

CHAPTER 246

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 97-1063

BY REPRESENTATIVES Snyder, Allen, Clarke, Hagedorn, Keller, Nichol, Tate, and Veiga;
also SENATOR Wham.

AN ACT

CONCERNING CERTAIN REVISIONS TO STATUTES RELATING TO THE "COLORADO MEDICAL ASSISTANCE ACT", AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 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:

26-4-509.2. Children's personal assistance services and family support program. (1) THE GENERAL ASSEMBLY FINDS THAT MANY FAMILIES WHO ATTEMPT TO CARE FOR SEVERELY DISABLED OR TERMINALLY ILL CHILDREN AT HOME OFTEN ARE BURDENED WITH THE EXCESSIVE FINANCIAL AND PERSONAL COSTS OF PROVIDING CONTINUOUS CARE. PRIVATE INSURANCE COMPANIES RARELY SUPPORT ESSENTIAL, LONG-TERM CUSTODIAL SERVICES AND OFTEN ESTABLISH MONETARY LIMITS THAT ARE WELL BELOW THE LEVELS REQUIRED BY THESE DISABLED CHILDREN. WHEN COVERAGE IS AVAILABLE, CARE IS FREQUENTLY PROVIDED IN A MEDICAL MODEL THAT IS MARGINALLY APPROPRIATE TO THE NEEDS OF THE CHILDREN AND THE FAMILY AND USUALLY MORE EXPENSIVE TO THE PAYOR. THE RESULTING PRESSURES OFTEN CONTRIBUTE TO FAMILY DISINTEGRATION AND INCREASED DEPENDENCY ON PUBLIC PROGRAMS. THE GENERAL ASSEMBLY FINDS THAT IT IS IN THE BEST INTERESTS OF THE CITIZENS OF THE STATE TO ENCOURAGE THE PRESERVATION OF FAMILIES WITH CHILDREN WITH DISABILITIES.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "ELIGIBLE DISABLED CHILDREN" MEANS CHILDREN EIGHTEEN YEARS OF AGE OR YOUNGER:

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

(a) WHO HAVE MEDICAL NEEDS THAT, PURSUANT TO STATE DEPARTMENT RULES, WOULD QUALIFY THEM FOR INSTITUTIONALIZATION OR PLACE THEM AT RISK OF INSTITUTIONALIZATION IN AN ACUTE CARE HOSPITAL OR NURSING FACILITY;

(b) WHO HAVE GROSS INCOMES, INCLUDING THE AMOUNT OF PARENTAL INCOME AND RESOURCES TO BE ATTRIBUTED TO THE CHILD'S GROSS INCOME ACCORDING TO RULES TO BE PROMULGATED BY THE MEDICAL SERVICES BOARD, THAT DO NOT EXCEED THREE HUNDRED PERCENT OF THE CURRENT FEDERAL SUPPLEMENTAL SECURITY INCOME BENEFIT LEVEL;

(c) WHO ARE NOT RECEIVING LONG-TERM SERVICES FROM ANY ALTERNATIVE WAIVER PROGRAM ESTABLISHED UNDER THIS TITLE;

(d) FOR WHOM A LICENSED PHYSICIAN HAS CERTIFIED THAT IN-HOME CARE IS AN APPROPRIATE WAY TO MEET THE CHILD'S NEEDS; AND

(e) FOR WHOM THE COST OF CARE OUTSIDE OF THE INSTITUTION IS NO HIGHER THAN THE ESTIMATED MEDICAID COST OF APPROPRIATE INSTITUTIONAL CARE.

(3) THERE IS HEREBY ESTABLISHED IN THE STATE DEPARTMENT THE CHILDREN'S PERSONAL ASSISTANCE SERVICES AND FAMILY SUPPORT WAIVER PROGRAM, REFERRED TO IN THIS SECTION AS THE "PROGRAM", TO PROVIDE SERVICES TO ELIGIBLE DISABLED CHILDREN IN THEIR HOMES RATHER THAN IN THE CONFINES OF AN ACUTE CARE HOSPITAL OR NURSING FACILITY. THE NUMBER OF CHILDREN ENROLLED IN THIS PROGRAM OR ANY OTHER MODEL 200 PROGRAM SHALL NOT EXCEED THE STATE DEPARTMENT'S ABILITY TO COVER THE COSTS OF THE PROGRAMS WITHIN THE ANNUAL APPROPRIATIONS FOR THIS PROGRAM AND ANY OTHER MODEL 200 PROGRAM.

(4) PRIORITY FOR PARTICIPATION IN THE PROGRAM SHALL BE GIVEN FIRST TO CHILDREN WHO ARE ON THE WAITING LIST FOR OTHER MODEL 200 PROGRAMS AND SECONDLY TO CHILDREN WHOSE PARENTS WILL RETURN TO WORK IF APPROPRIATE CARE FOR THEIR DISABLED CHILD IS PROVIDED UNDER THE PROGRAM. SPACES IN THE PROGRAM SHALL ALSO BE AVAILABLE TO CHILDREN WHO WERE ALREADY COVERED BY MEDICAID BUT WHO WERE RENDERED TEMPORARILY INELIGIBLE FOR A PERIOD OF NOT MORE THAN THREE MONTHS DUE TO A PERIODIC OR CYCLICAL PEAK IN THEIR PARENTS' INCOME.

(5) THE MEDICAL SERVICES BOARD SHALL ADOPT RULES TO GOVERN THE PROGRAM CONSISTENT WITH ANY FEDERAL WAIVERS INCLUDING, BUT NOT LIMITED TO, RULES CONCERNING:

(a) SERVICES THAT ARE REIMBURSABLE UNDER THIS SECTION INCLUDING, BUT NOT LIMITED TO:

(I) RESPITE CARE, TO THE DEGREE ITS ADDITIONAL COST IS OFFSET BY COLLECTION OF A PARENTAL COPAYMENT;

(II) CASE MANAGEMENT; AND

(III) MEDICALLY NECESSARY PROFESSIONAL OR COMMUNITY SERVICES BEYOND

THOSE SPECIFIED IN SECTION 26-4-202 OR 26-4-302, TO THE DEGREE THAT THEY PROVIDE A COST-EFFECTIVE AND MEDICALLY APPROPRIATE ALTERNATIVE TO COVERED SERVICES;

- (b) PROVIDER SELECTION AND CERTIFICATION;
- (c) DOCUMENTATION FOR ASSESSMENT AND RECERTIFICATION;
- (d) CASE MANAGEMENT AGENCY SELECTION AND RESPONSIBILITY; AND
- (e) REIMBURSEMENT.

(6) IF THE STATE DEPARTMENT FINDS IT COST-EFFECTIVE AND ALL NECESSARY FEDERAL WAIVERS ARE OBTAINED, PARENTS OF ELIGIBLE DISABLED CHILDREN MAY BE AUTHORIZED TO HIRE AND MANAGE CARE PROVIDERS FROM CERTIFIED MEDICAID AGENCIES. CASE MANAGEMENT AGENCIES SHALL WORK WITH PARENTS TO DEVELOP THE SKILLS NECESSARY FOR ONGOING CARE MANAGEMENT.

(7) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK WAIVERS FROM THE FEDERAL GOVERNMENT TO QUALIFY FOR FEDERAL FINANCIAL PARTICIPATION IN THE PROGRAM.

(8) THE STATE DEPARTMENT IS AUTHORIZED TO CHARGE AND COLLECT COPAYMENTS FROM PARENTS FOR SERVICES RENDERED.

(9) THE STATE DEPARTMENT IS DIRECTED TO STUDY THE ADVISABILITY OF SETTING AN UPPER LIMIT ON PARENTAL INCOME FOR PARTICIPATION IN THIS PROGRAM AND OTHER CHILDREN'S MEDICAID WAIVER PROGRAMS. ON OR BEFORE NOVEMBER 1, 1997, THE STATE DEPARTMENT SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY.

SECTION 2. 26-4-303 (1), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-303. Optional programs with special state provisions. (1) 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:

(m) THE CHILDREN'S PERSONAL ASSISTANCE SERVICES AND FAMILY SUPPORT WAIVER PROGRAM, AS SPECIFIED IN SECTION 26-4-509.2.

SECTION 3. 26-4-606 (3), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed as follows:

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, unless the need for such services is primarily due to physical impairments that are not caused by any diagnosis included in the definition of developmental disability.~~

SECTION 4. 26-4-302 (1) (f), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

26-4-302. Basic services for the categorically needy - optional services.

(1) The following are services for which federal financial participation is available and which Colorado has selected to provide as optional services under the medical assistance program:

(f) Prosthetic devices, ~~except that such devices shall be limited to surgically implanted devices~~ INCLUDING MEDICALLY NECESSARY AUGMENTATIVE COMMUNICATION DEVICES; EXCEPT THAT, NONSURGICALLY IMPLANTED PROSTHETIC DEVICES SHALL BE INCLUDED ONLY AFTER JULY 1, 1998, AND ONLY IF THE GENERAL ASSEMBLY APPROVES APPROPRIATIONS FOR THESE DEVICES AS A NEW BENEFIT.

SECTION 5. 26-4-403 (1) (a) (I), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended, and the said 26-4-403 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

26-4-403. Recoveries - overpayments - penalties - interest - adjustments -

liens. (1) (a) (I) Except as provided in section 26-4-403.3 AND SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), no recipient or estate of the recipient shall be liable for the cost or the cost remaining after payment by medicaid, medicare, or a private insurer of medical benefits authorized by Title XIX of the social security act, by this title, or by rules promulgated by the medical services board, which benefits are rendered to the recipient by a provider of medical services authorized to render such service in the state of Colorado, except those contributions required pursuant to section 26-4-518 (1). However, a recipient may enter into a documented agreement with a provider 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.

(III) (A) WHEN A THIRD PARTY IS PRIMARILY LIABLE FOR THE PAYMENT OF THE COSTS OF A RECIPIENT'S MEDICAL BENEFITS, PRIOR TO RECEIVING NONEMERGENCY MEDICAL CARE, THE RECIPIENT SHALL COMPLY WITH THE PROTOCOLS OF THE THIRD PARTY, INCLUDING USING PROVIDERS WITHIN THE THIRD PARTY'S NETWORK OR RECEIVING A REFERRAL FROM THE RECIPIENT'S PRIMARY CARE PHYSICIAN. ANY RECIPIENT FAILING TO FOLLOW THE THIRD PARTY'S PROTOCOLS IS LIABLE FOR THE PAYMENT OR COST OF ANY CARE OR SERVICES THAT THE THIRD PARTY WOULD HAVE BEEN LIABLE TO PAY; EXCEPT THAT, IF THE THIRD PARTY OR THE SERVICE PROVIDER SUBSTANTIVELY FAILS TO COMMUNICATE THE PROTOCOLS TO THE RECIPIENT, THE ITEMS OR SERVICES ARE NONREIMBURSABLE UNDER THIS ARTICLE AND THE RECIPIENT IS NOT LIABLE TO THE PROVIDER.

(B) A RECIPIENT MAY ENTER INTO A WRITTEN AGREEMENT WITH A THIRD PARTY OR PROVIDER UNDER WHICH THE RECIPIENT AGREES TO PAY FOR ITEMS PROVIDED OR SERVICES RENDERED THAT ARE OUTSIDE OF THE NETWORK OR PLAN PROTOCOLS. THE RECIPIENT'S AGREEMENT TO BE PERSONALLY LIABLE FOR SUCH NONEMERGENCY, NONREIMBURSABLE ITEMS SHALL BE RECORDED ON FORMS APPROVED BY THE MEDICAL SERVICES BOARD AND SIGNED AND DATED BY BOTH THE RECIPIENT AND THE PROVIDER IN ADVANCE OF THE SERVICES BEING RENDERED.

SECTION 6. Repeal. 26-4-504 (2) (b) (II), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is repealed.

SECTION 7. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, medical programs, administration, for the fiscal year beginning July 1, 1997, the sum of twenty-two thousand four hundred dollars (\$22,400), or so much thereof as may be necessary, for the implementation of this act. Of said sum, five thousand six hundred dollars (\$5,600) shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act, and sixteen thousand eight hundred dollars (\$16,800) shall be from matching federal funds.

SECTION 8. 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 3, 1997