NEEDS THROUGH HANDS-ON ASSISTANCE, SUPERVISION, OR CUEING THAT DO NOT REQUIRE A NURSE'S SUPERVISION OR PHYSICIAN'S ORDER.

25.5-6-1902. Community first choice option - covered services - state plan amendment. (1) NO LATER THAN JULY 1, 2025, THE STATE DEPARTMENT SHALL SEEK FEDERAL AUTHORIZATION THROUGH AN AMENDMENT TO THE STATE MEDICAL ASSISTANCE PLAN TO IMPLEMENT THE COMMUNITY FIRST CHOICE OPTION.

(2) AT A MINIMUM, THE STATE PLAN AMENDMENT MUST PROVIDE FOR, BUT IS NOT LIMITED TO:

(a) THE FOLLOWING SERVICES:

(I) PERSONAL CARE SERVICES;

(II) HOMEMAKER SERVICES;

(III) HEALTH MAINTENANCE ACTIVITIES;

(IV) ELECTRONIC MONITORING SERVICES; AND

(V) VOLUNTARY TRAINING ON HOW TO SELECT, MANAGE, AND DISMISS AN ATTENDANT; AND

(b) THE DELIVERY OF COVERED SERVICES, IF APPLICABLE, THROUGH:

(I) IN-HOME SUPPORT SERVICES;

(II) CONSUMER-DIRECTED SERVICES AND SUPPORTS; AND

(III) LICENSED HOME CARE SERVICES.

25.5-6-1903. Permissible services and supports. (1) THE STATE DEPARTMENT MAY PROVIDE PERMISSIBLE SERVICES AND SUPPORTS THAT ARE LINKED TO AN ASSESSED NEED OR GOAL IN THE INDIVIDUAL'S PERSON-CENTERED SERVICE PLAN. PERMISSIBLE SERVICES AND SUPPORTS MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(a) EXPENDITURES FOR TRANSITION COSTS, SUCH AS RENT AND UTILITY DEPOSITS, FIRST MONTH'S RENT AND UTILITIES, BEDDING, BASIC KITCHEN SUPPLIES, AND OTHER NECESSITIES LINKED TO AN ASSESSED NEED FOR AN INDIVIDUAL TO TRANSITION FROM A NURSING FACILITY, INSTITUTION FOR BEHAVIORAL OR MENTAL HEALTH DISORDERS, OR INTERMEDIATE CARE FACILITY FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES, TO A HOME- AND COMMUNITY-BASED SETTING WHERE THE INDIVIDUAL RESIDES; AND

(b) EXPENDITURES RELATING TO A NEED IDENTIFIED IN AN INDIVIDUAL'S PERSON-CENTERED SERVICE PLAN THAT INCREASES AN INDIVIDUAL'S INDEPENDENCE OR SUBSTITUTES FOR HUMAN ASSISTANCE, TO THE EXTENT THAT WOULD OTHERWISE BE MADE FOR HUMAN ASSISTANCE.

25.5-6-1904. Maintenance of effort. IN IMPLEMENTING THE COMMUNITY FIRST CHOICE OPTION, THE STATE DEPARTMENT SHALL ENSURE CONTINUITY OF SUPPORT FOR ELIGIBLE INDIVIDUALS WHO WERE RECEIVING SERVICES AS OF JULY 1, 2025, AND WHO HAVE MAINTAINED ELIGIBILITY IN THE STATE MEDICAL ASSISTANCE PROGRAM SINCE THAT DATE.

25.5-6-1905. Eligibility. (1) TO BE ELIGIBLE FOR THE COMMUNITY FIRST CHOICE OPTION, AN INDIVIDUAL MUST:

(a) BE ELIGIBLE FOR THE STATE MEDICAL ASSISTANCE PROGRAM;

(b) BE IN AN ELIGIBILITY GROUP UNDER THE STATE MEDICAL ASSISTANCE PROGRAM THAT INCLUDES NURSING FACILITY SERVICES, OR IF IN AN ELIGIBILITY GROUP THAT DOES NOT INCLUDE NURSING FACILITY SERVICES, HAVE AN INCOME THAT IS AT OR BELOW ONE HUNDRED FIFTY PERCENT OF THE FEDERAL POVERTY LEVEL. THE STATE DEPARTMENT SHALL DETERMINE WHETHER AN INDIVIDUAL IS AT OR BELOW ONE HUNDRED FIFTY PERCENT OF THE FEDERAL POVERTY LEVEL ON AN ANNUAL BASIS BY APPLYING THE SAME METHODOLOGIES THAT APPLY UNDER THE STATE MEDICAL ASSISTANCE PROGRAM, INCLUDING THE SAME LESS RESTRICTIVE RESOURCE METHODOLOGIES DESCRIBED IN THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1902 (f)(2).

(c) (I) RECEIVE AN ANNUAL DETERMINATION THAT IN THE ABSENCE OF THE HOME- AND COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS PROVIDED PURSUANT TO THE COMMUNITY FIRST CHOICE OPTION, THE INDIVIDUAL WOULD REQUIRE THE LEVEL OF CARE FURNISHED IN A HOSPITAL, A NURSING FACILITY, AN INTERMEDIATE CARE FACILITY TO AN INDIVIDUAL WITH INTELLECTUAL DISABILITIES, AN INSTITUTION PROVIDING INPATIENT PSYCHIATRIC SERVICES TO AN INDIVIDUAL UNDER TWENTY-ONE YEARS OF AGE, OR AN INSTITUTION FOR BEHAVIORAL OR MENTAL HEALTH DISORDERS FOR AN INDIVIDUAL SIXTY-FIVE YEARS OF AGE OR OLDER IF THE COST COULD BE REIMBURSED UNDER THE STATE MEDICAL ASSISTANCE PROGRAM.

(II) THE STATE DEPARTMENT MAY, AT ITS DISCRETION, PERMANENTLY WAIVE THE ANNUAL DETERMINATION FOR AN INDIVIDUAL IF THE STATE DEPARTMENT:

(A) DETERMINES THERE IS NO REASONABLE EXPECTATION OF IMPROVEMENT OR SIGNIFICANT CHANGE IN THE INDIVIDUAL'S CONDITION BECAUSE OF THE SEVERITY OF

A CHRONIC CONDITION OR THE DEGREE OF IMPAIRMENT OF FUNCTIONAL CAPACITY;
AND

(B) RETAINS DOCUMENTATION OF THE REASON FOR WAIVING THE INDIVIDUAL'S ANNUAL DETERMINATION REQUIREMENT.

(2) FOR THE PURPOSES OF MEETING THE REQUIREMENTS OF SUBSECTION (1)(b) OF THIS SECTION, AN INDIVIDUAL WHO QUALIFIES FOR MEDICAL ASSISTANCE PURSUANT TO THE SPECIAL HOME- AND COMMUNITY-BASED WAIVER ELIGIBILITY GROUP DEFINED IN THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. SEC. 1902 (a)(10)(A)(ii)(VI), SHALL MEET ALL THE REQUIREMENTS IN 42 U.S.C. SEC. 1915(c) AND RECEIVE AT LEAST ONE HOME- AND COMMUNITY-BASED WAIVER SERVICE PER MONTH.

(3) INDIVIDUALS RECEIVING SERVICES THROUGH THE COMMUNITY FIRST CHOICE OPTION MUST NOT BE PRECLUDED FROM RECEIVING OTHER HOME- AND COMMUNITY-BASED LONG-TERM CARE SERVICES AND SUPPORTS THROUGH OTHER STATE MEDICAL ASSISTANCE PROGRAM WAIVERS, GRANTS, OR DEMONSTRATION AUTHORITIES.

SECTION 2. In Colorado Revised Statutes, 25.5-5-203, **repeal** (1)(o) as follows:

25.5-5-203. Optional programs with special state provisions. (1) Subject to the provisions of subsection (2) of this section, this section specifies programs developed by Colorado to increase federal financial participation through selecting optional services or optional eligible groups. These programs include but are not limited to:

(o) ~~Home- and community-based services for children with autism, as specified in part 8 of article 6 of this title.~~

SECTION 3. In Colorado Revised Statutes, 25.5-6-303, **repeal** (8), (9), (10), (11), (17), and (18) as follows:

25.5-6-303. Definitions. As used in this part 3, unless the context otherwise requires:

(8) ~~"Electronic monitoring provider" means an entity that meets applicable state, federal, and local requirements and is certified to provide electronic monitoring services.~~

(9) ~~"Electronic monitoring services" means electronic equipment or adaptations or other remote supports that are related to an eligible person's disability and enable the person to remain at home.~~

(10) ~~"Homemaker agency" means any agency that meets applicable state and federal requirements and is state-certified to provide homemaker services.~~

(11) ~~"Homemaker services" means general household activities that are provided by state-certified agencies to maintain a healthy and safe home environment for eligible persons.~~

~~(17) "Personal care agency" means any agency that meets state and federal requirements and is state-certified to provide personal care services.~~

~~(18) "Personal care services" means services to meet an eligible person's physical requirements and functional needs, when such services do not require the supervision of a nurse.~~

SECTION 4. In Colorado Revised Statutes, 25.5-6-307, **amend** (1) as follows:

25.5-6-307. Services for the elderly, blind, and disabled. (1) Subject to the provisions of this part 3, home- and community-based services for the elderly, blind, and disabled include only the following services:

- (a) Adult day care;
- (b) Alternative care services;
- (c) ~~Electronic monitoring services;~~
- (d) Home modification services;
- (e) ~~Homemaker services;~~
- (f) Nonmedical transportation services;
- (g) ~~Personal care services;~~
- (h) Respite care services;
- (i) Repealed.
- (j) ~~Services provided under the consumer-directed care service model, part 11 of this article;~~
- (k) ~~In-home support services provided pursuant to part 12 of this article.~~

SECTION 5. In Colorado Revised Statutes, **repeal** 25.5-6-310 as follows:

25.5-6-310. Special provisions - personal care services provided by a family.

~~(1) A member of an eligible person's family, other than the person's spouse, may be employed to provide personal care services to such person.~~

~~(2) The maximum reimbursement for the services provided by a member of the person's family per year for each client shall not exceed the equivalent of four hundred forty-four service units per year for a member of the eligible person's family.~~

SECTION 6. In Colorado Revised Statutes, 25.5-6-406, **repeal** (2)(c)(V) and (2)(c)(VII) as follows:

25.5-6-406. Appropriations - reimbursement for services - direct support

professionals - legislative declaration - definitions. (2) (c) The state department shall immediately seek a six and one-half percent increase in the reimbursement rate for the following services delivered through the home- and community-based services for persons with developmental disabilities, supported living services, and children's extensive supports waivers:

(V) ~~Homemaker basic;~~

(VII) ~~Personal care;~~

SECTION 7. In Colorado Revised Statutes, 25.5-6-606, **amend** (1) as follows:

25.5-6-606. Implementation of program for persons with mental health disorders authorized - federal waiver - duties of the department of health care policy and financing and the department of human services - rules. (1) The state department is 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 health disorders. The program must 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 rules to the extent such eligibility criteria and services are authorized or required by federal waiver. ~~The program must include services provided under the consumer-directed care service model, part 11 of this article 6.~~

SECTION 8. In Colorado Revised Statutes, 25.5-6-703, **repeal** (6) as follows:

25.5-6-703. Definitions. As used in this part 7, unless the context otherwise requires:

(6) ~~"Personal care services" means assistance with eating, bathing, dressing, personal hygiene, and activities of daily living. Personal care services include assistance with the preparation of meals, but not the cost of the meals, and homemaker services that are necessary for the health and safety of the recipient.~~

SECTION 9. In Colorado Revised Statutes, 25.5-6-704, **repeal** (2)(c) and (2)(k) as follows:

25.5-6-704. Implementation of home- and community-based services program for persons with brain injury authorized - federal waiver - duties of the department - rules. (2) Services for eligible persons may be established in department rules to the extent authorized or required by federal waiver, but must include at least the following:

(c) ~~Personal care services;~~

(k) ~~Services provided under the consumer-directed care service model, part 11 of this article.~~

SECTION 10. In Colorado Revised Statutes, 25.5-6-1101, **amend** (4) and (6) as follows:

25.5-6-1101. Definitions. As used in this part 11, unless the context otherwise requires:

(4) "Eligible person" means a person who is eligible to receive services ~~under parts 3 to 12 of this article or any other home- and community-based service waiver for which the state department has federal waiver authority~~ PURSUANT TO PART 19 OF THIS ARTICLE 6.

(6) "Qualified services" means services provided under the eligible person's ~~applicable waiver program and attendant support~~ COMMUNITY FIRST CHOICE OPTION.

SECTION 11. In Colorado Revised Statutes, 25.5-6-1102, **amend** (2)(a); **amend as it will become effective July 1, 2024**, (3); and **repeal** (8) as follows:

25.5-6-1102. Service model - consumer-directed care. (2) In order to qualify and to remain eligible for the consumer-directed care service model authorized by this section, a person shall:

(a) Be eligible for ~~home- and community-based services under parts 3 to 12 of this article or any other home- and community-based service waiver for which the state department has federal waiver authority~~ COMMUNITY FIRST CHOICE SERVICES PURSUANT TO PART 19 OF THIS ARTICLE 6;

(3) The ~~voucher~~ ALLOCATION issued to the eligible person pursuant to this part 11 must be based on the eligible person's historical utilization of home- and community-based services pursuant to parts 3 to 12 of this article 6, the case management agency's care plan, or any approved resource allocation process as determined by the state department and the department of human services for the eligible person.

(8) Section 25.5-6-310 does not apply to a family member of an eligible person ~~who provides consumer-directed care services to the eligible person pursuant to this part 11.~~

SECTION 12. In Colorado Revised Statutes, **repeal** 25.5-6-1201 as follows:

25.5-6-1201. Legislative declaration. (1) ~~The general assembly finds that there may be a more effective way to deliver home- and community-based services to the elderly, blind, and disabled; to disabled children; and to persons with spinal cord injuries, that allows for more self-direction in their care and a cost savings to the state. The general assembly also finds that every person that is currently receiving home- and community-based services does not need the same level of supervision and care from a licensed health-care professional in order to meet his or her care needs and remain living in the community. The general assembly, therefore, declares that it is beneficial to the elderly, blind, and disabled clients of home- and community-based services, to clients of the disabled children care program, and to clients enrolled in the spinal cord injury waiver pilot program, for the state department to develop a service that would allow these people to receive in-home support.~~

(2) ~~The general assembly further finds that allowing clients more self-direction~~

~~in their care is a more effective way to deliver home- and community-based services to clients with major mental health disorders and brain injuries, as well as to clients receiving home- and community-based supportive living services and children's extensive support services. Therefore, the general assembly declares that it is appropriate for the state department to develop a plan for expanding the availability of in-home support services to include these clients:~~

SECTION 13. In Colorado Revised Statutes, 25.5-6-1202, **amend** (3)(a) and (4) as follows:

25.5-6-1202. Definitions. As used in this part 12, unless the context otherwise requires:

(3) "Eligible person" means any person who:

(a) Is enrolled in a ~~home- and community-based services waiver program pursuant to this article 6 for which in-home support services are authorized pursuant to state and federal law~~ COMMUNITY FIRST CHOICE SERVICES PURSUANT TO PART 19 OF THIS ARTICLE 6;

(4) "Health maintenance activities" means ~~health-related tasks as defined in rule by the state board and include, but are not limited to, catheter irrigation; administration of medication; enemas; and suppositories; and wound care~~ ROUTINE AND REPETITIVE HEALTH-RELATED TASKS FURNISHED TO A MEMBER IN THE COMMUNITY OR IN THE MEMBER'S HOME THAT IS NECESSARY FOR THE HEALTH AND NORMAL BODILY FUNCTIONING THAT A PERSON WITH A DISABILITY IS PHYSICALLY UNABLE TO CARRY OUT. "HEALTH MAINTENANCE ACTIVITIES" INCLUDE SKILLED TASKS TYPICALLY PERFORMED BY A CERTIFIED NURSING ASSISTANT OR A LICENSED NURSE THAT DOES NOT REQUIRE THE CLINICAL ASSESSMENT AND JUDGMENT OF A LICENSED NURSE.

SECTION 14. In Colorado Revised Statutes, 25.5-6-1203, **amend** (1); and **repeal** (6) as follows:

25.5-6-1203. In-home support services - eligibility - licensure exclusion - in-home support service agency responsibilities - rules. (1) The state department shall offer in-home support services as an option for eligible persons who receive ~~home- and community-based~~ COMMUNITY FIRST CHOICE services. In-home support services ~~shall~~ MUST be provided to eligible persons. The state department shall seek any federal authorization that may be necessary to implement this part 12. The state department shall design and implement in-home support services with input from consumers of ~~home- and community-based~~ COMMUNITY FIRST CHOICE services and independent living centers ~~and home- and community-based service providers.~~

(6) ~~Section 25.5-6-310 does not apply to a family member of an eligible person who provides in-home support services to the eligible person pursuant to this part 12. The state board shall promulgate rules, as necessary, to establish limits on reimbursement to family members.~~

SECTION 15. In Colorado Revised Statutes, **repeal** 25.5-6-1206 as follows:

~~**25.5-6-1206. Report.** The state department shall report annually to the joint budget committee of the general assembly and the health and human services committee of the senate, or any successor committee, and the health and environment committee of the house of representatives, or any successor committee, on the implementation of in-home support services. At a minimum the report shall include the cost-effectiveness of providing in-home support services to the elderly, blind, and disabled and to eligible disabled children, the number of persons receiving such services, and any strategies and resources that are available or that are necessary to assist more persons in staying in their homes through the use of in-home support services.~~

SECTION 16. In Colorado Revised Statutes, 25.5-6-1601, **amend** (2) and (4) as follows:

25.5-6-1601. Definitions. As used in this part 16, unless the context otherwise requires:

(2) "Health maintenance activities" has the meaning set forth in section ~~25.5-6-1202(4)~~ 25.5-6-1901 (2).

(4) "Homemaker services" has the meaning ~~as~~ set forth in section ~~25.5-6-303~~ ~~(11)~~ 25.5-6-1901 (3).

SECTION 17. In Colorado Revised Statutes, 24-75-1104.5, **amend** (3); and **repeal** (1.7)(k) as follows:

24-75-1104.5. Use of settlement money - programs. (1.7) Except as otherwise provided in subsections (1.3), (1.8), and (5) of this section, and except that disputed payments received by the state in the 2015-16 fiscal year or in any year thereafter are excluded from the calculation of allocations pursuant to this subsection (1.7), for the 2016-17 fiscal year and for each fiscal year thereafter, the following programs, services, and funds receive the following specified percentages of the total amount of settlement money received by the state in the preceding fiscal year:

(k) ~~The Colorado autism treatment fund created pursuant to section 25.5-6-805, C.R.S., shall receive two percent of the settlement moneys to pay a portion of the state's share of the annual funding required by the "Home- and Community-based Services for Children with Autism Act", part 8 of article 6 of title 25.5, C.R.S.;~~

(3) Notwithstanding subsection (1.7) of this section, for purposes of sections 23-20-136 (3.5)(a), 25-4-1401 (6), 25-4-1405 (2), 25-23-104 (2), ~~25.5-6-805 (2)~~, 25.5-8-105 (3), 26.5-3-507 (2)(e), 26-6.8-102 (2)(d), and 28-5-709 (2)(a), settlement money received and allocated by the state pursuant to subsection (1.7) of this section during the same fiscal year is deemed to be money received for or during the preceding fiscal year.

SECTION 18. In Colorado Revised Statutes, **repeal** part 8 of article 6 of title 25.5.

SECTION 19. Effective date. This act takes effect upon passage; except that sections 2 to 17 of this act take effect July 1, 2025.

SECTION 20. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 25, 2023