

CHAPTER 410

HEALTH CARE POLICY AND FINANCING

SENATE BILL 22-236

BY SENATOR(S) Hansen and Rankin, Zenzinger, Bridges, Buckner, Coram, Donovan, Fields, Gardner, Ginal, Gonzales, Hinrichsen, Hisey, Kolker, Lee, Lundeen, Moreno, Pettersen, Priola, Rodriguez, Smallwood, Woodward;
also REPRESENTATIVE(S) McCluskie and Ransom, Herod, Amabile, Bennett, Bird, Caraveo, Cutter, Exum, Gonzales-Gutierrez, Hooton, Jodeh, Kipp, Lindsay, Lontine, McCormick, Mullica, Ortiz, Pico, Sirota, Soper, Young.

AN ACT

CONCERNING THE REVIEW OF MEDICAID PROVIDER RATES.

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

SECTION 1. In Colorado Revised Statutes, **amend with relocated provisions 25.5-4-401.5** as follows:

25.5-4-401.5. Review of provider rates - advisory committee - recommendations - repeal. (1) (a) On or before September 1, ~~2015~~ 2023, the state department shall establish a schedule for an annual review of provider rates paid under the "Colorado Medical Assistance Act" so that each provider rate is reviewed at least every ~~five~~ **THREE** years and shall provide the schedule to the ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SUBSECTION (3) OF THIS SECTION AND THE joint budget committee. If the state department receives any petitions or proposals for provider rates to be reviewed or adjusted, the state department ~~must~~ **SHALL** forward a copy of the petition or proposal to the advisory committee AND THE JOINT BUDGET COMMITTEE.

(b) The state department shall review each of the provider rates scheduled for review pursuant to the process described in this section. ~~Additionally, The advisory committee established pursuant to subsection (3) of this section, by a majority vote, or the joint budget committee MAY, by a majority vote, may direct that the state department conduct a review of a provider rate that is not scheduled for review during that year. The advisory committee or the joint budget committee shall notify the state department OF THE REQUEST FOR AN OUT-OF-CYCLE REVIEW by December 1 of the year prior to the year in which the out-of-cycle review will take place. of the request for an out-of-cycle review.~~ IF THE STATE DEPARTMENT DETERMINES THAT

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.

THE REQUEST FOR AN OUT-OF-CYCLE REVIEW CANNOT BE CONDUCTED, THE STATE DEPARTMENT SHALL PROVIDE WRITTEN NOTIFICATION TO THE ADVISORY COMMITTEE AND THE JOINT BUDGET COMMITTEE WITHIN THIRTY DAYS AFTER THE REQUEST FOR AN OUT-OF-CYCLE REVIEW. THE NOTIFICATION MUST INCLUDE A DESCRIPTION OF THE REASONS THE OUT-OF-CYCLE REVIEW CANNOT BE CONDUCTED.

(c) (I) The state department may propose to exclude rates from the schedule established pursuant to ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION if those rates are adjusted on a periodic basis as a result of other state statute or federal law or regulation. The state department shall include the proposed list of exclusions with the schedule established pursuant to ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION.

(II) The advisory committee or the joint budget committee may, by a majority vote, direct the state department to include any rate that the state department has proposed to exclude from the schedule.

(2) (a) In the first phase of the review process, the state department shall conduct an analysis of the access, service, quality, and utilization of each service subject to a provider rate review. The state department shall compare the rates paid with available benchmarks, including medicare rates and usual and customary rates paid by private pay parties, and use qualitative tools to assess whether payments are sufficient to allow for provider retention and client access and to support appropriate reimbursement of high-value services. ~~Notwithstanding the provisions of section 24-1-136 (11)(a)(I), on or before May 1, 2016, and each May 1 thereafter, the state department shall provide a report on the analysis required by this paragraph (a) to the advisory committee, the joint budget committee, and any stakeholder groups identified by the state department whose rates are reviewed.~~

(b) Following the ~~report~~ ANALYSIS required by ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, the state department shall work with the advisory committee and any stakeholders identified by the state department OR THE ADVISORY COMMITTEE to review the ~~report~~ ANALYSIS and develop strategies for responding to the findings, including any nonfiscal approaches or rebalancing of rates AND STRATEGIES TO ADDRESS CAPACITY ISSUES THAT MAY EXIST IN CERTAIN REGIONS OF THE STATE.

(c) Following the review required by ~~paragraph (b) of this subsection (2)~~ SUBSECTION (2)(b) OF THIS SECTION, the state department shall work with the office of state planning and budgeting to determine achievable goals and executive branch priorities within the statewide budget.

(d) (I) ~~Notwithstanding the provisions of section 24-1-136 (11)(a)(I), on or before November 1, 2016~~ 2025, and each November 1 thereafter, the state department shall submit a written report to the joint budget committee and the advisory committee ~~containing its~~ ON THE ANALYSIS REQUIRED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION, A DESCRIPTION OF THE INFORMATION DISCUSSED DURING THE QUARTERLY PUBLIC MEETING CONDUCTED PURSUANT TO SUBSECTION (2)(e) OF THIS SECTION, AND THE STATE DEPARTMENT'S recommendations on all of the provider rates reviewed pursuant to this section and all of the data relied upon by the state department in making ~~its~~ THE recommendations. The joint budget committee shall

consider the recommendations in formulating the STATE DEPARTMENT'S budget. ~~for the state department.~~

(II) THE STATE DEPARTMENT SHALL SUBMIT, AS PART OF THE REPORT REQUIRED PURSUANT TO THIS SUBSECTION (2)(d), A DESCRIPTION OF THE INFORMATION DISCUSSED DURING THE QUARTERLY PUBLIC MEETING; THE STATE DEPARTMENT'S RESPONSE TO THE PUBLIC COMMENTS RECEIVED FROM PROVIDERS, RECIPIENTS, AND OTHER INTERESTED PARTIES; AND AN EXPLANATION OF HOW THE PUBLIC COMMENTS INFORMED THE PROVIDER RATE REVIEW PROCESS AND THE RECOMMENDATIONS CONCERNING PROVIDER RATES.

(e) THE STATE DEPARTMENT SHALL CONDUCT A PUBLIC MEETING AT LEAST QUARTERLY TO INFORM THE STATE DEPARTMENT'S REVIEW OF PROVIDER RATES PAID UNDER THE "COLORADO MEDICAL ASSISTANCE ACT". THE STATE DEPARTMENT SHALL INVITE TO THE PUBLIC MEETING PROVIDERS, RECIPIENTS, AND OTHER INTERESTED PARTIES DIRECTLY AFFECTED BY THE SERVICES SCHEDULED TO BE REVIEWED AT THE PUBLIC MEETING. AT A MINIMUM, EACH PUBLIC MEETING MUST CONSIST OF, BUT IS NOT LIMITED TO:

(I) A DISCUSSION OF THE ANALYSIS AND REVIEW PERFORMED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION; AND

(II) PUBLIC COMMENTS FROM PROVIDERS, RECIPIENTS, AND OTHER INTERESTED PARTIES CONCERNING:

(A) THE ANALYSIS AND REVIEW PERFORMED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION; AND

(B) RECOMMENDED CHANGES TO THE PROVIDER RATE REVIEW PROCESS THAT MAY ENHANCE OR IMPROVE THE PROCESS.

(3) (a) There is created in the state department the medicaid provider rate review advisory committee, referred to in this section as the "advisory committee", to assist the state department in the review of the provider rate reimbursements under the "Colorado Medical Assistance Act". The advisory committee shall:

(I) Review the schedule for annual review of provider rates established by the state department pursuant to ~~paragraph (a) of subsection (1)~~ SUBSECTION (1)(a) of this section and recommend any changes to the schedule;

(II) Review the ANALYSIS PERFORMED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION AND THE reports prepared by the state department on its analysis of provider rates pursuant to ~~paragraph (a) of subsection (2)~~ SUBSECTION (2)(d) of this section and provide comments and feedback to the state department AND THE JOINT BUDGET COMMITTEE on the reports;

~~(III) With the state department, conduct public meetings to allow providers, recipients, and other interested parties an opportunity to comment on the report required by paragraph (a) of subsection (2)~~ REVIEW THE COMMENTS RECEIVED FROM PROVIDERS, RECIPIENTS, AND OTHER INTERESTED PARTIES AND THE STATE DEPARTMENT'S RESPONSE TO THE COMMENTS REQUIRED PURSUANT TO SUBSECTION

(2)(d)(II) of this section;

(IV) Review proposals or petitions RECEIVED BY THE ADVISORY COMMITTEE for provider rates to be reviewed or adjusted; ~~received by the advisory committee;~~

(V) Determine whether any provider rates not scheduled for review during the next calendar year should be reviewed during that calendar year;

(VI) Recommend to the state department and to the joint budget committee any changes to the process of reviewing provider rates, including measures to increase access to the process, such as by providing for electronic comments by providers and the public; and

(VII) Provide other assistance to the state department AND THE JOINT BUDGET COMMITTEE as requested by the state department or the joint budget committee.

(b) (I) The advisory committee consists of the following ~~twenty-four~~ SEVEN members:

(A) THREE MEMBERS APPOINTED BY THE GOVERNOR;

(B) TWO MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE, OR THE PRESIDENT'S DESIGNEE; AND

(C) TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, OR THE SPEAKER'S DESIGNEE.

(II) EACH MEMBER APPOINTED TO THE ADVISORY COMMITTEE MUST HAVE PROVEN EXPERTISE RELATED TO THE MEDICAL ASSISTANCE PROGRAM IN ONE OR MORE OF THE FOLLOWING AREAS:

(A) SERVICE DELIVERY OR CASE MANAGEMENT SERVICES PROVIDED TO ONE OR MORE ELIGIBLE POPULATIONS;

(B) PROVIDER FINANCE OR BUDGET;

(C) SERVICE CAPACITY ANALYSIS;

(D) BUSINESS PROCESSES;

(E) CLAIMS FILING OR PROCESSING; OR

(F) IMPLEMENTATION OF STATE AND FEDERAL MEDICAID RULES, REGULATIONS, AND GUIDANCE.

(III) THE STATE DEPARTMENT MAY MAKE RECOMMENDATIONS TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES CONCERNING THE QUALIFICATIONS OF MEMBERS APPOINTED TO THE ADVISORY COMMITTEE.

~~(I) The following members appointed by the president of the senate:~~

- ~~(A) A recipient with a disability or a representative of recipients with a disability;~~
- ~~(B) A representative of hospitals providing services to recipients recommended by a statewide association of hospitals;~~
- ~~(C) A representative of providers of transportation;~~
- ~~(D) A representative of rural health centers;~~
- ~~(E) A representative of home health providers recommended by a statewide organization of home health providers; and~~
- ~~(F) A representative of providers of durable medical equipment recommended by a statewide association of durable medical equipment providers;~~
- ~~(H) The following members appointed by the minority leader of the senate:~~
 - ~~(A) A representative of providers of behavioral health-care services;~~
 - ~~(B) A representative of primary care physicians who see recipients recommended by a statewide association of primary care physicians;~~
 - ~~(C) A representative of dentists providing services to recipients recommended by a statewide association of dentists;~~
 - ~~(D) A representative of federally qualified health centers;~~
 - ~~(E) A representative of nonmedical home- and community-based service providers; and~~
 - ~~(F) A representative of providers serving recipients with intellectual and developmental disabilities;~~
- ~~(H) The following members appointed by the speaker of the house of representatives:~~
 - ~~(A) A representative of child recipients with a disability;~~
 - ~~(B) A representative of specialty care physicians not employed by a hospital who see recipients recommended by a statewide association whose members include at least one-third of the doctors of medicine or osteopathy licensed by the state;~~
 - ~~(C) A representative of providers of alternative care facilities recommended by a statewide association of alternative care facilities;~~
 - ~~(D) *[Editor's note: This version of subsection (3)(b)(H)(D) is effective until July 1, 2024.]* A representative of single entry point agencies;~~
 - ~~(D) *[Editor's note: This version of subsection (3)(b)(H)(D) is effective July 1, 2024.]* A representative of case management agencies;~~

~~(E) A representative of ambulatory surgical centers;~~

~~(F) A representative of hospice providers recommended by a statewide association of hospice and palliative care providers; and~~

~~(IV) The following members appointed by the minority leader of the house of representatives:~~

~~(A) A representative of substance use disorder providers recommended by a statewide association of substance use disorder providers;~~

~~(B) A representative of facility-based physicians who see recipients. For purposes of this sub-subparagraph (B), "facility-based physicians" include anesthesiologists, emergency room physicians, neonatologists, pathologists, and radiologists.~~

~~(C) A representative of pharmacists providing services to recipients;~~

~~(D) A representative of managed care health plans;~~

~~(E) A representative of advanced practice nurses recommended by a statewide association of nurses; and~~

~~(F) A representative of physical therapists or occupational therapists recommended by a statewide association representing occupational or physical therapists.~~

(c) The appointing authorities shall make ~~their~~ initial appointments to the advisory committee no later than ~~August 1, 2015~~ JANUARY 1, 2023. In making appointments to the advisory committee, the appointing authorities shall make a concerted effort to include members of diverse political, racial, cultural, income, and ability groups and members from urban and rural areas.

(d) Each member of the advisory committee serves at the pleasure of the official who appointed the member. Each member of the advisory committee serves a four-year term and may be reappointed.

(e) The members of the advisory committee serve without compensation and without reimbursement for expenses.

(f) At the first meeting of the advisory committee, to be held on or after ~~September 1, 2015~~ MARCH 1, 2023, the members shall elect a chair and vice-chair from among the members.

(g) The advisory committee shall meet at least once every quarter. The chair may call ~~such~~ additional meetings as may be necessary for the advisory committee to complete its duties.

(h) The advisory committee shall develop bylaws and procedures to govern its operations.

(i) ON OR BEFORE DECEMBER 1, 2023, AND EACH DECEMBER 1 THEREAFTER, THE

ADVISORY COMMITTEE SHALL PRESENT TO THE JOINT BUDGET COMMITTEE AN OVERVIEW OF THE PROVIDER RATE REVIEW PROCESS, A SUMMARY OF THE PROVIDER RATES THAT WERE REVIEWED, AND THE STRATEGIES FOR RESPONDING TO THE FINDINGS OF THE PROVIDER RATE REVIEW, INCLUDING ANY FISCAL OR NONFISCAL APPROACHES OR REBALANCING OF RATES, ANY ADVISORY COMMITTEE RECOMMENDATIONS FOR RATE ADJUSTMENTS MADE TO THE STATE DEPARTMENT, AND ANY RECOMMENDATIONS FOR IMPROVING CAPACITY AND ACCESS TO SERVICES IN REGIONS OF THE STATE WHERE REDUCED CAPACITY RESULTS IN LIMITED ACCESS TO SERVICES.

(j) (I) This subsection (3) is repealed, effective September 1, 2025 2034.

(II) Prior to repeal, the department of regulatory agencies shall conduct a sunset review of the advisory committee pursuant to the provisions of section 2-3-1203. C.R.S.

SECTION 2. In Colorado Revised Statutes, 2-3-1203, **repeal** (16)(a)(I); and **add** (23) as follows:

2-3-1203. Sunset review of advisory committees - legislative declaration - definition - repeal. (16) (a) The following statutory authorizations for the designated advisory committees will repeal on September 1, 2025:

(I) ~~The medicaid provider rate review advisory committee created in section 25.5-4-401.5, C.R.S.;~~

(23) (a) THE FOLLOWING STATUTORY AUTHORIZATIONS FOR THE DESIGNATED ADVISORY COMMITTEES WILL REPEAL ON SEPTEMBER 1, 2034:

(I) THE MEDICAID PROVIDER RATE REVIEW ADVISORY COMMITTEE CREATED IN SECTION 25.5-4-401.5;

(b) THIS SUBSECTION (23) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2036.

SECTION 3. Act subject to petition - effective date. Section 25.5-4-401.5 (3), as enacted in section 1 of this act, takes effect December 1, 2022, section 25.5-4-401.5 (2)(d), as enacted in section 1 of this section, takes effect May 1, 2025, and the remainder of this act takes effect July 1, 2023; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect July 1, 2023, or on the date of the official declaration of the vote thereon by the governor, whichever is later; except that section 25.5-4-401.5 (3), as enacted in section 1 of this act, takes effect December 1, 2022, and section 25.5-4-401.5 (2)(d), as enacted in section 1 of this section, takes effect May 1, 2025.

Approved: June 7, 2022