

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0433.01 Richard Sweetman x4333

SENATE BILL 19-238

SENATE SPONSORSHIP

Danielson and Moreno,

HOUSE SPONSORSHIP

Kennedy and Duran,

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING HOME CARE _____ AGENCIES, AND, IN CONNECTION**
102 **THEREWITH, REQUIRING CERTAIN AGENCIES TO EXPEND A**
103 **MINIMUM PERCENTAGE OF THEIR REIMBURSEMENTS FROM THE**
104 **"COLORADO MEDICAL ASSISTANCE ACT" AS WAGES FOR**
105 **EMPLOYEES WHO PROVIDE DIRECT CARE AND REQUIRING THE**
106 **DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO**
107 **ENFORCE TRAINING REQUIREMENTS AND REQUEST AN INCREASE**
108 **TO THE REIMBURSEMENT RATE FOR CERTAIN SERVICES**
109 **PROVIDED UNDER THE "COLORADO MEDICAL ASSISTANCE**
110 **ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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>.)

The bill requires that, on and after July 1, 2019, of the total reimbursement that a home care service agency (agency) receives each fiscal year pursuant to the "Colorado Medical Assistance Act" for the provision of personal care services, homemaker services, and respite care services (covered services), the agency shall expend at least 77% as wages for nonadministrative employees who provide the services. Each agency shall expend at least such amount on a per-employee basis, with each such employee receiving at least 77% of each reimbursement that is associated with covered services provided by the employee.

The bill also directs the department of health care policy and financing (department) to seek an 8.1% increase in the federal reimbursement rate for the relevant service categories and requires home care service agencies to apply the entire amount of that increase to employee compensation during the 2019-20 fiscal year. Agencies are required to notify employees in writing about this increase.

On and after December 31, 2021, an agency that is found to have paid an employee less than the amount due to the employee shall be required to pay the remaining amount owed to the employee and may be subject to a civil penalty, assessed by the department, of up to \$1,000.

Each agency is required to report the following information annually to the department for each nonadministrative employee who provided covered services to home care consumers during the preceding fiscal year:

- ! The total amount of money the agency received as reimbursement for the provision of covered services by that employee in the preceding fiscal year;
- ! The total amount of money the agency provided as wages to that employee for the provision of covered services during the preceding fiscal year; and
- ! The employee's full name, home address, mailing address, telephone number, and e-mail address and the most recent date upon which the employee completed certain training or a skills validation test.

On or before April 1, 2021, and on or before April 1 of each year thereafter, the department or a designee of the executive director of the department is required to make the reported information publicly available on a website. The department shall not disclose an employee's home address, mailing address, telephone number, or e-mail address if the employee requests that the department not disclose the information and the employee indicates to the department that the employee is:

1 (4) "HOMEMAKER SERVICES" HAS THE MEANING SET FORTH IN
2 SECTION 25.5-6-303 (11).

3 (5) "IN-HOME SUPPORT SERVICE AGENCY" HAS THE MEANING SET
4 FORTH IN SECTION 25.5-6-1202 (5).

5 (6) "IN-HOME SUPPORT SERVICES" HAS THE MEANING SET FORTH
6 IN SECTION 25.5-6-1202 (6); EXCEPT THAT THE TERM DOES NOT INCLUDE
7 HEALTH MAINTENANCE ACTIVITIES.

8 (7) "PERSONAL CARE SERVICES" HAS THE MEANING SET FORTH IN
9 SECTION 25-27.5-102 (6).

10
11 **25.5-6-1602. State department to request increase in**

12 **reimbursement rate for certain services.** (1) NOT MORE THAN NINETY
13 DAYS AFTER THE EFFECTIVE DATE OF THIS PART 16, THE STATE
14 DEPARTMENT SHALL REQUEST FROM THE FEDERAL GOVERNMENT AN
15 INCREASE OF EIGHT AND ONE-TENTH PERCENT IN THE REIMBURSEMENT
16 RATE FOR THE FOLLOWING SERVICES DELIVERED TO CONSUMERS THROUGH
17 THE HOME- AND COMMUNITY-BASED SERVICES WAIVERS:

- 18 (a) HOMEMAKER;
- 19 (b) HOMEMAKER ENHANCED; AND
- 20 (c) PERSONAL CARE.

21 (2) FOR THE 2019-20 FISCAL YEAR, EACH HOME CARE AGENCY
22 SHALL PAY ONE HUNDRED PERCENT OF THE FUNDING THAT RESULTS FROM
23 THE RATE INCREASE DESCRIBED IN SUBSECTION (1) OF THIS SECTION AS
24 COMPENSATION FOR EMPLOYEES WHO PROVIDE PERSONAL CARE SERVICES,
25 HOMEMAKER SERVICES, AND IN-HOME SUPPORT SERVICES TO CONSUMERS.
26 EACH HOME CARE AGENCY SHALL EXPEND THIS FUNDING ON A
27 PER-EMPLOYEE BASIS, WITH EACH SUCH EMPLOYEE RECEIVING ONE

1 HUNDRED PERCENT OF THE RATE INCREASE THAT IS ASSOCIATED WITH
2 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR IN-HOME SUPPORT
3 SERVICES PROVIDED BY THE EMPLOYEE AS COMPENSATION IN ADDITION TO
4 THE RATE OF COMPENSATION THAT THE EMPLOYEE WAS RECEIVING AS OF
5 JUNE 30, 2019. FOR AN EMPLOYEE WHO WAS HIRED AFTER JUNE 30, 2019,
6 THE HOME CARE AGENCY SHALL USE THE LOWEST COMPENSATION PAID TO
7 AN EMPLOYEE OF SIMILAR FUNCTIONS AND DUTIES AS OF JUNE 30, 2019,
8 AS THE BASE COMPENSATION TO WHICH THE INCREASE IS APPLIED.

9 (3) WITHIN SIXTY DAYS AFTER THE REQUEST DESCRIBED IN
10 SUBSECTION (1) OF THIS SECTION IS APPROVED, EACH HOME CARE AGENCY
11 SHALL PROVIDE WRITTEN NOTIFICATION TO EACH NONADMINISTRATIVE
12 EMPLOYEE OF THE AGENCY WHO PROVIDES PERSONAL CARE SERVICES,
13 HOMEMAKER SERVICES, OR IN-HOME SUPPORT SERVICES OF THE
14 COMPENSATION THEY ARE ENTITLED TO PURSUANT TO SUBSECTION (2) OF
15 THIS SECTION.

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17 **25.5-6-1603. Minimum wage - wage pass-through requirement**
18 **for certain home care agencies - applicability - reports - recovery.**

19 (1) THIS SECTION APPLIES TO EACH HOME CARE _____ AGENCY THAT
20 RECEIVES REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL
21 ASSISTANCE ACT" FOR THE PROVISION OF PERSONAL CARE SERVICES,
22 HOMEMAKER SERVICES, OR IN-HOME SUPPORT SERVICES.

23 (2) ON AND AFTER JULY 1, 2020, THE HOURLY MINIMUM WAGE FOR
24 PERSONS WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES,
25 OR IN-HOME SUPPORT SERVICES FOR WHICH A HOME CARE AGENCY MAY
26 RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL
27 ASSISTANCE ACT" IS TWELVE DOLLARS AND FORTY-ONE CENTS PER HOUR.

1 (3) FOR ANY INCREASE TO THE REIMBURSEMENT RATES FOR
2 PERSONAL CARE SERVICES, HOMEMAKER SERVICES, OR IN-HOME SUPPORT
3 SERVICES THAT TAKES EFFECT DURING THE 2020-21 FISCAL YEAR, HOME
4 CARE AGENCIES SHALL USE EIGHTY-FIVE PERCENT OF THE FUNDING
5 RESULTING FROM THE INCREASE TO INCREASE COMPENSATION FOR
6 NONADMINISTRATIVE EMPLOYEES ABOVE THE RATE OF COMPENSATION
7 THAT NONADMINISTRATIVE EMPLOYEES ARE RECEIVING AS OF JUNE 30,
8 2019. HOME CARE AGENCIES MAY USE ANY REMAINING FUNDING
9 RESULTING FROM THE REIMBURSEMENT RATE INCREASE FOR GENERAL AND
10 ADMINISTRATIVE EXPENSES, SUCH AS CHIEF EXECUTIVE OFFICER SALARIES,
11 HUMAN RESOURCES, INFORMATION TECHNOLOGY, OVERSIGHT, BUSINESS
12 MANAGEMENT, GENERAL RECORD KEEPING, BUDGETING AND FINANCE,
13 AND OTHER ACTIVITIES NOT IDENTIFIABLE TO A SINGLE PROGRAM.

14 (4) (a) EACH HOME CARE AGENCY SHALL TRACK AND REPORT HOW
15 IT USED ANY FUNDING RESULTING FROM THE INCREASE IN THE
16 REIMBURSEMENT RATE PURSUANT TO SECTION 25.5-6-1602 USING A
17 REPORTING TOOL DEVELOPED BY THE STATE DEPARTMENT. ON OR BEFORE
18 DECEMBER 31, 2020, EACH HOME CARE AGENCY SHALL SUBMIT THE
19 REPORT TO THE STATE DEPARTMENT DEMONSTRATING HOW THE FUNDING
20 WAS USED TO INCREASE COMPENSATION FOR THE 2019-20 FISCAL YEAR.
21 ON OR BEFORE DECEMBER 31, 2021, EACH HOME CARE AGENCY SHALL
22 REPORT TO THE STATE DEPARTMENT HOW THE FUNDING WAS USED TO
23 INCREASE OR, IN THE EVENT THAT THERE IS NO REIMBURSEMENT RATE
24 INCREASE, MAINTAIN EACH EMPLOYEE'S COMPENSATION FOR THE 2020-21
25 FISCAL YEAR. THE STATE DEPARTMENT HAS ONGOING DISCRETION TO
26 REQUEST INFORMATION FROM A HOME CARE AGENCY DEMONSTRATING
27 HOW IT MAINTAINED INCREASES IN COMPENSATION FOR

1 NONADMINISTRATIVE EMPLOYEES BEYOND THE REPORTING PERIOD.

2 (b) EACH HOME CARE AGENCY SHALL MAINTAIN ALL BOOKS,
3 DOCUMENTS, PAPERS, ACCOUNTING RECORDS, AND OTHER EVIDENCE
4 REQUIRED TO SUPPORT THE REPORTING OF PAYROLL INFORMATION FOR
5 INCREASED COMPENSATION TO NONADMINISTRATIVE EMPLOYEES
6 PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION FOR AT LEAST THREE
7 YEARS FROM THE REPORTING DEADLINES DESCRIBED IN SUBSECTION (4)(a)
8 OF THIS SECTION FOR EACH RESPECTIVE FISCAL YEAR. EACH HOME CARE
9 AGENCY SHALL MAKE THE INFORMATION AND MATERIALS AVAILABLE FOR
10 INSPECTION BY THE STATE DEPARTMENT OR ITS DESIGNEES AT ALL
11 REASONABLE TIMES.

12 (5) (a) THE STATE DEPARTMENT MAY RECOUP PART OR ALL OF THE
13 FUNDING RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE
14 DESCRIBED IN SECTION 25.5-6-1602 IF THE STATE DEPARTMENT
15 DETERMINES THAT A HOME CARE AGENCY:

16 (I) DID NOT USE ONE HUNDRED PERCENT OF ANY FUNDING
17 RESULTING FROM THE RATE INCREASE TO INCREASE COMPENSATION FOR
18 NONADMINISTRATIVE EMPLOYEES, AS REQUIRED BY SECTION 25.5-6-1602
19 (2);

20 (II) DID NOT USE EIGHTY-FIVE PERCENT OF THE FUNDING
21 RESULTING FROM THE RATE INCREASE TO INCREASE COMPENSATION FOR
22 NONADMINISTRATIVE EMPLOYEES, AS REQUIRED BY SUBSECTION (3) OF
23 THIS SECTION; OR

24 (III) FAILED TO TRACK AND REPORT HOW IT USED ANY FUNDS
25 RESULTING FROM THE INCREASE IN THE REIMBURSEMENT RATE AS
26 REQUIRED BY SUBSECTION (4) OF THIS SECTION.

27 (b) IF THE STATE DEPARTMENT MAKES A DETERMINATION

1 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION, THE STATE
2 DEPARTMENT SHALL NOTIFY THE HOME CARE AGENCY IN WRITING OF THE
3 STATE DEPARTMENT'S INTENTION TO RECOUP FUNDS PURSUANT TO
4 SUBSECTION (5)(a) OF THIS SECTION. A HOME CARE AGENCY HAS
5 FORTY-FIVE DAYS AFTER RECEIVING SUCH NOTICE TO:

6 (I) CHALLENGE THE DETERMINATION OF THE STATE DEPARTMENT;

7 (II) PROVIDE ADDITIONAL INFORMATION TO THE STATE
8 DEPARTMENT DEMONSTRATING COMPLIANCE; OR

9 (III) SUBMIT A PLAN OF CORRECTION TO THE STATE DEPARTMENT.

10 (c) THE STATE DEPARTMENT SHALL NOTIFY A HOME CARE AGENCY
11 IN WRITING OF ITS FINAL DETERMINATION AFTER AFFORDING THE HOME
12 CARE AGENCY THE OPPORTUNITY TO TAKE ONE OF THE ACTIONS SPECIFIED
13 IN SUBSECTION (5)(b) OF THIS SECTION.

14 (d) THE STATE DEPARTMENT SHALL RECOUP FROM A HOME CARE
15 AGENCY ONE HUNDRED PERCENT OF THE FUNDING RESULTING FROM THE
16 INCREASE IN THE REIMBURSEMENT RATE PURSUANT TO SECTION
17 25.5-6-1602 THAT THE HOME CARE AGENCY RECEIVED BUT DID NOT USE
18 FOR COMPENSATION FOR NONADMINISTRATIVE EMPLOYEES IF:

19 (I) THE HOME CARE AGENCY FAILS TO RESPOND TO A NOTICE OF
20 DETERMINATION OF THE STATE DEPARTMENT WITHIN THE TIME PROVIDED
21 IN SUBSECTION (5)(b) OF THIS SECTION;

22 (II) THE HOME CARE AGENCY IS UNABLE TO PROVIDE
23 DOCUMENTATION OF COMPLIANCE; OR

24 (III) THE STATE DEPARTMENT DOES NOT ACCEPT THE PLAN OF
25 CORRECTION SUBMITTED BY THE HOME CARE AGENCY PURSUANT TO
26 SUBSECTION (5)(b)(III) OF THIS SECTION. _____

27 **25.5-6-1604. Training for home care _____ agency employees -**

1 **rules - disclosure of employee information required - exemptions.**

2 (1) ON OR BEFORE JANUARY 1, 2020, THE STATE DEPARTMENT AND THE
3 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, IN CONSULTATION
4 WITH STAKEHOLDERS, SHALL ESTABLISH A PROCESS FOR REVIEWING AND
5 ENFORCING INITIAL AND ONGOING TRAINING REQUIREMENTS FOR PERSONS
6 WHO PROVIDE PERSONAL CARE SERVICES, HOMEMAKER SERVICES, AND
7 IN-HOME SUPPORT SERVICES FOR WHICH A HOME CARE AGENCY MAY
8 RECEIVE REIMBURSEMENT PURSUANT TO THE "COLORADO MEDICAL
9 ASSISTANCE ACT", AS SUCH REQUIREMENTS ARE SET FORTH IN THIS
10 SECTION AND IN RULES PROMULGATED BY THE STATE BOARD. THE
11 STAKEHOLDERS MUST INCLUDE, BUT ARE NOT LIMITED TO:

- 12 (a) ONE OR MORE CONSUMER ADVOCACY ORGANIZATIONS;
- 13 (b) ONE OR MORE PERSONAL CARE WORKERS;
- 14 (c) ONE OR MORE WORKER ORGANIZATIONS;
- 15 (d) ONE OR MORE HOME CARE AGENCIES;
- 16 (e) ONE OR MORE DISABILITY ADVOCACY ORGANIZATIONS;
- 17 (f) ONE OR MORE SENIOR ADVOCACY ORGANIZATIONS; AND
- 18 (g) ONE OR MORE CHILDREN'S ADVOCACY ORGANIZATIONS.

19 (2) THE STAKEHOLDERS WITH WHOM THE DEPARTMENTS CONSULT
20 PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL DISCUSS AND
21 ADVISE THE DEPARTMENTS CONCERNING THE MANNER IN WHICH
22 NONADMINISTRATIVE EMPLOYEES WILL BE NOTIFIED OF THE
23 COMPENSATION INCREASES AND MINIMUM WAGE DESCRIBED IN SECTIONS
24 25.5-6-1602 AND 25.5-6-1603. _____

25 **25.5-6-1605. Exemptions.** (1) NOTWITHSTANDING ANY PROVISION
26 OF THIS PART 16 TO THE CONTRARY, THIS PART 16 DOES NOT APPLY TO
27 SERVICES PROVIDED UNDER:

1 (a) THE CONSUMER-DIRECTED ATTENDANT SUPPORT SERVICES
2 MODEL; OR

3 (b) THE PEDIATRIC CARE BENEFIT.

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