

CHAPTER 345

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 02-1457

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AN ACT

CONCERNING THE SUSPENSION OF THE EIGHT PERCENT LIMITATION ON INCREASES IN HEALTH CARE COSTS FOR NURSING FACILITIES BY USING FUNDING RELATED TO THE QUALITY OF CARE INCENTIVE PAYMENT PROGRAM, AND, IN CONNECTION THEREWITH, REPEALING THE QUALITY OF CARE INCENTIVE PAYMENT PROGRAM AND MODIFYING THE RESIDENT-CENTERED QUALITY IMPROVEMENT PROGRAM, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 26-4-410 (2) (c) (II) (B), (2) (c.5), and (4) (d) (II) (A), Colorado Revised Statutes, are amended, and the said 26-4-410 is further amended BY THE ADDITION A NEW SUBSECTION, to read:

26-4-410. Providers - nursing facility - nursing facility patient program improvement fund - reimbursement - maximum allowable - nonmonetary incentive program - quality of care incentive payment program - legislative declaration. (2) (c) The medical services board shall adopt rules and regulations to:

(II) (B) Determine and pay to nursing facility providers a reasonable share of the amount by which the reasonable costs of the categories of administration, property, and room and board, excluding food costs, exceed the actual cost in these categories only of each facility provider. Such reasonable share shall be defined as twelve and one-half percent of such amount in such categories for each facility, not to exceed twelve percent of the reasonable cost. As used in this sub-subparagraph (B), "nursing facility provider" ~~shall have the same meaning as set forth in subparagraph (VII) of paragraph (c.5) of this subsection~~ (2) MEANS A FACILITY PROVIDER THAT MEETS THE

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

STATE NURSING HOME LICENSING STANDARDS IN SECTION 25-1-107 (1) (I) OR (1) (I) (II), C.R.S., IS MAINTAINED PRIMARILY FOR THE CARE AND TREATMENT OF INPATIENTS UNDER THE DIRECTION OF A PHYSICIAN, AND MEETS THE REQUIREMENTS IN 42 U.S.C. SEC. 1396d FOR CERTIFICATION AS A QUALIFIED PROVIDER OF NURSING FACILITY SERVICES.

~~(c.5) (F) There is hereby established a quality of care incentive payment program for the purpose of encouraging improvement in the quality of care provided by nursing facility providers including, but not limited to, implementation of the consumer satisfaction survey in accordance with section 26-4-410.3. The sum of all incentive payments made under the program shall be equal to the aggregate sum of payments made to all nursing facility providers under sub-subparagraph (B) of subparagraph (H) of paragraph (c) of this subsection (2). The first payment annually from the source of funds for the program shall be made for the state administrative oversight of the consumer satisfaction survey created in section 25-3-102.5, C.R.S., and the resident-centered quality improvement program created in paragraph (c.7) of this subsection (2). The department of health care policy and financing, after consulting with the department of human services and the department of public health and environment, shall reflect in its annual budget submission the offset for administrative costs for the quality of care incentive program.~~

~~(H) Beginning January 1, 1995, the department shall issue incentive payments under the program to nursing facility providers that meet the criteria established by the department through rules and regulations. In determining which providers shall be eligible to receive incentive payments, the department shall consider the following factors:~~

~~(A) Whether the provider is delivering a high level of quality of care as measured by the number of validated and proven deficiencies on the provider's last full recertification survey;~~

~~(B) Whether the provider is meeting such other patient care standards as may be adopted by the department after considering the advice of the advisory committee created by subparagraph (VI) of this paragraph (c.5);~~

~~(C) The number of days of care provided annually under the state medical assistance program;~~

~~(D) The resident care characteristics;~~

~~(E) The facility size and location;~~

~~(F) Inspection surveys;~~

~~(G) Expertise of the nursing facility staff providing care;~~

~~(H) Consumer satisfaction, including how well each resident and resident's family members or representatives are informed about resident rights and choices;~~

~~(I) Satisfactory resolution of complaints;~~

~~(J) Appropriate equipment and support needed to achieve maximum functional ability of residents; and~~

~~(K) Screening for deinstitutionalization.~~

~~(H.5) After December 1, 2001, the department shall consider the definitions of the factors listed in subparagraph (H) of this paragraph (c.5) developed by the working group, created in section 26-4-420, when determining eligibility to receive incentive payments:~~

~~(III) The department shall promulgate rules and regulations establishing the dollar amounts of incentive payments available through the program. Incentive payments may be graduated in amount in order to provide higher payments to those nursing facility providers that provide a comparatively higher degree of quality care.~~

~~(IV) (A) For the period beginning January 1, 1995, and ending June 30, 1995, the department shall assess all nursing facility providers in accordance with the criteria adopted pursuant to subparagraph (H) of this paragraph (c.5) for the purpose of identifying those providers that are eligible to receive quality incentive payments. Based on such assessment, the department shall issue quality incentive payments to a minimum of forty-five percent of all such providers:~~

~~(B) Beginning July 1, 1995, and on July 1 of each fiscal year thereafter, the department shall reassess all nursing facility providers in accordance with the criteria adopted pursuant to subparagraph (H) of this paragraph (c.5) for the purpose of identifying those providers that are eligible to receive quality incentive payments. Based on such assessment, the department shall issue annual quality incentive payments:~~

~~(V) In the event a nursing facility provider is denied an incentive payment under this paragraph (c.5), the provider shall be afforded an opportunity for a hearing in accordance with the provisions of section 24-4-105, C.R.S., as administered under section 25.5-1-107 (2), C.R.S., and the rules and regulations promulgated by the department that govern aggrieved provider appeals of rate determinations, without first meeting the requirement of informal reconsideration by the department.~~

~~(VI) (A) There is hereby created an advisory committee of nine persons to study and make recommendations to the state department on the appropriate method of measuring a "high level of quality care" for the purpose of making payments to providers under this paragraph (c.5). The committee shall be appointed by the executive director of the state department and shall be composed of one representative from such department, two individuals who represent the interests of consumers, one representative of the state department of public health and environment, and one representative from the state long-term care ombudsman office. The remaining four members shall be selected from a list of nominees recommended by proprietary and nonproprietary facilities as follows: Two representatives from the long-term care facility association for proprietary facilities; and two representatives of the long-term care facility association for nonproprietary facilities. The committee members shall serve without compensation. Appointments shall be made for terms of two years. Vacancies that occur during any term shall be filled by the executive director for the remainder of such term.~~

~~(B) This subparagraph (VI) is repealed, effective July 1, 2010. Prior to said repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.~~

~~(VII) As used in this paragraph (c.5), "nursing facility provider" means a facility provider that meets the state nursing home licensing standards in section 25-1-107 (1) (i) (I) or (1) (i) (II), C.R.S., is maintained primarily for the care and treatment of inpatients under the direction of a physician, and meets the requirements in 42 U.S.C. sec. 1396d for certification as a qualified provider of nursing facility services.~~

~~(VIII) Incentive payments issued under subparagraph (II) of this paragraph (c.5) shall be subject to recovery by the state department if the state department or its agent determines that the recipient of such payments failed to satisfactorily complete by December 31 of each year the implementation or evaluation stages of an approved plan required under the rules promulgated pursuant to this paragraph (c.5).~~

~~(IX) Repealed.~~

(4) (d) (II) Notwithstanding any other provision in this article, the following limitations shall apply to rates for reimbursement of nursing facilities:

(A) For all rates effective on or after July 1, 1997, for each class I and class V facility, any increase in administrative costs shall not exceed six percent per year; and for each class I and class V facility, any increase in health care services costs shall not exceed eight percent per year, except that such limitation on health care services costs shall not apply for rates effective on or after July 1, 2000, and prior to July 1, 2002; and

(5) (a) (I) INTERESTED MEMBERS OF THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE STATE DEPARTMENT, THE STATE OMBUDSMAN AND INTERESTED LONG-TERM CARE OMBUDSMEN, AND NURSING FACILITY PROVIDERS SHALL DEVELOP A METHODOLOGY FOR DETERMINING WHEN AND UNDER WHAT CIRCUMSTANCES A LIMITATION ON THE INCREASE IN HEALTH CARE SERVICES COSTS FOR CLASS I AND CLASS V FACILITIES SHALL BE IMPLEMENTED. THE METHODOLOGY MAY TAKE INTO CONSIDERATION FACTORS INCLUDING BUT NOT LIMITED TO NURSING FACILITY CASELOAD, THE IMPLEMENTATION OF REFINANCING MECHANISMS, FEDERAL MANDATES, INFLATION, AND OTHER ECONOMIC FACTORS.

(II) THE MEMBERS OF THE GROUP SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY BY NOVEMBER 15, 2002, WITH RECOMMENDATIONS FOR A METHODOLOGY FOR DETERMINING WHEN AND UNDER WHAT CIRCUMSTANCES THERE SHALL BE IMPLEMENTATION OF A LIMITATION ON THE INCREASE IN HEALTH CARE SERVICES COSTS FOR CLASS I AND CLASS V FACILITIES. THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION BY JULY 1, 2003, IMPLEMENTING A METHODOLOGY FOR DETERMINING WHEN AND UNDER WHAT CIRCUMSTANCES A LIMITATION ON THE INCREASE IN HEALTH CARE SERVICES COSTS SHALL BE IMPLEMENTED, WHICH LEGISLATION SHALL INCLUDE A REPEAL OF PARAGRAPH (b) OF THIS SUBSECTION (5).

(b) IN THE EVENT THE GENERAL ASSEMBLY FAILS TO ENACT LEGISLATION BY JULY 1, 2003, SPECIFYING WHEN AND UNDER WHAT CONDITIONS A LIMITATION ON THE

INCREASE IN NURSING FACILITY HEALTH CARE COSTS SHALL BE IMPOSED, THEN FOR RATES EFFECTIVE ON AND AFTER JULY 1, 2005, IN ADDITION TO THE LIMITATIONS SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION, FOR EACH CLASS I AND CLASS V FACILITY, ANY INCREASE IN HEALTH CARE SERVICES COSTS SHALL NOT EXCEED EIGHT PERCENT PER YEAR. THE CALCULATION OF THE EIGHT PERCENT PER YEAR LIMITATION FOR RATES EFFECTIVE ON OR AFTER JULY 1, 2005, SHALL BE BASED ON THE FACILITY'S COST REPORTS, AS SPECIFIED BY RULE OF THE MEDICAL SERVICES BOARD, IN THE PRECEDING YEAR.

SECTION 2. 26-4-410 (2) (c.7), Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

26-4-410. Providers - nursing facility - nursing facility patient program improvement fund - reimbursement - maximum allowable - nonmonetary incentive program - quality of care incentive payment program - legislative declaration. (2) (c.7) (I) BEGINNING JULY 1, 2003, SUBJECT TO AVAILABLE APPROPRIATIONS, THERE IS HEREBY ESTABLISHED A RESIDENT-CENTERED QUALITY IMPROVEMENT PROGRAM, WHICH SHALL BE KNOWN AS RESQUIP, FOR THE PURPOSE OF ENCOURAGING IMPROVEMENT IN THE QUALITY OF LIFE IN NURSING FACILITIES BY RESIDENT PARTICIPATION IN LIFE-ENRICHING ACTIVITIES THAT PROMOTE ENHANCED COMMUNICATION, BETTER UNDERSTANDING OF RESIDENT NEEDS AND SELF-DETERMINATION, AND BUILDING POSITIVE RELATIONSHIPS AND A SENSE OF COMMUNITY IN A NONTHREATENING ENVIRONMENT THAT PROVIDES AN ENCOURAGING AND ACCEPTING ATMOSPHERE.

(II) THE STATE DEPARTMENT MAY ISSUE INCENTIVE GRANTS UNDER THE PROGRAM, SUBJECT TO AVAILABLE APPROPRIATIONS, TO NURSING FACILITY PROVIDERS THAT MEET THE CRITERIA ESTABLISHED BY THE STATE DEPARTMENT BY RULE. A NURSING FACILITY PROVIDER MAY ALSO APPLY FOR AN INCENTIVE PAYMENT.

(III) APPLICANTS FOR PROGRAM INCENTIVE GRANTS SHALL CLEARLY DEFINE A RESIDENT-CENTERED PROGRAM PROPOSAL PURSUANT TO RULES ESTABLISHED BY THE STATE DEPARTMENT. SUCH APPLICATION SHALL INCLUDE A REQUEST FOR A SPECIFIC GRANT AMOUNT. PROPOSALS AND REQUESTS FOR A SPECIFIC GRANT AMOUNT MAY INCLUDE DIRECT AND INDIRECT COSTS INCLUDING ENHANCED EDUCATION AND TRAINING FOR STAFF, HUMAN RESOURCE EXPENDITURES, AND OTHER ACTIVITIES THAT MAY ENCOURAGE IMPROVEMENT IN THE QUALITY OF LIFE OF RESIDENTS IN NURSING FACILITIES.

(IV) RULES ISSUED BY THE STATE DEPARTMENT REGARDING THE INCENTIVE GRANT PROGRAM SHALL INCLUDE REQUIREMENTS IN APPLICATIONS BY PROVIDERS FOR PARTICIPATION BY RESIDENTS OR FAMILY MEMBERS.

(V) THE STATE DEPARTMENT AND THE RESQUIP TEAM OF EACH NURSING CARE FACILITY THAT RECEIVES AN INCENTIVE GRANT SHALL CONDUCT AN EVALUATION OF THE PROPOSAL TO DEMONSTRATE PROGRAM AND FINANCIAL ACCOUNTABILITY, ON AT LEAST AN ANNUAL BASIS, TO ENSURE THAT THE GRANTS ARE SPENT ONLY ON THE IMPLEMENTATION OF THE PROPOSAL. THE COMPOSITION OF EACH RESQUIP TEAM SHALL BE ESTABLISHED BY RULE OF THE STATE DEPARTMENT. ANY PAYMENTS THAT ARE NOT SPENT ON THE PROPOSAL SHALL BE RETURNED TO THE STATE DEPARTMENT.

(VI) BEGINNING JULY 1, 2004, AND EACH JULY 1 THEREAFTER, THE STATE DEPARTMENT SHALL REPORT ANNUALLY TO THE MEMBERS OF THE HEALTH, ENVIRONMENT, CHILDREN AND FAMILIES COMMITTEE OF THE SENATE AND THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES ON CONSUMER SATISFACTION SURVEYS AND OTHER FACILITY INFORMATION. FOR EACH NURSING FACILITY, THIS REPORT SHALL CONTAIN INFORMATION ON THE SURVEY RESULTS, THE NUMBER OF COMPLAINTS, AND THE NUMBER OF OCCURRENCES THAT ARE REPORTED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1-124, C.R.S.

SECTION 3. Repeal. 2-3-1203 (3) (w) (I), Colorado Revised Statutes, is repealed.

SECTION 4. Repeal. 25-3-102.5 (1) (a.5) (III) (C), Colorado Revised Statutes, as enacted by Senate Bill 02-071, enacted at the Second Regular Session of the Sixty-third General Assembly, is repealed.

SECTION 5. Repeal. 26-4-410 (2) (c.5) (I), Colorado Revised Statutes, as amended by Senate Bill 02-071, enacted at the Second Regular Session of the Sixty-third General Assembly, is repealed.

SECTION 6. Repeal. Section 3 of Senate Bill 02-071, enacted at the Second Regular Session of the Sixty-third General Assembly, is repealed.

SECTION 7. Appropriation - adjustments to the 2002 long bill. (1) (a) In addition to any other appropriation, there is hereby appropriated, out of moneys in the general fund not otherwise appropriated, to the department of public health and environment, division of health facilities, for the fiscal year beginning July 1, 2002, the sum of fifty-eight thousand five hundred fourteen dollars (\$58,514) and 1.1 FTE, or so much thereof as may be necessary, for the implementation of this act.

(b) In addition to any other appropriation, there is hereby appropriated, out of moneys in the general fund not otherwise appropriated, to the department of human services, office of adult and veterans services, aging services programs, for the fiscal year beginning July 1, 2002, the sum of fifty thousand two hundred thirty-one dollars (\$50,231), or so much thereof as may be necessary, for the implementation of this act. This amount is to be for the contract for the state ombudsman program.

(2) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2002, shall be adjusted as follows:

(a) The appropriation to the department of health care policy and financing, medical programs administration, for the fiscal year beginning July 1, 2002, is decreased by eighty-nine thousand five hundred six dollars (\$89,506). Of this sum, twenty-two thousand three hundred seventy-six dollars (\$22,376) shall be from the general fund and sixty-seven thousand one hundred thirty dollars (\$67,130) shall be from federal funds.

(b) The appropriation to the department of health care policy and financing, department of human services-medicare funded programs, for fiscal year beginning

July 1, 2002, is decreased by one hundred twenty-six thousand one hundred thirty dollars (\$126,130). Of said sum, sixty-three thousand sixty-five dollars (\$63,065) shall be from the general fund and sixty-three thousand sixty-five dollars (\$63,065) shall be from federal funds. Although federal funds are not appropriated, they are noted for the purpose of indicating the assumptions used relative to these funds.

(c) The appropriation to the department of public health and environment, division of health facilities, is decreased by eighty-nine thousand five hundred six dollars (\$89,506) cash funds exempt and 1.8 FTE.

(d) The appropriation to the department of human services, office of adult veterans services, aging services programs, is decreased by one hundred twenty-six thousand one hundred thirty dollars (\$126,130) cash funds exempt.

(3) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2002, shall be adjusted as follows: The appropriation to the department of health care policy and financing, medical services premiums, is decreased by one hundred seventy-seven thousand six hundred ninety-one dollars (\$177,691). Of said sum, eighty-eight thousand eight hundred forty-six dollars (\$88,846) shall be from the general fund, and eighty-eight thousand eight hundred forty-five dollars (\$88,845) shall be from federal funds.

SECTION 8. Appropriation - adjustments to the 2002 long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2002, shall be adjusted as follows: The appropriation to the department of health care policy and financing, medical services premiums, is decreased by one hundred seventy-seven thousand six hundred ninety-one dollars (\$177,691). Of said sum, eighty-eight thousand eight hundred forty-six dollars (\$88,846) shall be from the general fund, and eighty-eight thousand eight hundred forty-five dollars (\$88,845) shall be from federal funds.

SECTION 9. Effective date. (1) Except as otherwise provided for in subsections (2) and (3) of this section, this act shall take effect July 1, 2002.

(2) Sections 4, 5, 6, and 7 of this act shall take effect only if Senate Bill 02-071 is enacted at the Second Regular Session of the Sixty-third General Assembly and becomes law.

(3) Section 8 of this act shall not take effect if Senate Bill 02-071 is enacted at the Second Regular Session of the Sixty-third General Assembly and becomes law.

SECTION 10. 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 7, 2002