

CHAPTER 307

SOCIAL SERVICES

SENATE BILL 94-091

BY SENATOR Rizzuto;
also REPRESENTATIVE Anderson.

AN ACT

CONCERNING AMENDMENTS TO STATUTORY PROVISIONS THAT IMPACT THE "COLORADO MEDICAL ASSISTANCE ACT".

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

SECTION 1. Part 3 of article 4 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-301.3. Managed care programs - guaranteed minimum enrollment for recipients who become ineligible for benefits - optional program.

(1) BEGINNING JANUARY 1, 1995, ANY RECIPIENT WHO BECOMES INELIGIBLE TO RECEIVE BENEFITS UNDER THIS ARTICLE AND WHO HAS BEEN ENROLLED IN A MANAGED CARE PROGRAM FOR LESS THAN SIX MONTHS SHALL CONTINUE TO BE ELIGIBLE FOR ENROLLMENT IN SUCH PROGRAM FOR THE MINIMUM ENROLLMENT PERIOD.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "MANAGED CARE PROGRAM" MEANS A HEALTH CARE SERVICE PROGRAM PROVIDED PURSUANT TO A RISK CONTRACT BY A VENDOR THAT IS EITHER A:

(I) HEALTH MAINTENANCE ORGANIZATION QUALIFIED PURSUANT TO SECTION 1301 (d) OF THE FEDERAL "PUBLIC HEALTH SERVICE ACT"; OR

(II) PREPAID HEALTH PLAN QUALIFIED AS A COMMUNITY OR MIGRANT HEALTH CENTER PURSUANT TO SECTION 1903 (m) OF TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT".

(b) "MINIMUM ENROLLMENT PERIOD" MEANS THE PERIOD BEGINNING ON THE FIRST

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

DAY A RECIPIENT IS INITIALLY ENROLLED IN A MANAGED CARE PROGRAM UNDER THIS ARTICLE AND ENDING SIX CALENDAR MONTHS AFTER SUCH DATE.

(c) "RISK CONTRACT" MEANS A CONTRACT WHICH INCLUDES THE POSSIBILITY THAT LOSS MAY BE INCURRED BECAUSE THE COST OF PROVIDING SERVICES MAY EXCEED THE PAYMENTS MADE FOR SERVICES COVERED UNDER THE CONTRACT.

SECTION 2. 26-4-403 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-403. Recoveries - overpayments - penalties - interest - adjustments - liens. (1) (a) (I) Except as provided in section 26-4-403.3, no recipient or ~~his~~ RECIPIENT'S estate shall be liable for the cost or the cost remaining after payment by medicaid, ~~or the cost remaining after payment by medicare, or A private insurance coverage INSURER whether or not medicaid has made payment,~~ of medical benefits authorized by Title XIX of the social security act, by this title, or by rules promulgated by the state board, WHICH BENEFITS ARE rendered to ~~him~~ THE RECIPIENT by a provider of medical services authorized to render such service in the state of Colorado, ~~whether or not that provider is enrolled in the Colorado medicaid program,~~ except those contributions required pursuant to section 26-4-518 (1). HOWEVER, A RECIPIENT MAY ENTER INTO A DOCUMENTED AGREEMENT WITH A VENDOR UNDER WHICH THE RECIPIENT AGREES TO PAY FOR ITEMS OR SERVICES THAT ARE NONREIMBURSABLE UNDER THE MEDICAL ASSISTANCE PROGRAM. UNDER THESE CIRCUMSTANCES, A RECIPIENT IS LIABLE FOR THE COST OF SUCH SERVICES AND ITEMS.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL APPLY REGARDLESS OF WHETHER MEDICAID HAS ACTUALLY REIMBURSED THE PROVIDER AND REGARDLESS OF WHETHER THE PROVIDER IS ENROLLED IN THE COLORADO MEDICAL ASSISTANCE PROGRAM.

(b) ~~nor shall~~ Recipient income applied pursuant to section 26-4-518 (1) SHALL NOT disqualify any recipient, as defined in section 26-2-103 (8), from receiving benefits under this article or public assistance under article 2 of this title. If, at any time during the continuance of medical benefits, the recipient becomes possessed of property having a value in excess of that amount set by law or by the rules and regulations of the state department or receives any increase in income, it is the duty of the recipient to notify the county department thereof, and the county department may, after investigation, either revoke such medical benefits or alter the amount thereof, as the circumstances may require.

(c) Any medical assistance paid to which a recipient was not lawfully entitled shall be recoverable from the recipient or ~~his~~ THE RECIPIENT'S estate by the county as a debt due the state pursuant to section 26-1-112, but no lien may be imposed against the property of a recipient on account of medical assistance paid or to be paid on ~~his~~ THE RECIPIENT'S behalf under this article, except pursuant to the judgment of a court of competent jurisdiction or as provided by section 26-4-403.3.

(d) If any such medical assistance was obtained fraudulently, interest shall be charged and paid to the county department on the amount of such medical assistance calculated at the legal rate and calculated from the date that payment for medical services rendered on behalf of the recipient is made to the date such amount is

recovered.

SECTION 3. 26-4-404 (3) (b) (IV), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

26-4-404. Vendors - payments - rules. (3) (b) (IV) ~~Nothing in this subsection (3) shall apply to any county with a population of twenty thousand or less; except that a vendor may provide capitated services in such counties if the vendor had a contract to provide such services on or before July 1, 1992.~~

SECTION 4. 26-4-410, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-410. Vendors - nursing facility - nursing facility patient program improvement fund - reimbursement - maximum allowable. (4) (a) FOR THE PURPOSES OF THIS SECTION, "REASONABLE COSTS" MEANS THE MAXIMUM ALLOWABLE REIMBURSEMENT BASED ON THE FOLLOWING CATEGORIES OF COSTS:

(I) ACTUAL HEALTH CARE SERVICES AND FOOD COSTS; AND

(II) ACTUAL ADMINISTRATION, PROPERTY, AND ROOM AND BOARD COSTS, EXCLUDING CAPITAL-RELATED ASSETS AND EXCLUDING FOOD COSTS.

(b) EFFECTIVE JULY 1, 1995, THE MAXIMUM ALLOWABLE REIMBURSEMENT SHALL NOT EXCEED THE FOLLOWING AMOUNTS IN THE FOLLOWING CATEGORIES:

(I) **Administrative costs:** (A) CLASS I FACILITIES: ONE HUNDRED TWENTY PERCENT OF THE WEIGHTED AVERAGE ACTUAL COSTS OF ALL CLASS I FACILITIES;

(B) CLASS II FACILITIES: ONE HUNDRED FORTY PERCENT OF THE WEIGHTED AVERAGE ACTUAL COSTS OF ALL CLASS II FACILITIES;

(C) CLASS IV FACILITIES: ONE HUNDRED FORTY PERCENT OF THE WEIGHTED AVERAGE ACTUAL COSTS OF ALL CLASS IV FACILITIES.

(II) **Health care - food costs:** (A) CLASS I FACILITIES: ONE HUNDRED TWENTY-FIVE PERCENT OF THE WEIGHTED AVERAGE ACTUAL COSTS OF ALL CLASS I FACILITIES;

(B) CLASS II FACILITIES: ONE HUNDRED TWENTY-NINE PERCENT OF THE WEIGHTED AVERAGE ACTUAL COSTS OF ALL CLASS II FACILITIES;

(C) PRIVATELY OWNED CLASS IV FACILITIES: ONE HUNDRED TWENTY-NINE PERCENT OF THE WEIGHTED AVERAGE ACTUAL COSTS OF ALL CLASS IV FACILITIES.

(c) FOOD COSTS SHALL NOT INCLUDE THE COSTS OF REAL OR PERSONAL PROPERTY, STAFF, PREPARATION, OR OTHER ITEMS RELATED TO THE FOOD PROGRAM. THE DOLLAR AMOUNT PER PATIENT DAY SHALL BE ESTABLISHED EVERY TWELVE MONTHS IN ACCORDANCE WITH RULES ESTABLISHED BY THE MEDICAL SERVICES BOARD.

SECTION 5. 26-4-503 (2), Colorado Revised Statutes, 1989 Repl. Vol., as

amended, is amended to read:

26-4-503. Definitions relating to reimbursement of rental allowance for capital-related assets. As used in this part 5, unless the context otherwise requires:

(2) "Appraised value" means the determination by a qualified appraiser who is a member of an institute of real estate appraisers or its equivalent of the depreciated cost of replacement of a capital-related asset to its current owner. The depreciated replacement appraisal shall be based on the "Boechk Commercial Underwriter's Valuation System for Nursing Homes", December 1985 edition. The depreciated cost of replacement appraisal shall be redetermined every four years by new appraisals of the nursing facilities. Such new appraisals shall be based upon rules and regulations promulgated by the ~~executive director of~~ MEDICAL SERVICES BOARD in the department of health care policy and financing.

SECTION 6. 26-4-504 (2) (a), the introductory portion to 26-4-504 (2) (b) (I), and 26-4-504 (3) and (4), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-504. Personal needs benefits - amount - patient personal needs trust fund required - funeral and burial expenses - penalty for illegal retention and use. (2) (a) The basic ~~maximum~~ MINIMUM amount payable pursuant to subsection (1) of this section for personal needs to any recipient admitted to a nursing facility or intermediate care facility for the mentally retarded shall be thirty-four dollars monthly.

(b) (I) On and after October 1, 1992, the basic ~~maximum~~ MINIMUM amount payable pursuant to subsection (1) of this section for personal needs shall be ninety dollars for the following persons:

(3) (a) All personal needs funds shall be held in trust by the nursing facility or intermediate care facility for the mentally retarded, or its designated trustee, separate and apart from any other funds of the facility. THE FACILITY SHALL DEPOSIT ANY PERSONAL NEEDS FUNDS OF A RESIDENT IN AN AMOUNT OF FIFTY OR MORE DOLLARS in ~~a~~ AN INTEREST-BEARING checking account OR ACCOUNTS or savings account or any combination thereof established to protect and separate the personal needs funds of the patients. ANY INTEREST EARNED ON A RESIDENT'S PERSONAL NEEDS FUNDS SHALL BE CREDITED TO SUCH ACCOUNT OR ACCOUNTS. IN THE EVENT RESIDENTS' PERSONAL NEEDS FUNDS ARE MAINTAINED IN A POOLED ACCOUNT, SEPARATE ACCOUNTINGS SHALL BE MADE FOR EACH RESIDENT'S SHARE OF THE POOLED ACCOUNT. ANY PERSONAL NEEDS FUNDS OF A RESIDENT IN AN AMOUNT LESS THAN FIFTY DOLLARS SHALL BE MAINTAINED IN A NON-INTEREST-BEARING ACCOUNT, AN INTEREST-BEARING ACCOUNT, OR A PETTY CASH FUND.

(b) At all times, the principal and all income derived from said principal in the patient personal needs trust fund shall remain the property of the participating patients, and the facility or its designated trustee is bound by all of the duties imposed by law upon fiduciaries in the handling of such fund. THOSE DUTIES INCLUDE BUT ARE NOT LIMITED TO PROVIDING NOTICE TO A RESIDENT WHEN THE RESIDENT'S PERSONAL NEEDS ACCOUNT ACCUMULATES TWO HUNDRED DOLLARS LESS THAN THE FEDERAL SUPPLEMENTAL SECURITY INCOME RESOURCE LIMIT FOR ONE PERSON.

(c) The facility or its designated trustee shall post a surety bond in an amount to assure the security of all personal needs funds deposited in the patient personal needs trust fund OR SHALL OTHERWISE DEMONSTRATE TO THE SATISFACTION OF THE STATE DEPARTMENT THAT THE SECURITY OF RESIDENTS' PERSONAL NEEDS FUNDS IS ASSURED.

(d) WITHIN SIXTY DAYS AFTER A RESIDENT'S DEATH, THE FACILITY SHALL TRANSFER THE RESIDENT'S PERSONAL NEEDS FUNDS AND A FINAL ACCOUNTING OF THE FUNDS TO THE PERSON RESPONSIBLE FOR SETTLING THE RESIDENT'S ESTATE OR, IF THERE IS NONE, TO THE RESIDENT'S HEIRS IN ACCORDANCE WITH THE PROVISIONS OF TITLE 15, C.R.S. WITHIN FIFTEEN DAYS AFTER RECEIVING THE FUNDS, THE EXECUTOR, ADMINISTRATOR, OR OTHER APPROPRIATE REPRESENTATIVE OF THE RESIDENT'S ESTATE SHALL PROVIDE WRITTEN NOTICE TO THE STATE DEPARTMENT REGARDING THE RECEIPT OF THE FUNDS. UPON RECEIPT OF THE NOTICE, THE STATE DEPARTMENT MAY BRING AN ACTION TO RECOVER THE FUNDS PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

(4) The state department shall establish rules and regulations concerning the establishment of a patient personal needs trust fund and procedures for the maintenance of a system of accounting for expenditures of each patient's personal needs funds. THE FACILITY SHALL USE AN ACCOUNTING SYSTEM THAT ASSURES A COMPLETE AND SEPARATE ACCOUNTING OF RESIDENTS' PERSONAL NEEDS FUNDS BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND THAT PRECLUDES THE COMMINGLING OF A RESIDENT'S PERSONAL NEEDS FUNDS WITH THE FACILITY'S FUNDS OR THE FUNDS OF ANY OTHER PERSON OTHER THAN THE PERSONAL NEEDS FUNDS OF ANOTHER RESIDENT. These rules and regulations shall provide that the nursing facility or intermediate care facility for the mentally retarded shall maintain complete records of all receipts and expenditures involving the patient personal needs trust fund, that all expenditures shall be approved by the patient, legal custodian, guardian, or conservator prior to an expenditure, and that each patient or such patient's legal custodian, guardian, or conservator shall be given at least a quarterly accounting of the receipts and expenditures of such funds. In addition, the rules shall require that the person who maintains the patient personal needs trust fund for the facility and who is responsible for the deposit of moneys into such trust fund shall deposit any personal needs funds received from a patient or from the state department no later than sixty days after the receipt of such moneys.

SECTION 7. Part 5 of article 4 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-529. Home health services - pilot program - advisory committee - repeal. (1) THE DEPARTMENT SHALL CONDUCT A PILOT PROGRAM TO DETERMINE THE FEASIBILITY AND COST-EFFECTIVENESS OF USING TRAINED HOME HEALTH AIDES TO PROVIDE SPECIFIC NURSING SERVICES TO MEDICAL ASSISTANCE RECIPIENTS IN:

- (a) THE RECIPIENT'S OWN RESIDENCE;
- (b) ANY OTHER RESIDENCE, OTHER THAN A NURSING FACILITY, HOSPITAL, OR INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED; OR
- (c) OTHER SITES INCLUDING, BUT NOT LIMITED TO, SCHOOLS, WORK SITES, OR DAY TREATMENT CENTERS.

(1.5) THE DEPARTMENT SHALL IMPLEMENT THE PILOT PROGRAM NO LATER THAN JULY 1, 1995. THE DEPARTMENT SHALL IMPLEMENT THE PROGRAM IN A MANNER THAT IS CONSISTENT WITH THE "NURSE PRACTICES ACT" AND WITH THE PROVISIONS OF ARTICLE 38.1 OF TITLE 12, C.R.S., GOVERNING THE REGULATION OF NURSE AIDES. UNDER THE PROGRAM, HOME HEALTH AIDES SHALL PROVIDE SERVICES UNDER THE SUPERVISION OF REGISTERED NURSES IN ACCORDANCE WITH SECTION 12-38-132, C.R.S.

(2) THE STATE DEPARTMENT SHALL ADOPT RULES AS NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE PILOT PROGRAM. THE DEPARTMENT, IN ITS RULES, SHALL SPECIFY:

(a) THE NURSING SERVICES THAT MAY BE PROVIDED TO MEDICAL ASSISTANCE RECIPIENTS BY HOME HEALTH AIDES;

(b) THAT A PROFESSIONAL NURSE IS TO DETERMINE WHETHER A RECIPIENT'S CONDITION IS APPROPRIATE FOR THE SERVICES AUTHORIZED BY THE RULES BASED ON AN INITIAL ASSESSMENT OF THE CLIENT, THAT THE PROFESSIONAL NURSE IS TO ASSESS AND MONITOR SERVICES PROVIDED TO A RECIPIENT ON AN ONGOING BASIS AND PROVIDE ONGOING INSTRUCTION AND ASSISTANCE TO A HOME HEALTH AIDE AND INTERVENTION SERVICES FOR THE RECIPIENT, AS DEEMED APPROPRIATE BY THE PROFESSIONAL NURSE, AND THAT THE FUNCTIONS PERFORMED BY THE PROFESSIONAL NURSE ARE TO BE REIMBURSED AS SKILLED NURSING SERVICES UNDER THE PILOT PROGRAM;

(c) THAT THE SERVICES AUTHORIZED BY THE RULES ARE TO BE PROVIDED AS A ROUTINE PART OF A RECIPIENT'S CARE;

(d) THAT THE RECIPIENT IS ALLOWED TO PARTICIPATE IN DECISIONS CONCERNING THE RECIPIENT'S CARE;

(e) THAT THE RECIPIENT MAY, AT ANY TIME, REFUSE TO PARTICIPATE IN THE PILOT PROGRAM WITHOUT PENALTY;

(f) THAT PARTICIPATION IN THE PILOT PROGRAM BY HOME HEALTH AGENCIES, INDIVIDUAL NURSES, AND INDIVIDUAL HOME HEALTH AIDES IS STRICTLY VOLUNTARY; AND

(g) THAT THE SUPERVISING NURSE HAS THE AUTHORITY TO APPROVE THE DELEGATION OF FUNCTIONS TO BE PERFORMED BY HOME HEALTH AIDES UNDER THE PILOT PROGRAM.

(3) (a) IN ORDER FOR THE DEPARTMENT TO DEVELOP AND IMPLEMENT THE PILOT PROGRAM WITH SUFFICIENT INPUT FROM PERSONS IMPACTED BY THE PROGRAM, THERE IS HEREBY CREATED AN ADVISORY COMMITTEE TO BE APPOINTED BY THE EXECUTIVE DIRECTOR. THE COMMITTEE CONSISTS OF NINE MEMBERS WHO REPRESENT THE FOLLOWING POPULATIONS:

(I) ADVOCACY GROUPS REPRESENTING PERSONS WITH DISABILITIES AND THE FRAIL ELDERLY;

(II) MEDICAL ASSISTANCE RECIPIENTS DESCRIBED IN SUBSECTION (1) OF THIS SECTION WHO RECEIVE NURSING SERVICES;

(III) THE HOME HEALTH AGENCY PROVIDERS ASSOCIATION;

(IV) THE PROFESSIONAL NURSES' ASSOCIATION;

(V) THE STATE BOARD OF NURSING;

(VI) ASSISTED LIVING FACILITIES;

(VII) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT;

(VIII) THE MEDICAL ASSISTANCE LONG-TERM CARE ADVISORY COMMITTEE.

(b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, IN THE DEVELOPMENT AND IMPLEMENTATION OF THE PILOT PROGRAM, SHALL, ON A REGULAR BASIS, CONSULT FULLY WITH THE MEMBERS OF THE ADVISORY COMMITTEE CREATED IN PARAGRAPH (a) OF THIS SUBSECTION (3).

(c) (I) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2000.

(II) PRIOR TO SAID REPEAL, THE ADVISORY COMMITTEE SHALL BE REVIEWED, AS PROVIDED IN SECTION 2-3-1203 (3), C.R.S.

(4) THE DEPARTMENT SHALL CONTRACT WITH A PUBLIC OR PRIVATE ENTITY TO CONDUCT AN INDEPENDENT EVALUATION OF THE PILOT PROGRAM. ON OR BEFORE OCTOBER 1, 1996, THE DEPARTMENT SHALL PROVIDE A WRITTEN REPORT TO THE GENERAL ASSEMBLY, BASED ON THE INDEPENDENT EVALUATION. THE DEPARTMENT SHALL INCLUDE IN THE REPORT THE INDEPENDENT EVALUATOR'S ASSESSMENT OF THE COST-EFFICIENCY, WHICH INCLUDES IDENTIFYING ANY COST-SAVINGS TO THE MEDICAL ASSISTANCE PROGRAM AND ANY OTHER PUBLIC BENEFITS PROGRAMS, BENEFIT, IMPACT ON THE QUALITY OF CARE AND CLIENT OUTCOMES, AND IMPACT UPON RECIPIENTS' ABILITY TO LIVE INDEPENDENTLY AS A RESULT OF THE PROVISION OF NURSING SERVICES TO MEDICAL ASSISTANCE RECIPIENTS BY HOME HEALTH AIDES. IN ADDITION, THE DEPARTMENT SHALL INCLUDE IN THE REPORT RECOMMENDATIONS FOR IMPLEMENTATION OF ANY MODEL OR PROPOSED PROGRAM MODIFICATION.

(5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT IS HEREBY AUTHORIZED TO ACCEPT ON BEHALF OF THE STATE ANY GRANTS OR DONATIONS FROM ANY PRIVATE SOURCE AND ANY PUBLIC MONEYS APPROPRIATED FOR THE PURPOSE OF IMPLEMENTING THIS SECTION.

(6) THE PILOT PROGRAM SHALL TERMINATE ON JULY 1, 2000, UNLESS EXTENDED BY THE GENERAL ASSEMBLY.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2000.

SECTION 8. 26-4-608, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-608. Special provisions - post-eligibility treatment of income. Persons who receive services under this subpart 1 shall pay to the state department, or designated agent or vendor, all income remaining after application of federally allowed maintenance and medical deductions ~~(except the amount for client maintenance shall remain equal to the current standard of assistance for the old age pension)~~ or shall pay the cost of home and community-based services rendered, whichever is less.

SECTION 9. 26-4-610 (1) (a), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-610. Duties of state department. (1) The state department shall:

(a) On or before October 1 of each year, provide the general assembly with a report on the availability and quality of alternative care services, home health services, and home and community-based services FOR THE ELDERLY, BLIND, AND DISABLED AND FOR PERSONS LIVING WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME provided in the state and the costs associated therewith. Such report may include recommendations for appropriate state and federal legislation, rules and regulations, and other actions which would enhance the availability, appropriate utilization, and coordination of such services in the state.

SECTION 10. 26-4-606, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-4-606. Eligible groups. (3) A PERSON ELIGIBLE FOR HOME AND COMMUNITY-BASED SERVICES FOR THE DEVELOPMENTALLY DISABLED, AS SUCH PERSON IS DESCRIBED IN SECTION 26-4-623 (2), SHALL NOT BE ELIGIBLE FOR HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY, BLIND, AND DISABLED PURSUANT TO THIS SUBPART 1.

SECTION 11. The introductory portion to 26-4-622 (1) and 26-4-622 (1) (b) and (1) (f), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-622. Legislative declaration. (1) The general assembly hereby finds and declares that it is the purpose of this article to provide services for ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES which would foster the following goals:

(b) To recognize the unique services requirements of ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES;

(f) To coordinate, integrate, and link these social, habilitative, remedial, residential, and health services into existing community-based service delivery systems for ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES, to avoid unnecessary and expensive duplication of services;

SECTION 12. 26-4-623 (2) (a) (II), (2) (a) (IV), and (3), the introductory portion to 26-4-623 (4) (a), and 26-4-623 (4) (a) (II), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-623. Definitions. As used in this subpart 2, unless the context otherwise requires:

(2) (a) "Eligible person" means a person with developmental disabilities:

(II) Who is in need of the level of care available in ~~a nursing home~~ AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED;

(IV) For whom it is determined that provision of such services is necessary to avoid ~~nursing home~~ placement IN AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED.

(3) "Plan of care" means a coordinated plan of care for provision of services in other than a nursing facility or institutional setting, developed and managed, subject to review and approval pursuant to section 26-4-624, by a community centered board for persons with developmental disabilities. This plan of care shall fully identify the services to be provided to eligible persons. Prior to the provision of those services, a physician may be required to review a ~~plan of care~~ AN ASSESSMENT DOCUMENT to insure that it adequately ~~addresses~~ DESCRIBES the medical needs of the eligible person.

(4) (a) "Services for ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES" means those services:

(II) Necessary to prevent a person, eligible for services under subsection (2) of this section, from being subjected to ~~nursing home~~ placement IN AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED.

SECTION 13. 26-4-626, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-626. Appropriations. To carry out duties and obligations pursuant to this subpart 2 and for the administration and provision of services to eligible persons, all medicaid funds appropriated pursuant to Title XIX of the federal "Social Security Act", as amended, for the provision of ~~nursing facility~~ care for ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES and all other funds otherwise appropriated by the general assembly as additional sources of program funding shall be available for the placement of eligible individuals either in ~~nursing homes~~ INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED or alternatives to ~~nursing homes~~ SUCH PLACEMENTS.

SECTION 14. 26-4-629 (1) and (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, are amended to read:

26-4-629. Services for persons with developmental disabilities. (1) A program to provide home and community-based services to persons with developmental disabilities who are in need of the level of care available in ~~a nursing facility~~ AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED is hereby established pursuant to the federal "Social Security Act", as amended. This program shall provide for the social, habilitative, remedial, residential, health, and other needs of ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES to avoid

~~nursing facility~~ placement IN AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED.

(2) Services for ~~the developmentally disabled~~ PERSONS WITH DEVELOPMENTAL DISABILITIES provided through this program shall be delivered under the provisions of a statewide services plan, IN THE FORM OF HOME AND COMMUNITY-BASED SERVICES WAIVERS OR MODEL WAIVERS, developed by the department of health care policy and financing and the department of human services AND APPROVED BY THE FEDERAL HEALTH CARE AND FINANCING ADMINISTRATION. This plan shall include the specific services to be offered, a plan for the delivery of such services through community centered boards or other service agencies approved pursuant to article 10.5 of title 27, C.R.S., utilizing where appropriate the provision of in-home services, the expected costs of such services, the expected benefits of providing those services, and the administrative provisions which shall govern the implementation of the plan. The plan shall provide for all necessary safeguards to insure the health and welfare of any eligible persons. The average per capita expenditure for services under this plan shall not exceed the average per capita expenditure the department of human services or the department of health care policy and financing would have made for services otherwise available without this plan.

SECTION 15. 26-4-644 (2), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-644. Program established - financial eligibility. (2) Any person who accepts and receives services authorized under this subpart 3 shall pay to the state department, or to an agent or vendor designated by the state department, an amount which shall be the lesser of the person's gross income, ~~minus the current standard of assistance for the old age pension program and cost of dependents and minus any amounts paid for private health or medical insurance~~ MINUS FEDERALLY ALLOWED MAINTENANCE AND MEDICAL DEDUCTIONS, or the projected cost of services to be rendered to the person under the case plan. Such amount shall be reviewed and revised as necessary each time the case plan is reviewed.

SECTION 16. Subpart 3 of part 6 of article 4 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF NEW SECTION to read:

26-4-645.5. 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 FIVE THOUSAND DOLLARS PER FAMILY PER YEAR.

SECTION 17. 26-4-646 (1) (d), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

26-4-646. Duties of state department. (1) In addition to the duties set forth in section 26-4-610, the state department shall:

~~(d) Provide to the general assembly annually, on or before January 1, a complete cost comparison of the total state medical costs associated with persons with AIDS or ARC both under the waiver program and without the waiver program, and this comparison shall include not only the cost of home and community-based services but all other medicaid costs, including but not limited to institutionalization, doctor's fees, medications, medical equipment and supplies, and other necessary related services.~~

SECTION 18. 26-4-703, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

26-4-703. Cost-containment and utilization control plan.

(5) NOTWITHSTANDING RESTRICTIONS SET FORTH IN ANY OTHER PROVISION OF THIS SECTION, ON AND AFTER JULY 1, 1994, THE DEPARTMENT IS HEREBY AUTHORIZED, IF DEEMED FEASIBLE BY THE EXECUTIVE DIRECTOR, TO ENTER INTO COMPETITIVE BIDDING OR SELECTIVE CONTRACTING ARRANGEMENTS. IN PROCURING ANY SELECTIVE SERVICES PURSUANT TO THIS SECTION, THE DEPARTMENT SHALL GIVE PREFERENCE TO COLORADO-BASED AGENCIES, INSTITUTIONS, AND PROVIDERS THAT SUBMIT A BID THAT IS COMPETITIVE IN PRICE, ACCESS, AND QUALITY WITH THE SERVICES OFFERED BY NON-COLORADO COMPETING BIDDERS. COMPETITIVE BIDDING OR SELECTIVE CONTRACTING SHALL OCCUR FOR THE FOLLOWING SERVICES:

(a) INPATIENT HOSPITAL AND PROFESSIONAL SERVICES ON A GLOBAL FEE BASIS FOR PRENATAL CARE, LABOR, AND DELIVERY SERVICES, EXCLUDING SERVICES UNDER FAMILY PRACTICE RESIDENCY TRAINING PROGRAMS THAT RECEIVE GENERAL FUND APPROPRIATIONS;

(b) TRANSPLANTS FINANCED THROUGH MEDICAL ASSISTANCE, AS SPECIFIED IN RULES ADOPTED BY THE EXECUTIVE DIRECTOR;

(c) INPATIENT PSYCHIATRIC CARE;

(d) SERVICES DESCRIBED IN THE FEDERALLY APPROVED STATE PLAN THAT ARE PROVIDED ON A PREPAID CAPITATED BASIS THROUGH HEALTH MAINTENANCE ORGANIZATIONS OR UNDER PREPAID HEALTH PLANS WHERE MULTIPLE HEALTH MAINTENANCE ORGANIZATIONS ARE LOCATED OR PREPAID HEALTH PLANS ARE AVAILABLE IN DESIGNATED GEOGRAPHIC AREAS.

(5.5) IN ADDITION TO THE SERVICES DESCRIBED IN SUBSECTION (5) OF THIS SECTION, ON AND AFTER JULY 1, 1994, THE DEPARTMENT IS AUTHORIZED TO ENTER INTO SELECTIVE CONTRACT ARRANGEMENTS FOR ACUTE OR SUB-ACUTE CARE FOR SEVERE BEHAVIORALLY IMPAIRED PERSONS WHOSE DISABILITIES ARE DUE TO ORGANIC ORIGINS. THE DEPARTMENT SHALL LIMIT THE NUMBER OF PROVIDERS AND PERSONS TO BE SERVED UNDER THE SELECTIVE CONTRACT ARRANGEMENTS BASED ON THE NEED FOR CARE IN THE STATE. PROVIDERS WITH WHOM THE DEPARTMENT MAY CONTRACT INCLUDE NURSING FACILITIES CERTIFIED IN ACCORDANCE WITH TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", INPATIENT HOSPITALS, AND HOME HEALTH AGENCIES. THE DEPARTMENT SHALL ESTABLISH PROVIDER-ENROLLMENT CRITERIA TO ENSURE THAT SELECTED PROVIDERS ARE CAPABLE OF PROVIDING THE NECESSARY CARE TO RECIPIENTS. THE DEPARTMENT IS HEREBY AUTHORIZED TO SEEK ANY NECESSARY WAIVER FROM THE FEDERAL GOVERNMENT TO IMPLEMENT THIS

SUBSECTION (5.5). BEFORE ENTERING INTO A SELECTIVE CONTRACT ARRANGEMENT, THE DEPARTMENT SHALL ISSUE A REQUEST FOR INFORMATION TO PROVIDE AFFECTED PROVIDERS AND RECIPIENTS THE OPPORTUNITY TO PROVIDE INPUT AND MAKE RECOMMENDATIONS CONCERNING A SELECTIVE CONTRACT ARRANGEMENT. THE DEPARTMENT MAY ESTABLISH AD HOC ADVISORY COMMITTEES TO OBTAIN SUCH INPUT AND RECOMMENDATIONS.

(6) IN ENGAGING IN A COMPETITIVE BIDDING PROCESS OR ENTERING INTO ANY COMPETITIVE PROCUREMENT PURSUANT TO SUBSECTION (5) OF THIS SECTION, THE DEPARTMENT SHALL:

(a) ASSURE THAT ADEQUATE ACCESS TO CARE AND QUALITY OF SERVICES IS PROVIDED;

(b) AWARD MORE THAN ONE CONTRACT FOR SERVICES THAT WERE PROVIDED BY MORE THAN A SINGLE PROVIDER AS OF JANUARY 1, 1994;

(c) AWARD CONTRACTS IN ACCORDANCE WITH THE STATE PROCUREMENT CODE, ARTICLE 101 OF TITLE 24, C.R.S.

(7) (a) FOR SERVICES DESCRIBED IN SUBPARAGRAPHS (I) TO (III) OF PARAGRAPH (b) OF THIS SUBSECTION (7), THE DEPARTMENT SHALL RELEASE A FORMAL REQUEST FOR INFORMATION, DEVELOPED WITH REASONABLE CRITERIA AND STANDARDS, FOR THE PROVISION OF COMPREHENSIVE SERVICES IN ORDER TO PROVIDE THE OPPORTUNITY FOR AFFECTED MEDICAL ASSISTANCE RECIPIENTS AND VENDORS TO PROVIDE INPUT AND MAKE RECOMMENDATIONS TO THE DEPARTMENT WITH RESPECT TO THE FACTORS DESCRIBED IN SUB-SUBPARAGRAPHS (A) TO (J) OF SUBPARAGRAPH (I) OF PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION DURING THE REQUEST FOR INFORMATION PROCESS. THE DEPARTMENT SHALL CONSULT WITH THE MEDICAL ADVISORY COUNCIL CREATED IN SECTION 26-4-108 AND WITH THE MEDICAL ASSISTANCE REFORM ADVISORY COMMITTEE CREATED IN SECTION 26-4-704 DURING THE REQUEST FOR INFORMATION PROCESS. NOTHING IN THIS SUBSECTION (7) SHALL BE CONSTRUED TO PRECLUDE THE EXECUTIVE DIRECTOR OF THE DEPARTMENT FROM ESTABLISHING AD HOC ADVISORY COMMITTEES TO OBTAIN INPUT AND RECOMMENDATIONS DURING THE REQUEST FOR INFORMATION PROCESS.

(b) THE FOLLOWING SERVICES MAY BE SUBJECT TO PARAGRAPH (a) OF THIS SUBSECTION (7):

(I) PRESCRIPTION DRUGS AND RELATED EXPENSES TO MEDICAL ASSISTANCE RECIPIENTS WHO RESIDE IN NURSING FACILITIES IN THE GREATER DENVER METROPOLITAN AREA;

(II) OXYGEN AND RELATED EXPENSES FOR NURSING FACILITY RESIDENTS IN THE GREATER DENVER METROPOLITAN AREA;

(III) INSTITUTIONAL REHABILITATION SERVICES PROVIDED BY CLASS V NURSING FACILITIES.

SECTION 19. 2-3-1203 (3), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(m) JULY 1, 2000: THE ADVISORY COMMITTEE IN THE DEPARTMENT OF HUMAN SERVICES CREATED IN SECTION 26-4-529 (3), C.R.S.

SECTION 20. Appropriations - appropriations in long bill to be adjusted - directive to implement within existing appropriations. (1) (a) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing for medical assistance administration, for the fiscal year beginning July 1, 1994, the sum of one hundred eighty-one thousand five hundred seventy-five dollars (\$181,575), or so much thereof as may be necessary, for the implementation of this act. Of said sum, ninety thousand seven hundred eighty-seven dollars (\$90,787) shall be from the general fund and ninety thousand seven hundred eighty-eight dollars (\$90,788) shall be from federal funds.

(b) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing, medical assistance, medical programs, for the fiscal year beginning July 1, 1994, is decreased by one hundred eighty-one thousand five hundred seventy-five dollars (\$181,575). Of said sum, ninety thousand seven hundred eighty-seven dollars (\$90,787) shall be from the general fund and ninety thousand seven hundred eighty-eight dollars (\$90,788) shall be from federal funds.

(2) (a) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of health care policy and financing for the fiscal year beginning July 1, 1994, the sum of one hundred twenty-five thousand five hundred dollars (\$125,500), or so much thereof as may be necessary, for the implementation of this act. Of said sum, fifty-five thousand seven hundred fifty dollars (\$55,750) shall be from the general fund and sixty-nine thousand seven hundred fifty dollars (\$69,750) shall be from federal funds.

(b) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing for the fiscal year beginning July 1, 1994, shall be adjusted as follows: The appropriation for the department of health care policy and financing, medical services division, is decreased by three hundred seventy-seven thousand nine hundred eighty-one dollars (\$377,981). Of said sum, one hundred seventy-seven thousand two hundred seventy-three dollars (\$177,273) is from the general fund and two hundred thousand seven hundred eight dollars (\$200,708) is from federal funds.

(3) The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys shall be made to carry out the purposes of this act.

SECTION 21. Effective date. This act shall take effect July 1, 1994.

SECTION 22. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1994