

CHAPTER 259

HEALTH CARE POLICY AND FINANCING

SENATE BILL 02-027

BY SENATOR(S) Hernandez, Epps, Linkhart, Nichol, Pascoe, and Taylor;
also REPRESENTATIVE(S) Stafford, Mace, Romanoff, Boyd, Cloer, Coleman, Groff, Hoppe, Johnson, Marshall, and Schultheis.

AN ACT

CONCERNING THE CREATION OF IN-HOME SUPPORT SERVICES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 13
IN-HOME SUPPORT SERVICES**

26-4-1301. Legislative declaration. 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 AND TO DISABLED CHILDREN 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 AND TO CLIENTS OF THE DISABLED CHILDREN CARE PROGRAM FOR THE STATE DEPARTMENT TO DEVELOP A SERVICE THAT WOULD ALLOW THESE PEOPLE TO RECEIVE IN-HOME SUPPORT.

26-4-1302. Definitions. AS USED IN THIS PART 13, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "ATTENDANT" MEANS A PERSON WHO IS DIRECTLY EMPLOYED BY AN IN-HOME

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

SUPPORT SERVICE AGENCY TO PROVIDE OR A FAMILY MEMBER PROVIDING IN-HOME SUPPORT SERVICES TO ELIGIBLE PERSONS.

(2) "AUTHORIZED REPRESENTATIVE" MEANS AN INDIVIDUAL DESIGNATED BY THE ELIGIBLE PERSON RECEIVING SERVICES, OR BY THE PARENT OR GUARDIAN OF THE ELIGIBLE PERSON RECEIVING SERVICES, IF APPROPRIATE, WHO HAS THE JUDGMENT AND ABILITY TO ASSIST THE ELIGIBLE PERSON RECEIVING SERVICES IN ACQUIRING AND UTILIZING SERVICES UNDER THIS PART 13. THE EXTENT OF THE AUTHORIZED REPRESENTATIVE'S INVOLVEMENT SHALL BE DETERMINED UPON DESIGNATION. THE AUTHORIZED REPRESENTATIVE SHALL NOT BE THE ELIGIBLE PERSON'S SERVICE PROVIDER.

(3) "ELIGIBLE PERSON" MEANS ANY PERSON WHO:

(a) IS ELIGIBLE FOR HOME- AND COMMUNITY-BASED SERVICES UNDER SUBPART 1 OF PART 6 OF ARTICLE 4 OF THIS TITLE OR IS ELIGIBLE FOR THE DISABLED CHILDREN CARE PROGRAM UNDER SECTION 26-4-509;

(b) IS WILLING TO PARTICIPATE;

(c) OBTAINS A STATEMENT FROM HIS OR HER PRIMARY CARE PHYSICIAN INDICATING THAT THE PERSON HAS SOUND JUDGMENT AND THE ABILITY TO DIRECT HIS OR HER CARE, THE ELIGIBLE CHILD'S PARENT OR GUARDIAN HAS SOUND JUDGMENT AND THE ABILITY TO DIRECT THE ELIGIBLE CHILD'S CARE, OR THE PERSON HAS AN AUTHORIZED REPRESENTATIVE; AND

(d) MEETS ANY OTHER QUALIFICATIONS ESTABLISHED BY THE MEDICAL SERVICES BOARD BY RULE.

(4) "HEALTH MAINTENANCE ACTIVITIES" MEANS HEALTH-RELATED TASKS AS DEFINED IN RULE BY THE STATE DEPARTMENT AND INCLUDE, BUT ARE NOT LIMITED TO, CATHETER IRRIGATION, ADMINISTRATION OF MEDICATION, ENEMAS, AND SUPPOSITORIES, AND WOUND CARE.

(5) "IN-HOME SUPPORT SERVICE AGENCY" MEANS AN AGENCY THAT IS CERTIFIED BY THE STATE DEPARTMENT AND PROVIDES INDEPENDENT LIVING CORE SERVICES AS DEFINED IN SECTION 26-8.1-102 (3) AND IN-HOME SUPPORT SERVICES.

(6) "IN-HOME SUPPORT SERVICES" MEANS SERVICES THAT ARE PROVIDED BY AN ATTENDANT AND INCLUDE HEALTH MAINTENANCE ACTIVITIES, SUPPORT FOR ACTIVITIES OF DAILY LIVING OR INSTRUMENTAL ACTIVITIES OF DAILY LIVING, PERSONAL CARE SERVICES AS DEFINED IN SECTION 26-4-603 (17), AND HOMEMAKER SERVICES AS DEFINED IN SECTION 26-4-603 (11).

26-4-1303. In-home support services - eligibility - licensure exclusion - in-home support service agency responsibilities. (1) THE STATE DEPARTMENT SHALL OFFER IN-HOME SUPPORT SERVICES AS AN OPTION FOR ELIGIBLE PERSONS WHO RECEIVE HOME- AND COMMUNITY-BASED SERVICES. IN-HOME SUPPORT SERVICES SHALL BE PROVIDED TO ELIGIBLE PERSONS. THE STATE DEPARTMENT SHALL SEEK ANY FEDERAL AUTHORIZATION THAT MAY BE NECESSARY TO IMPLEMENT THIS PART 13. THE STATE DEPARTMENT SHALL DESIGN AND IMPLEMENT IN-HOME SUPPORT SERVICES

WITH INPUT FROM CONSUMERS OF HOME- AND COMMUNITY-BASED SERVICES AND INDEPENDENT LIVING CENTERS AND HOME- AND COMMUNITY-BASED SERVICE PROVIDERS.

(2) AN ELIGIBLE PERSON RECEIVING IN-HOME SUPPORT SERVICES OR THE ELIGIBLE PERSON'S AUTHORIZED REPRESENTATIVE OR PARENT OR GUARDIAN SHALL BE ALLOWED TO CHOOSE THE ELIGIBLE PERSON'S IN-HOME SUPPORT SERVICE AGENCY OR THE ELIGIBLE PERSON'S ATTENDANT.

(3) SECTIONS 12-38-103 (8), 12-38-103 (11), 12-38-123 (1) (a), 12-38.1-102 (5), AND 12-38.1-117 (1) (b), C.R.S., SHALL NOT APPLY TO A PERSON WHO IS DIRECTLY EMPLOYED BY AN IN-HOME SUPPORT SERVICE AGENCY TO PROVIDE IN-HOME SUPPORT SERVICES AND WHO IS ACTING WITHIN THE SCOPE AND COURSE OF SUCH EMPLOYMENT OR IS A FAMILY MEMBER PROVIDING IN-HOME SUPPORT SERVICES PURSUANT TO THIS PART 13. HOWEVER, SUCH PERSON MAY NOT REPRESENT HIMSELF OR HERSELF TO THE PUBLIC AS A LICENSED NURSE, A CERTIFIED NURSE AIDE, A LICENSED PRACTICAL OR PROFESSIONAL NURSE, A REGISTERED NURSE, OR A REGISTERED PROFESSIONAL NURSE. THIS EXCLUSION SHALL NOT APPLY TO ANY PERSON WHO HAS HAD HIS OR HER LICENSE AS A NURSE OR CERTIFICATION AS A NURSE AIDE SUSPENDED OR REVOKED OR HIS OR HER APPLICATION FOR SUCH LICENSE OR CERTIFICATION DENIED.

(4) (a) IN-HOME SUPPORT SERVICE AGENCIES PROVIDING IN-HOME SUPPORT SERVICES SHALL PROVIDE TWENTY-FOUR-HOUR BACK-UP SERVICES TO THEIR CLIENTS. IN-HOME SUPPORT SERVICE AGENCIES SHALL EITHER CONTRACT WITH OR HAVE ON STAFF A STATE LICENSED HEALTH CARE PROFESSIONAL, AS DEFINED BY THE MEDICAL SERVICES BOARD BY RULE, ACTING WITHIN THE SCOPE OF THE PERSON'S PROFESSION. THE MEDICAL SERVICES BOARD SHALL PROMULGATE RULES SETTING FORTH THE TRAINING REQUIREMENTS FOR ATTENDANTS PROVIDING IN-HOME SUPPORT SERVICES AND THE OVERSIGHT AND MONITORING RESPONSIBILITIES OF THE STATE LICENSED HEALTH CARE PROFESSIONAL THAT IS EITHER CONTRACTING WITH OR IS ON STAFF WITH THE IN-HOME SUPPORT SERVICE AGENCY.

(b) AN IN-HOME SUPPORT SERVICE AGENCY SHALL NOT DISCONTINUE A CLIENT UNDER THIS PART 13 UNTIL EITHER THE CLIENT OR THE IN-HOME SUPPORT SERVICE AGENCY HAS SECURED OTHER CARE FOR THE CLIENT. THE MEDICAL SERVICES BOARD SHALL PROMULGATE RULES THAT ESTABLISH HOW AN IN-HOME SUPPORT SERVICE AGENCY CAN DISCONTINUE A CLIENT UNDER THIS PART 13.

(5) THE SINGLE ENTRY POINT AGENCIES ESTABLISHED IN SECTION 26-4-522 SHALL BE RESPONSIBLE FOR DETERMINING A PERSON'S ELIGIBILITY FOR IN-HOME SUPPORT SERVICES; EXCEPT THAT FOR ELIGIBLE DISABLED CHILDREN THE STATE DEPARTMENT SHALL DESIGNATE THE ENTITY THAT WILL DETERMINE THE CHILD'S ELIGIBILITY. THE MEDICAL SERVICES BOARD SHALL PROMULGATE RULES SPECIFYING THE SINGLE ENTRY POINT AGENCIES' RESPONSIBILITIES UNDER THIS PART 13. AT A MINIMUM, THESE RULES SHALL REQUIRE THAT CASE MANAGERS DISCUSS THE OPTION AND POTENTIAL BENEFITS OF IN-HOME SUPPORT SERVICES WITH ALL ELIGIBLE LONG-TERM CARE CLIENTS.

(6) SECTION 26-4-609 DOES NOT APPLY TO ANY PARENT WHO PROVIDES IN-HOME SUPPORT SERVICES TO AN ELIGIBLE DISABLED CHILD PURSUANT TO THIS PART 13.

26-4-1304. Provision of services - duties of state department - gifts - grants.

(1) THE PROVISION OF THE IN-HOME SUPPORT SERVICES SET FORTH IN THIS PART 13 SHALL BE SUBJECT TO THE AVAILABILITY OF FEDERAL MATCHING MEDICAID FUNDS, PURSUANT TO TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, FOR PAYMENT OF THE COSTS FOR ADMINISTRATION AND THE COSTS FOR THE PROVISION OF SUCH SERVICES.

(2) THE STATE DEPARTMENT SHALL SEEK AND UTILIZE ANY AVAILABLE FEDERAL, STATE, OR PRIVATE FUNDS THAT ARE AVAILABLE FOR CARRYING OUT THE PURPOSES OF THIS PART 13, INCLUDING BUT NOT LIMITED TO MEDICAID FUNDS, PURSUANT TO TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(3) THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT IS AUTHORIZED TO ACCEPT AND EXPEND ON BEHALF OF THE STATE ANY GRANTS OR GIFTS FROM ANY PUBLIC OR PRIVATE SOURCE FOR THE PURPOSE OF IMPLEMENTING THIS PART 13.

26-4-1305. Accountability - rate structure - rules. (1) THE STATE DEPARTMENT SHALL DEVELOP THE ACCOUNTABILITY REQUIREMENTS NECESSARY TO SAFEGUARD THE USE OF PUBLIC DOLLARS AND TO PROMOTE EFFECTIVE AND EFFICIENT SERVICE DELIVERY UNDER THIS PART 13.

(2) THE MEDICAL SERVICES BOARD, BY RULE, SHALL SET A SEPARATE RATE STRUCTURE FOR IN-HOME SUPPORT SERVICES PROVIDED UNDER THIS PART 13.

(3) THE MEDICAL SERVICES BOARD SHALL ADOPT RULES AS NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE IN-HOME SUPPORT SERVICES AUTHORIZED BY THIS PART 13. AT A MINIMUM, THE RULES SHALL INCLUDE CERTIFICATION OF IN-HOME SUPPORT SERVICE AGENCIES AND STANDARDS OF CARE FOR THE PROVISION OF SERVICES UNDER THIS PART 13.

26-4-1306. Report. ON OR BEFORE JANUARY 1, 2008, THE STATE DEPARTMENT SHALL PROVIDE A REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES, AND THE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE OF THE SENATE 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 AND THE NUMBER OF PERSONS RECEIVING SUCH SERVICES.

26-4-1307. Repeal. THIS PART 13 IS REPEALED, EFFECTIVE JULY 1, 2008. PRIOR TO SUCH REPEAL, IN-HOME SUPPORT SERVICES ESTABLISHED UNDER THIS PART 13 SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

SECTION 2. 24-34-104 (39) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (b) The following agencies, functions, or both, shall terminate on July 1, 2008:

(XV) IN-HOME SUPPORT SERVICES, ESTABLISHED PURSUANT TO PART 13 OF ARTICLE 4 OF TITLE 26, C.R.S.

SECTION 3. Appropriation. The general assembly anticipates that, for the fiscal year beginning July 1, 2002, the department of health care policy and financing, medical programs administration, will receive the sum of thirty-six thousand six hundred seventy-five dollars (\$36,675) in federal funds and 0.4 FTE for the implementation of this act. Although these funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

SECTION 4. Conditional repeal. (1) Part 13 of Article 4 of Title 26 shall be repealed if sufficient federal funds reflected in section 3 are not received by the state department. If sufficient federal funds are not received by the state department, said department shall immediately notify the revisor of statutes.

(2) Part 13 of Article 4 of Title 26 shall be repealed upon receipt by the revisor of statutes of the notification described in subsection (1) of this section.

SECTION 5. 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, 2002