

CHAPTER 278

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 05-1243

BY REPRESENTATIVE(S) Jahn, Berens, Boyd, Carroll T., Coleman, Frangas, Garcia, Green, Madden, McCluskey, Merrifield, Solano, Stafford, and Todd;
 also SENATOR(S) Johnson, Evans, Fitz-Gerald, Groff, Hagedorn, Hanna, Isgar, Jones, Keller, Kester, Lamborn, Mitchell, Sandoval, Shaffer, Spence, Tapia, Taylor, Teck, Tochtrop, Tupa, Veiga, Wiens, Williams, and Windels.

AN ACT

CONCERNING CONSUMER-DIRECTED CARE 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. 26-4-1301, Colorado Revised Statutes, is amended to read:

26-4-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(1) "ATTENDANT SUPPORT" MEANS ANY ACTION TO ASSIST AN ELIGIBLE PERSON IN ACCOMPLISHING ACTIVITIES OF DAILY LIVING, INSTRUMENTAL ACTIVITIES OF DAILY LIVING, AND HABILITATIVE AND HEALTH-RELATED TASKS. SUCH ACTIVITIES INCLUDE, BUT ARE NOT LIMITED TO, PERSONAL CARE SERVICES, HOUSEHOLD SERVICES, COGNITIVE SERVICES, MOBILITY SERVICES, AND HEALTH-RELATED TASKS.

(1.5) "Authorized representative" means an individual designated by the eligible person, BY THE PARENT OF A MINOR, or by the LEGAL guardian of the eligible person ~~if appropriate~~ IF THE ELIGIBLE PERSON CANNOT DEMONSTRATE SOUND JUDGMENT TO HIS OR HER PRIMARY CARE PHYSICIAN, who has the judgment and ability to assist the eligible person in acquiring and utilizing services under this part 13. The extent of the authorized representative's involvement shall be determined upon designation.

(2) "Consumer-directed" means ~~that an eligible person receives a direct payment through a voucher to purchase qualified services. The direct payment received by the eligible person to pay for qualified services shall not be counted as income for~~

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

~~purposes of determining eligibility for medicaid and other state programs that use income to determine eligibility~~ THAT AN ELIGIBLE PERSON RECEIVES A DIRECT PAYMENT THROUGH A VOUCHER AND EMPLOYS, TRAINS, AND IN OTHER WAYS MANAGES THE PERSON WHO PROVIDES HIS OR HER ATTENDANT SUPPORT. THE DIRECT PAYMENT THROUGH A VOUCHER THAT IS RECEIVED BY AN ELIGIBLE PERSON TO PAY FOR ATTENDANT SUPPORT SHALL NOT BE COUNTED AS INCOME FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEDICAID AND OTHER STATE PROGRAMS THAT USE INCOME TO DETERMINE ELIGIBILITY.

(3) "Eligible person" means ~~an elderly~~ a person who is eligible to receive services under ~~subpart 1 of part 6 of article 4 of this title OR ANY OTHER HOME- AND COMMUNITY- BASED SERVICE WAIVER FOR WHICH THE STATE DEPARTMENT HAS FEDERAL WAIVER AUTHORITY.~~

(3.5) "PRIMARY CARE PHYSICIAN" MEANS A PHYSICIAN WHO IS THE PRIMARY PROVIDER OF PHYSICIAN SERVICES TO THE ELIGIBLE PERSON OR WHO IS FAMILIAR WITH THE ELIGIBLE PERSON'S NEEDS AND CAPABILITIES.

(4) "Qualified services" means ~~home- and community-based services as specified in section 26-4-607 (1)~~ SERVICES PROVIDED UNDER THE ELIGIBLE PERSON'S APPLICABLE WAIVER PROGRAM AND ATTENDANT SUPPORT.

SECTION 2. 26-4-1302, Colorado Revised Statutes, is amended to read:

26-4-1302. Service model - consumer-directed care. (1) The state department shall implement a consumer-directed care ~~program~~ SERVICE MODEL that allows eligible persons to receive a direct payment through a voucher to purchase qualified services. The state department is authorized to seek any federal waivers or waiver amendments that may be necessary to implement this part 13. The state department shall design and implement the ~~program~~ CONSUMER-DIRECTED CARE SERVICE MODEL with input from ~~elderly~~ consumers of home- and community-based services or their authorized representatives. AN ELIGIBLE PERSON SHALL NOT BE REQUIRED TO DISENROLL FROM THE PERSON'S WAIVER PROGRAM IN ORDER TO RECEIVE QUALIFIED SERVICES THROUGH THE CONSUMER-DIRECTED CARE SERVICE MODEL.

(2) In order to qualify and to remain eligible for the ~~program~~ CONSUMER-DIRECTED CARE SERVICE MODEL authorized by this section, ~~an elderly~~ A person shall:

(a) Be eligible for home- and community-based services under ~~subpart 1 of part 6 of article 4 of this title OR ANY OTHER HOME- AND COMMUNITY-BASED SERVICE WAIVER FOR WHICH THE STATE DEPARTMENT HAS FEDERAL WAIVER AUTHORITY;~~

(b) Be willing to participate; ~~in the program;~~

(c) Obtain 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 or has an authorized representative;

(d) Demonstrate the ability to handle the financial aspects of self-directed care or has an authorized representative who is able to handle the financial aspects of the eligible person's care; AND

(e) Meet any other qualifications established by the medical services board by rule.

(3) The voucher issued to the eligible person under this ~~program~~ PART 13 shall be based on the eligible person's historical utilization of home- and community-based services under ~~subpart 1 of part 6 of this article, or, the single entry point agency's care plan, or ANY APPROVED RESOURCE ALLOCATION PROCESS AS DETERMINED BY THE STATE DEPARTMENT AND THE DEPARTMENT OF HUMAN SERVICES for the eligible person.~~

(4) While an eligible person is participating in the consumer-directed care ~~program~~ SERVICE MODEL established in this part 13, that person shall be ineligible to receive a home care allowance as provided in section 26-2-122.3 (1) (b).

(5) The state department shall develop the accountability requirements necessary to safeguard the use of public dollars, to promote effective and efficient delivery of services, and to monitor the safety and welfare of eligible persons under this part 13.

(6) The medical services board shall adopt rules as necessary for the implementation and administration of the ~~program~~ CONSUMER-DIRECTED CARE SERVICE MODEL authorized by this part 13. Such rules shall include a provision allowing an eligible person to designate a family member or authorized representative to be responsible for managing the financial matters associated with the consumer-directed care or to direct the eligible person's care. ~~Except as provided in section 26-4-609, such~~ THE designee shall not receive reimbursement for ~~his or her services~~ MANAGING THE FINANCIAL MATTERS ASSOCIATED WITH THE ELIGIBLE PERSON'S CARE OR FOR DIRECTING THE ELIGIBLE PERSON'S CARE.

(7) 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 INDIVIDUAL PARTICIPATING IN THE CONSUMER-DIRECTED CARE SERVICE MODEL PURSUANT TO THIS SECTION AND WHO IS ACTING WITHIN THE SCOPE AND COURSE OF SUCH EMPLOYMENT. 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.

(8) SECTION 26-4-609 DOES NOT APPLY TO A FAMILY MEMBER OF AN ELIGIBLE PERSON WHO PROVIDES CONSUMER-DIRECTED CARE SERVICES TO THE ELIGIBLE PERSON PURSUANT TO THIS PART 13.

(9) A PERSON WHO HAS BEEN DESIGNATED AS AN AUTHORIZED REPRESENTATIVE UNDER THIS PART 13 SHALL SUBMIT AN AFFIDAVIT, WHICH SHALL BECOME PART OF THE ELIGIBLE PERSON'S FILE, STATING THAT:

(a) HE OR SHE IS AT LEAST EIGHTEEN YEARS OF AGE;

(b) HE OR SHE HAS KNOWN THE ELIGIBLE PERSON FOR AT LEAST TWO YEARS;

(c) HE OR SHE HAS NOT BEEN CONVICTED OF ANY CRIME INVOLVING EXPLOITATION, ABUSE, OR ASSAULT ON ANOTHER PERSON; AND

(d) HE OR SHE DOES NOT HAVE A MENTAL, EMOTIONAL, OR PHYSICAL CONDITION THAT COULD RESULT IN HARM TO THE ELIGIBLE PERSON.

SECTION 3. 26-4-607 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-607. Services for the elderly, blind, and disabled. (1) Subject to the provisions of this subpart 1, home- and community-based services for the elderly, blind, and disabled shall include only the following services:

(k) SERVICES PROVIDED UNDER THE CONSUMER-DIRECTED CARE SERVICE MODEL, PART 13 OF THIS ARTICLE.

SECTION 4. 26-4-623 (4) (b), Colorado Revised Statutes, is amended to read:

26-4-623. Definitions. As used in this subpart 2, unless the context otherwise requires:

(4) (b) "Services for the developmentally disabled" includes, but is not limited to: Social, habilitative, remedial, residential, ~~and~~ health services, AND SERVICES PROVIDED UNDER THE CONSUMER-DIRECTED CARE SERVICE MODEL, PART 13 OF THIS ARTICLE, WHICH SHALL INCLUDE THE SELECTION, FROM A LIST OF QUALIFIED ENTITIES, OF AN ORGANIZATION OF THE ELIGIBLE PERSON'S CHOICE TO PROVIDE FINANCIAL MANAGEMENT SERVICES FOR THE ELIGIBLE PERSON.

SECTION 5. 26-4-645 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-645. Services for long-term-care eligible persons. (1) Subject to the provisions of this subpart 3, the home- and community-based services program for persons with HIV/AIDS shall include the following continuum of long-term care services:

(j) SERVICES PROVIDED UNDER THE CONSUMER-DIRECTED CARE MODEL, PART 13 OF THIS ARTICLE.

SECTION 6. 26-4-675 (1), Colorado Revised Statutes, is amended to read:

26-4-675. Implementation of program for mentally ill authorized - federal waiver - duties of the department of health care policy and financing and the department of human services. (1) The state department is hereby authorized to seek any necessary waiver from the federal government to develop and implement a home- and community-based services program for persons with major mental illnesses. The program shall be designed to provide home- and community-based services to eligible persons. Eligibility may be limited to persons who meet the level of services provided in a nursing facility, and services for eligible persons may be established in medical services board rules to the extent such eligibility criteria and services are authorized or required by federal waiver. THE PROGRAM SHALL INCLUDE

SERVICES PROVIDED UNDER THE CONSUMER-DIRECTED CARE SERVICE MODEL, PART 13 OF THIS ARTICLE.

SECTION 7. 26-4-684 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-684. Implementation of home- and community-based services program for persons with brain injury authorized - federal waiver - duties of the department. (2) Services for eligible persons may be established in department rules to the extent authorized or required by federal waiver, but shall include at least the following:

(k) SERVICES PROVIDED UNDER THE CONSUMER-DIRECTED CARE SERVICE MODEL, PART 13 OF THIS ARTICLE.

SECTION 8. 26-4-694 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-694. Services - duties of the state department - rules. (1) Subject to the provisions of this subpart 7, home- and community-based services for children with autism shall include only the following services, as specified in the eligible child's care plan:

(f) SERVICES PROVIDED UNDER THE CONSUMER-DIRECTED CARE SERVICE MODEL, PART 13 OF THIS ARTICLE.

SECTION 9. Part 1 of article 1 of title 25.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25.5-1-113. Federal authorization - repeal. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ELIGIBLE PERSON" MEANS A PERSON WHO IS ELIGIBLE TO RECEIVE SERVICES UNDER PART 6 OF ARTICLE 4 OF TITLE 26, C.R.S., OR ANY OTHER HOME- AND COMMUNITY-BASED SERVICE WAIVER FOR WHICH THE STATE DEPARTMENT HAS FEDERAL WAIVER AUTHORITY.

(b) "QUALIFIED SERVICES" MEANS SERVICES PROVIDED UNDER THE ELIGIBLE PERSON'S APPLICABLE WAIVER PROGRAM AND ATTENDANT SUPPORT.

(2) THE STATE DEPARTMENT SHALL AMEND THE NECESSARY WAIVERS TO ALLOW AN ELIGIBLE PERSON TO RECEIVE QUALIFIED SERVICES THROUGH THE CONSUMER-DIRECTED CARE SERVICE MODEL.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2007.

SECTION 10. 26-4-902, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

26-4-902. Definitions. As used in this part 9, unless the context otherwise requires:

(1.5) "AUTHORIZED REPRESENTATIVE" MEANS AN INDIVIDUAL DESIGNATED BY THE CONSUMER OF ATTENDANT SUPPORT, THE PARENT OF A MINOR, OR THE LEGAL GUARDIAN OF THE CONSUMER OF ATTENDANT SUPPORT, IF APPROPRIATE, WHO HAS THE JUDGMENT AND ABILITY TO ASSIST THE CONSUMER OF ATTENDANT SUPPORT IN ACQUIRING AND UTILIZING SERVICES UNDER THIS PART 9. THE EXTENT OF THE AUTHORIZED REPRESENTATIVE'S INVOLVEMENT SHALL BE DETERMINED UPON DESIGNATION. THE AUTHORIZED REPRESENTATIVE SHALL NOT BE THE CONSUMER'S SERVICE PROVIDER.

(4) "PRIMARY CARE PHYSICIAN" MEANS A PHYSICIAN WHO IS THE PRIMARY PROVIDER OF PHYSICIAN SERVICES TO THE PERSON WITH A DISABILITY OR WHO IS FAMILIAR WITH THE PERSON'S NEEDS AND CAPABILITIES.

SECTION 11. 26-4-903 (2) (b) and (5), Colorado Revised Statutes, are amended, and the said 26-4-903 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26-4-903. Pilot program - consumer-directed attendant support. (2) (b) In order to qualify and to remain eligible for the pilot program authorized by this section, a person with a disability shall:

(I) Be willing to participate in the pilot program;

(II) Be eligible for medicaid. This pilot program may include persons whose gross income does not exceed three hundred percent of the current federal supplement security income benefit level and who are eligible for a home- and community-based program but who choose the pilot program authorized in subsection (1) of this section in lieu of a home- and community-based program.

(III) Demonstrate a current need for attendant support, ~~and have received medicaid-funded attendant support for the past twelve months;~~ as defined in rule by the state board;

(IV) Have a utilization review that indicates a predictable need for attendant support and a pattern of stable health, such as a person with a disability who seeks appropriate treatment for illnesses and conditions;

(V) Obtain a statement from his or her primary care physician that indicates such person with a disability has sound judgment, OR THAT SUCH PERSON WITH A DISABILITY HAS AN AUTHORIZED REPRESENTATIVE, and is in stable condition;

(VI) Demonstrate the ability to handle the financial aspects of self-directed attendant care OR HAVE AN AUTHORIZED REPRESENTATIVE WHO IS ABLE TO HANDLE THE FINANCIAL ASPECTS OF SELF-DIRECTED ATTENDANT CARE;

(VII) Demonstrate the ability to manage the health aspects of his or her life OR HAVE AN AUTHORIZED REPRESENTATIVE TO MANAGE THE HEALTH ASPECTS OF THE ELIGIBLE PERSON; and

(VIII) Demonstrate the ability to supervise attendants and to give clear directions OR HAVE AN AUTHORIZED REPRESENTATIVE TO SUPERVISE ATTENDANTS AND TO GIVE

CLEAR DIRECTIONS.

(5) The state department ~~and the department of human services~~ shall adopt rules as necessary for the implementation and administration of the pilot program authorized by this section. Such rules may include a provision allowing a person with a cognitive disability, such as a person with a developmental disability or person with a mental illness, to designate a family member or friend to be responsible for managing the financial matters associated with the self-directed attendant care. Such designee shall not ~~direct the attendant care or~~ receive reimbursement for his or her services.

(9) A PERSON WHO HAS BEEN DESIGNATED AS AN AUTHORIZED REPRESENTATIVE UNDER THIS PART 9 SHALL SUBMIT AN AFFIDAVIT, WHICH SHALL BECOME PART OF THE FILE OF THE PERSON WITH A DISABILITY, STATING THAT:

(a) HE OR SHE IS AT LEAST EIGHTEEN YEARS OF AGE;

(b) HE OR SHE HAS KNOWN THE PERSON WITH A DISABILITY FOR AT LEAST TWO YEARS;

(c) HE OR SHE HAS NOT BEEN CONVICTED OF ANY CRIME INVOLVING EXPLOITATION, ABUSE, OR ASSAULT ON ANOTHER PERSON; AND

(d) HE OR SHE DOES NOT HAVE A MENTAL, EMOTIONAL, OR PHYSICAL CONDITION THAT COULD RESULT IN HARM TO THE PERSON WITH A DISABILITY.

SECTION 12. Appropriation - adjustment in 2005 long bill. (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing for the fiscal year beginning July 1, 2005, shall be adjusted as follows:

(a) The appropriation for the executive director's office, personal services is increased by twenty-six thousand five hundred seventy dollars (\$26,570) and 0.5 FTE. Of said sum, thirteen thousand two hundred eighty-five dollars (\$13,285) shall be from the general fund and thirteen thousand two hundred eighty-five dollars (\$13,285) shall be from federal funds.

(b) The appropriation for the executive director's office, operating expenses is increased by three thousand seven hundred sixty-two dollars (\$3,762). Of said sum, one thousand eight hundred eighty-one dollars (\$1,881) shall be from the general fund and one thousand eight hundred eighty-one dollars (\$1,881) shall be from federal funds.

(c) The appropriation for the executive director's office, medicaid management information system contract is increased by one hundred seventy thousand six hundred eight-eight dollars (\$170,688). Of said sum, forty-two thousand six hundred seventy-two dollars (\$42,672) shall be from the general fund and one hundred twenty-eight thousand sixteen dollars (\$128,016) shall be from federal funds.

(d) The appropriation for the medical services premiums is increased by one million eight thousand three hundred seventy-five dollars (\$1,008,375). Of said sum,

five hundred four thousand one hundred eighty-eight dollars (\$504,188) shall be from the general fund and five hundred four thousand one hundred eighty-seven dollars (\$504,187) shall be from federal funds.

(e) The appropriation for the medical services premiums is decreased by two million twelve thousand seven hundred ninety dollars (\$2,012,790). Of said sum, one million six thousand three hundred ninety-five dollars (\$1,006,395) shall be from the general fund and one million six thousand three hundred ninety-five dollars (\$1,006,395) shall be from federal funds.

SECTION 13. 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, 2005