

CHAPTER 161

HEALTH CARE POLICY AND FINANCING

SENATE BILL 05-221

BY SENATOR(S) Hagedorn, Bacon, Johnson, Shaffer, Tochtrop, Tupa, Williams, and Keller;
also REPRESENTATIVE(S) Buescher, Berens, Boyd, Butcher, Carroll M., Coleman, Frangas, and Paccione.

AN ACT

CONCERNING A REQUIREMENT THAT THE STATE SEEK A WAIVER UNDER THE HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION PROGRAM, 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:

26-4-534. ColoradoCares program - health insurance flexibility and accountability waiver - evaluation. (1) THE STATE DEPARTMENT SHALL PREPARE A WAIVER UNDER THE HEALTH INSURANCE FLEXIBILITY AND ACCOUNTABILITY DEMONSTRATION PROGRAM TO PERMIT THE STATE DEPARTMENT TO CREATE A NEW SERVICE DELIVERY OR PURCHASING SYSTEM IN ORDER TO BETTER SERVE CHILDREN AND ADULTS UNDER THIS ARTICLE OR UNDER ARTICLE 19 OF THIS TITLE, REFERRED TO AS THE COLORADOCARES PROGRAM. THE WAIVER MAY INCLUDE THE POPULATIONS IDENTIFIED IN SECTION 26-4-201 (1) (a), (1) (b), (1) (f), (1) (g), AND (1) (o), 26-4-301 (1) (a), (1) (d), (1) (e), (1) (o), AND (1) (s), 26-4-508, OR 26-19-109 AND ANY ADDITIONAL POPULATIONS THAT THE STATE DEPARTMENT DETERMINES THE FEDERAL GOVERNMENT SHALL REQUIRE TO BE COVERED FOR APPROVAL OF THE WAIVER. THE STATE DEPARTMENT SHALL NOT FINALIZE ANY WAIVER WITH THE FEDERAL GOVERNMENT THAT REDUCES OR DIMINISHES FEDERAL FINANCIAL PARTICIPATION IN THE MEDICAL ASSISTANCE PROGRAM, THE CHILDREN'S BASIC HEALTH PLAN ESTABLISHED PURSUANT TO ARTICLE 19 OF THIS TITLE, THE DISPROPORTIONATE SHARE HOSPITAL FACTOR, OR ANY OTHER CURRENT OR FUTURE FEDERAL PROGRAM TO PROVIDE HEALTH SERVICES TO LOW-INCOME POPULATIONS. THE STATE DEPARTMENT SHALL NOT IMPLEMENT, WITHOUT PRIOR STATUTORY AUTHORIZATION, THE WAIVER IF IT WOULD RESULT IN A REDUCTION OF BENEFITS COVERED TO THE CATEGORICALLY NEEDY AS REQUIRED BY SECTIONS 26-4-202,

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

26-4-203, AND 26-4-302.

(2) (a) THE STATE DEPARTMENT SHALL SUBMIT THE PROPOSED WAIVER TO THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES. IF NOT INCLUDED IN THE WAIVER, THE STATE DEPARTMENT SHALL ALSO SUBMIT TO THE COMMITTEES INFORMATION ON:

(I) ANY ACTUARIAL ANALYSIS OR OTHER FINANCIAL STUDY CONDUCTED, INCLUDING BUT NOT LIMITED TO ANY STUDY REGARDING THE FEASIBILITY OF THE WAIVER AND COST SAVINGS TO BE REALIZED UNDER THE WAIVER;

(II) WHETHER THE WAIVER SEEKS A PROGRAMMATIC CAP ON FEDERAL MONEYS OR A PER CAPITA CAP ON FEDERAL MONEYS AND HOW THE WAIVER WILL ADDRESS INCREASES IN COSTS DUE TO POPULATION GROWTH OR GROWTH IN EXPENDITURES;

(III) THE SPECIFIC REQUIREMENTS OF FEDERAL OR STATE LAW, INCLUDING BUT NOT LIMITED TO ANY RULE OR REGULATION, PROPOSED TO BE WAIVED;

(IV) HOW BENEFITS PROVIDED TO A RECIPIENT WHO IS ELIGIBLE FOR BENEFITS BEFORE THE IMPLEMENTATION OF THE WAIVER WILL BE INCREASED OR DECREASED;

(V) THE ELIGIBILITY OF RECIPIENTS WHO WERE NOT ELIGIBLE BEFORE THE IMPLEMENTATION OF THE WAIVER AND A COMPARISON OF THE BENEFITS AND COST SHARING REQUIREMENTS OF THE NEWLY ELIGIBLE RECIPIENTS TO RECIPIENTS WHO WERE ELIGIBLE FOR BENEFITS BEFORE THE IMPLEMENTATION OF THE WAIVER;

(VI) WHETHER EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES SHALL BE PART OF THE CORE WAIVER SERVICE PACKAGE AND WHICH OUTREACH EFFORTS SHALL BE INCLUDED;

(VII) HOW THE WAIVER WILL ADDRESS DURABLE MEDICAL EQUIPMENT AND WHETHER THERE WILL BE A MONETARY CAP ON SUCH EQUIPMENT;

(VIII) HOW THE WAIVER WILL DEFINE "MEDICAL NECESSITY" AND WHETHER IT WILL INCLUDE DIFFERENT DEFINITIONS FOR ADULTS AND CHILDREN;

(IX) WHETHER THE WAIVER WILL INCLUDE A RESTRUCTURING OF ANY PROVIDER REIMBURSEMENT RATES AND, IF SO, AN EXPLANATION OF THE PROPOSED CHANGES TO REIMBURSEMENT RATES;

(X) HOW THE SERVICES DESCRIBED IN THE WAIVER SHALL BE DELIVERED INCLUDING AN IDENTIFICATION OF THE TYPES OF ENTITIES OR ORGANIZATIONS THAT WILL DELIVER THE SERVICES AND HOW THE IMPLEMENTATION OF THE WAIVER WILL ENCOURAGE THE PARTICIPATION OF NEW MANAGED CARE ORGANIZATIONS;

(XI) HOW THE WAIVER WILL MINIMIZE BARRIERS TO ACCESS OR DELAYS IN THE AVAILABILITY OF SERVICES TO RECIPIENTS REQUIRING SERVICES, INCLUDING WRAP-AROUND SERVICES; AND

(XII) HOW THE WAIVER WILL IMPROVE ON THE ADEQUACY OF A STATEWIDE NETWORK OF PROVIDERS AVAILABLE TO RECIPIENTS UNDER THE WAIVER, INCLUDING

BUT NOT LIMITED TO PROVISIONS FOR ADEQUATE REIMBURSEMENT RATES AND CONSIDERATION OF THE BURDEN OF PROGRAM ADMINISTRATION ON PROVIDERS.

(b) THE HEALTH AND HUMAN SERVICES COMMITTEES SHALL HOLD AT LEAST FOUR JOINT PUBLIC HEARINGS ON THE WAIVER, AT WHICH PUBLIC TESTIMONY SHALL BE ACCEPTED. THE HEARINGS AT WHICH PUBLIC TESTIMONY IS ACCEPTED MAY BE CONDUCTED WITH THE ATTENDANCE OF FEWER MEMBERS THAN A QUORUM OF EACH OF THE HEALTH AND HUMAN SERVICES COMMITTEES. ONE JOINT HEARING SHALL BE CONDUCTED IN THE DENVER METROPOLITAN AREA, ONE JOINT HEARING SHALL BE HELD WEST OF THE CONTINENTAL DIVIDE, ONE JOINT HEARING SHALL BE HELD IN NORTHERN COLORADO, AND ONE JOINT HEARING SHALL BE HELD IN SOUTHERN COLORADO. FOLLOWING THE JOINT HEARINGS BUT WITHIN SIXTY DAYS AFTER THE SUBMISSION OF THE WAIVER TO THE JOINT COMMITTEES, AT A HEARING AT WHICH A QUORUM OF EACH HEALTH AND HUMAN SERVICES COMMITTEE IS PRESENT, THE JOINT HEALTH AND HUMAN SERVICES COMMITTEE SHALL EITHER APPROVE OR REJECT THE WAIVER AS SUBMITTED BY THE DEPARTMENT. IF A MAJORITY OF THE SENATE HEALTH AND HUMAN SERVICES COMMITTEE AND A MAJORITY OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE APPROVES THE WAIVER, THE JOINT HEALTH AND HUMAN SERVICES COMMITTEE SHALL SUBMIT THE WAIVER TO THE JOINT BUDGET COMMITTEE FOR APPROVAL.

(c) THE JOINT BUDGET COMMITTEE MAY HOLD HEARINGS AND ACCEPT PUBLIC TESTIMONY ON THE WAIVER. WITHIN FIFTEEN DAYS AFTER THE APPROVAL OF THE WAIVER BY THE JOINT COMMITTEES, THE JOINT BUDGET COMMITTEE SHALL EITHER APPROVE OR REJECT THE WAIVER AS SUBMITTED BY THE DEPARTMENT. IF THE JOINT BUDGET COMMITTEE APPROVES THE WAIVER, THE STATE DEPARTMENT SHALL SUBMIT THE WAIVER TO THE FEDERAL GOVERNMENT.

(3) (a) IF THE FEDERAL GOVERNMENT RETURNS THE WAIVER WITH SUGGESTED OR REQUIRED AMENDMENTS, THE STATE DEPARTMENT SHALL SUBMIT AN AMENDED WAIVER TO THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES. THE COMMITTEES SHALL HOLD A JOINT HEARING AND MAY TAKE PUBLIC TESTIMONY ON THE AMENDED WAIVER. IF A MAJORITY OF THE SENATE HEALTH AND HUMAN SERVICES COMMITTEE AND A MAJORITY OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE APPROVES THE AMENDED WAIVER, THE JOINT HEALTH AND HUMAN SERVICES COMMITTEE SHALL SUBMIT THE AMENDED WAIVER TO THE JOINT BUDGET COMMITTEE FOR ITS APPROVAL.

(b) THE JOINT BUDGET COMMITTEE MAY HOLD HEARINGS AND ACCEPT PUBLIC TESTIMONY ON THE AMENDED WAIVER. IF THE JOINT BUDGET COMMITTEE APPROVES THE AMENDED WAIVER, THE STATE DEPARTMENT SHALL SUBMIT THE AMENDED WAIVER TO THE FEDERAL GOVERNMENT.

(4) (a) IF A WAIVER SUBMITTED PURSUANT TO THIS SECTION IS IMPLEMENTED, THE STATE AUDITOR'S OFFICE SHALL OVERSEE AN EVALUATION OF THE WAIVER PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (4). OUT OF MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY TO COVER THE COSTS OF THE EVALUATIONS REQUIRED BY THIS SUBSECTION (4), THE STATE AUDITOR'S OFFICE SHALL BE REIMBURSED FOR ITS REASONABLE AND NECESSARY COSTS INCURRED IN CONNECTION WITH ADMINISTERING THE CONTRACT FOR THE EVALUATION.

(b) THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT SHALL NOTIFY THE STATE AUDITOR ONCE THE WAIVER IS IMPLEMENTED. NO MORE THAN SIX MONTHS FOLLOWING THE IMPLEMENTATION OF THE WAIVER, THE STATE AUDITOR'S OFFICE SHALL ISSUE A REQUEST FOR PROPOSALS FOR A PUBLIC OR PRIVATE ENTITY TO CONDUCT THE EVALUATIONS REQUIRED BY THIS SUBSECTION (4). NO ENTITY INVOLVED WITH THE DEVELOPMENT OR OVERSIGHT OF THE WAIVER SHALL BE ELIGIBLE TO SUBMIT A RESPONSE TO THE REQUEST FOR PROPOSALS. THE STATE AUDITOR'S OFFICE SHALL SEEK INPUT FROM RECIPIENTS, PROVIDERS, AND ADVOCATES IN DEVELOPING THE REQUEST FOR PROPOSALS REQUIRED BY THIS PARAGRAPH (b).

(c) THE GOALS OF THE EVALUATIONS SHALL BE TO OBTAIN AN OBJECTIVE ANALYSIS OF THE OUTCOMES REALIZED AS A RESULT OF THE IMPLEMENTATION OF THE WAIVER AND WHETHER THERE SHOULD BE ANY CHANGES TO THE WAIVER. SUCH OUTCOMES SHALL INCLUDE BUT ARE NOT LIMITED TO:

(I) THE NUMBER OF NEW RECIPIENTS WHO WOULD NOT HAVE BEEN ELIGIBLE FOR BENEFITS WITHOUT THE WAIVER;

(II) THE LENGTH OF TIME RECIPIENTS UNDER THE WAIVER REMAIN IN THE MEDICAL ASSISTANCE PROGRAM AS COMPARED TO OTHER RECIPIENTS NOT UNDER THE WAIVER;

(III) THE UTILIZATION RATES OF RECIPIENTS UNDER THE WAIVER FOR PRIMARY AND PREVENTATIVE CARE AND EMERGENCY ROOM AND HOSPITAL-BASED CARE AND THE REASONS FOR ANY INCREASE OR DECREASE IN THE RATES;

(IV) THE RATE OF UTILIZATION FOR EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES AND PROCEDURES FOR MAKING RECIPIENTS AWARE OF EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES;

(V) THE RATE OF PROVIDER PARTICIPATION AND THE REASONS FOR ANY INCREASE OR DECREASE IN THE RATE;

(VI) THE ACCESS TO CARE IN ALL GEOGRAPHIC AREAS OF THE STATE;

(VII) THE CONTINUED AVAILABILITY OF THE SAME APPELLATE PROCEDURES AVAILABLE TO RECIPIENTS WHO ARE NOT PART OF THE WAIVER;

(VIII) THE STABILITY OF HEALTH OUTCOMES FOR RECIPIENTS AND THE REASONS FOR ANY CHANGES IN THE STABILITY;

(IX) THE IMPACT OF COST SHARING, IF ANY, ON UTILIZATION OF PRIMARY AND PREVENTATIVE CARE, INCLUDING BUT NOT LIMITED TO WHETHER COST SHARING HAS RESULTED IN COLLECTION ACTIONS BEING INITIATED BY PROVIDERS;

(X) IF THERE IS A PREMIUM ASSISTANCE WAIVER COMPONENT, HOW THIS COMPONENT IMPACTS A RECIPIENT'S ABILITY TO ACCESS SERVICES; AND

(XI) THE IMPACT OF THE WAIVER ON THE STATE DEPARTMENT'S ADMINISTRATIVE COSTS.

(d) THE EVALUATIONS REQUIRED BY THIS SUBSECTION (4) SHALL BE CONDUCTED

FOLLOWING THE FIRST, SECOND, AND FOURTH YEAR OF IMPLEMENTATION OF THE WAIVER.

(e) TO THE EXTENT PERMISSIBLE UNDER THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 42 U.S.C. SEC. 1320d TO 1320d-8, THE STATE AUDITOR'S OFFICE AND THE ENTITY CONDUCTING THE EVALUATIONS SHALL HAVE ACCESS TO ALL RECORDS, DOCUMENTS, AND REPORTS PREPARED BY OR FOR, OR MAINTAINED BY OR FOR, THE STATE DEPARTMENT. THE STATE AUDITOR'S OFFICE AND THE ENTITY CONDUCTING THE EVALUATIONS SHALL COMPLY WITH ALL PROVISIONS OF THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 42 U.S.C. SEC. 1320d TO 1320d-8.

(f) THE ENTITY THAT CONDUCTS THE EVALUATIONS SHALL REPORT TO THE STATE AUDITOR'S OFFICE ON A QUARTERLY BASIS CONCERNING ITS PROGRESS IN COMPLETING THE EVALUATIONS REQUIRED BY THIS SUBSECTION (4).

SECTION 2. Article 19 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-19-112.5. Health insurance flexibility and accountability waiver. IF THE STATE DEPARTMENT IMPLEMENTS A WAIVER SUBMITTED PURSUANT TO SECTION 26-4-534 AFFECTING AN ELIGIBLE PERSON UNDER THIS ARTICLE, THE BENEFITS OF THE ELIGIBLE PERSON SHALL BE DETERMINED BY THE PROVISIONS OF THE WAIVER.

SECTION 3. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the legislative department, for allocation to the general assembly, for the fiscal year beginning July 1, 2005, the sum of twenty thousand dollars (\$20,000), or so much thereof as may be necessary, for the implementation of this act.

(2) It is the intent of the general assembly that the general fund appropriation in subsection (1) of this section shall be derived from savings generated from the implementation of the provisions of House Bill 05-1243, as enacted during the First Regular Session of the Sixty-fifth General Assembly.

SECTION 4. Effective date. This act shall take effect upon passage only if:

(a) House Bill 05-1243 is enacted at the First Regular Session of the Sixty-fifth General Assembly and becomes law; and

(b) The final fiscal estimate for House Bill 05-1243, as determined from the appropriations enacted in said bill, shows a net reduction in the amount of general fund revenues appropriated for the state fiscal year 2005-06, that is equal to or greater than the amount of the general fund appropriation made for the implementation of this act for the state fiscal year 2005-06, as reflected in section 3 of this act; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 15, 2005, that the requirement set forth in paragraph (b) of this subsection (2) has been met.

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: May 26, 2005