

## CHAPTER 304

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**HEALTH CARE POLICY AND FINANCING**


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**SENATE BILL 04-206**

BY SENATOR(S) McElhany, Hanna, Anderson, Andrews, Chlouber, Dyer, Fitz-Gerald, Groff, Grossman, Hagedorn, Johnson S., Keller, Kester, Phillips, Reeves, Sandoval, Teck, Gordon, Isgar, Jones, Nichol, Tupa, Veiga, and Windels;  
 also REPRESENTATIVE(S) Witwer, Hefley, Harvey, Boyd, Carroll, Clapp, Coleman, Fairbank, Frangas, Hall, Johnson R., King, Mitchell, Plant, Rhodes, Romanoff, Spradley, Stafford, Tochtrop, Young, Borodkin, Hodge, Madden, Marshall, McFadyen, McGihon, Miller, Spence, Stengel, Weissmann, White, and Williams S.

**AN ACT**

**CONCERNING HOSPICE CARE FOR PERSONS WHO ARE ELIGIBLE UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AND MAKING AN APPROPRIATION THEREFOR.**

*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, is amended BY THE ADDITION OF A NEW SECTION to read:

**26-4-533. Pediatric hospice care - legislative declaration - federal authorization - rules - fund - repeal.** (1) **Legislative declaration.** (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(I) THE DEATH OF A CHILD HAS A DEVASTATING AND ENDURING IMPACT ON THE CHILD'S FAMILY;

(II) TOO OFTEN, CHILDREN WITH FATAL CONDITIONS AND THEIR FAMILIES FAIL TO RECEIVE COMPASSIONATE AND CONSISTENT CARE THAT MEETS THEIR PHYSICAL, EMOTIONAL, AND SPIRITUAL NEEDS;

(III) BETTER CARE IS POSSIBLE, BUT CURRENT METHODS OF ORGANIZING AND FINANCING PALLIATIVE, END-OF-LIFE, AND BEREAVEMENT CARE IMPEDE THE PROVISION OF SERVICES THAT ARE BOTH MORE APPROPRIATE AND MORE COST-EFFICIENT;

(IV) CURRENT FEDERAL MEDICAID REGULATIONS CONTAIN INHERENT BARRIERS TO PROVIDING APPROPRIATE PALLIATIVE AND END-OF-LIFE CARE TO PEDIATRIC PATIENTS.

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

THESE BARRIERS INCLUDE REQUIREMENTS THAT PRECLUDE THE PURSUIT OF CURATIVE TREATMENTS, MANDATE A DO-NOT-RESUSCITATE ORDER, AND REQUIRE PHYSICIAN CERTIFICATION THAT DEATH IS EXPECTED WITHIN SIX MONTHS.

(b) THE GENERAL ASSEMBLY DECLARES THAT IT IS IN THE BEST INTEREST OF THE STATE TO INVESTIGATE AND IMPLEMENT HOSPICE GUIDELINES THAT PROVIDE APPROPRIATE, COMPASSIONATE CARE TO DYING CHILDREN AND THEIR FAMILIES WHILE PROVING TO BE COST NEUTRAL OR COST SAVING TO THE STATE AND FEDERAL MEDICAID PROGRAMS.

(c) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT WHILE THIS DIRECTION IMMEDIATELY CONCERNS FEDERAL APPROVAL FOR HOSPICE CARE THAT RECOGNIZES THE DISTINCT CIRCUMSTANCES OF CHILDREN FACING LIFE-THREATENING ILLNESSES AND THEIR FAMILIES, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE INFORMATION AND DATA PRODUCED AS A RESULT OF THIS ACT SHALL BE USED TO IMPROVE THE DELIVERY OF PALLIATIVE AND END-OF-LIFE SERVICES TO PERSONS OF ALL AGES WHEN SUCH IMPROVEMENTS CAN BE MADE IN A MANNER THAT IS COST NEUTRAL OR COST SAVING TO THE STATE.

(2) **Definitions.** (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "ELIGIBLE CHILD" MEANS A CHILD WHO:

(A) IS LESS THAN NINETEEN YEARS OF AGE; AND

(B) IS ELIGIBLE FOR THE STATE'S MEDICAID PROGRAM PURSUANT TO SECTION 26-4-201, 26-4-301, OR 26-4-303.

(II) "PEDIATRIC HOSPICE CARE" MEANS HOSPICE CARE FOR ELIGIBLE CHILDREN AS AUTHORIZED IN THIS SECTION.

(3) **Pediatric hospice care.** (a) (I) THE STATE DEPARTMENT SHALL SEEK THE APPROPRIATE FEDERAL AUTHORIZATION, CONDITIONED ON THE RECEIPT OF GIFTS, GRANTS, OR DONATIONS SUFFICIENT TO PROVIDE FOR THE STATE'S ADMINISTRATIVE COSTS OF PREPARING AND SUBMITTING THE REQUEST, FOR PEDIATRIC HOSPICE CARE THAT SHALL INCLUDE BUT MAY NOT BE LIMITED TO:

(A) RESPITE CARE;

(B) EXPRESSIVE THERAPIES, AS DEFINED IN RULE BY THE STATE BOARD;

(C) PALLIATIVE CARE FROM THE TIME OF DIAGNOSIS OF A POTENTIALLY LIFE-THREATENING ILLNESS; AND

(D) A CONTINUUM OF CARE THROUGH THE COORDINATION OF SERVICES, WHICH MAY INCLUDE SKILLED, INTERMITTENT, AND AROUND-THE-CLOCK NURSING CARE.

(II) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK FEDERAL APPROVAL FOR MODIFICATIONS TO THE PROVISION OF HOSPICE CARE FOR ADULTS WHO ARE ELIGIBLE FOR THE STATE'S MEDICAID PROGRAM.

(b) FOR THE PROVISION OF PEDIATRIC HOSPICE CARE, THE STATE DEPARTMENT SHALL SEEK AN EXEMPTION FROM THE FOLLOWING FEDERAL MEDICAID REQUIREMENTS FOR THE ELIGIBILITY OF AND ELECTION FOR HOSPICE CARE:

(I) THE MANDATORY DO-NOT-RESUSCITATE ORDER;

(II) A PHYSICIAN'S CERTIFICATION THAT A PATIENT IS EXPECTED TO LIVE LESS THAN SIX MONTHS; AND

(III) THE NON-ALLOWANCE OF CURATIVE CARE THERAPIES CONCURRENT WITH PALLIATIVE AND HOSPICE CARE.

(c) IN ANY APPLICATION FOR FEDERAL AUTHORIZATION PURSUANT TO THIS SECTION, THE STATE DEPARTMENT SHALL RETAIN BEREAVEMENT SERVICES TO THE EXTENT AVAILABLE UNDER FEDERAL LAW.

(d) PEDIATRIC HOSPICE CARE, AS AUTHORIZED PURSUANT TO THIS SECTION, SHALL MEET AGGREGATE FEDERAL WAIVER BUDGET NEUTRALITY REQUIREMENTS.

(e) THE STATE DEPARTMENT SHALL IMPLEMENT THE PROVISION OF PEDIATRIC HOSPICE CARE TO THE EXTENT AUTHORIZED BY THE FEDERAL GOVERNMENT.

(4) **Review.** THE STATE DEPARTMENT SHALL NOTIFY THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY OF THE EXTENT TO WHICH THE STATE DEPARTMENT RECEIVED FEDERAL AUTHORIZATION FOR PEDIATRIC HOSPICE CARE SERVICES PURSUANT TO THIS SECTION IN ORDER FOR THE JOINT BUDGET COMMITTEE TO REVIEW THE APPROVED BUDGET NEUTRALITY ANALYSIS FOR SUCH SERVICES PRIOR TO THE STATE DEPARTMENT'S IMPLEMENTATION.

(5) **Rules.** THE STATE DEPARTMENT SHALL DEVELOP THE SERVICE PROVISIONS FOR PEDIATRIC HOSPICE CARE IN CONSULTATION WITH MEDICAL PROFESSIONALS WHO HAVE EXPERTISE IN PROVIDING END-OF-LIFE AND PALLIATIVE CARE TO PEDIATRIC PATIENTS AND FAMILY MEMBERS WHO HAVE EXPERIENCED THE DEATH OF A CHILD. THE STATE BOARD SHALL ADOPT RULES NECESSARY TO IMPLEMENT AND ADMINISTER THE PROVISIONS OF THIS SECTION.

(6) **Fund.** (a) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSE OF PROVIDING FOR THE ADMINISTRATIVE COSTS OF PREPARING AND SUBMITTING THE REQUEST FOR FEDERAL APPROVAL FOR THE PROVISION OF PEDIATRIC HOSPICE CARE. ALL PRIVATE AND PUBLIC FUNDS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE PEDIATRIC HOSPICE CARE CASH FUND, WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR PREPARING AND SUBMITTING THE REQUEST FOR FEDERAL APPROVAL PURSUANT TO THIS SECTION. ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND

AND SHALL NOT BE CREDITED OR TRANSFERRED OR REVERT TO THE GENERAL FUND OR ANOTHER FUND.

(b) IF SUFFICIENT MONEYS HAVE NOT BEEN CREDITED TO THE FUND FOR THE PURPOSE OF PREPARING THE REQUEST FOR FEDERAL AUTHORIZATION REQUIRED UNDER THIS SECTION PRIOR TO JANUARY 1, 2005, THE STATE TREASURER SHALL IMMEDIATELY PROVIDE NOTIFICATION OF SUCH FACT TO THE STATE DEPARTMENT AND TO THE REVISOR OF STATUTES.

(c) THIS SECTION IS REPEALED UPON RECEIPT BY THE REVISOR OF STATUTES OF THE NOTIFICATION DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (6).

**SECTION 2. Appropriation.** In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, for the fiscal year beginning July 1, 2004, the sum of twenty-two thousand dollars (\$22,000), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from gifts, grants, and donations in the pediatric hospice care cash fund created in section 26-4-533 (6), Colorado Revised Statutes. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2004, the department of health care policy and financing will receive the sum of twenty-two thousand dollars (\$22,000) in federal funds 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 3. 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: May 27, 2004