

CHAPTER 42

HEALTH CARE POLICY AND FINANCING

SENATE BILL 05-173

BY SENATOR(S) Owen, Fitz-Gerald, Groff, Hanna, Kester, May R., Sandoval, Shaffer, Tapia, Taylor, Tochtrop, Williams, and Windels;
also REPRESENTATIVE(S) Hall, Borodkin, Boyd, Green, Hoppe, Riesberg, and Todd.

AN ACT

CONCERNING LONG-TERM CARE SERVICES UNDER THE "COLORADO MEDICAL ASSISTANCE ACT".

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

SECTION 1. Part 4 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

26-4-425. Legislative declaration - advisory committee - long-term care - report - repeal. (1) **Legislative declaration.** (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(I) IT IS CONCERNED THAT THE COMMUNITY LONG-TERM CARE SYSTEM IS NOT PREPARED FOR THE ENSUING SERVICE DEMAND THAT WILL BE EXPERIENCED AS A RESULT OF THE EXPLOSION OF "BABY BOOMERS" THAT WILL NEED SERVICES IN THE NEAR FUTURE;

(II) THE COMMUNITY LONG-TERM CARE SYSTEM IS ANTIQUATED, OUTDATED, AND UNABLE TO RESPOND EFFICIENTLY AND EFFECTIVELY TO ACCOMMODATE A RANGE OF SERVICES NECESSARY TO ADDRESS THE NEEDS OF THIS GROWING POPULATION;

(III) THE STATE NEEDS TO PROVIDE EFFECTIVE AND EFFICIENT DELIVERY SYSTEMS DESIGNED TO PROVIDE BETTER ACCESS, CONSUMER CHOICE, ECONOMY, AND CONGRUENCE OF A QUALITY OF LIFE IN THE LEAST RESTRICTIVE SETTING TO MEDICAID RECIPIENTS NOW AND IN THE FUTURE; AND

(IV) THE STATE HAS AN URGENT NEED TO CREATE A COMMUNITY LONG-TERM CARE SYSTEM PREPARED TO ADDRESS THE NEEDS OF CLIENTS, PROVIDE THE MAXIMUM SERVICE DELIVERY AND MAKE THE BEST USE OF AVAILABLE PUBLIC FUNDS.

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

(b) THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT IT IS IN THE STATE'S BEST INTERESTS TO CREATE AN ADVISORY COMMITTEE TO EXPLORE AND RECOMMEND TO THE STATE DEPARTMENT PUBLIC POLICY THAT WILL ENABLE THE STATE'S MEDICAID PROGRAM TO ACT STRATEGICALLY AS A CLIENT ADVOCATE AND BE AN EFFICIENT AND EFFECTIVE PURCHASER OF SERVICES AND SERVICE DELIVERY.

(2) **Advisory committee.** CONTINGENT ON THE CONDITION SPECIFIED IN SUBSECTION (6) OF THIS SECTION, THE STATE DEPARTMENT SHALL CONVENE AN ADVISORY COMMITTEE NO LATER THAN AUGUST 15, 2005, TO ASSIST IN THE CREATION OF A COMMUNITY LONG-TERM CARE DELIVERY SYSTEM THAT WILL PROVIDE AN OPPORTUNITY FOR EXCELLENCE IN MANAGEMENT AND THAT FOSTERS A CONTINUUM OF COMMUNITY LONG-TERM CARE SERVICES AND SERVICE DELIVERY. THE STATE DEPARTMENT SHALL HIRE AN INDEPENDENT FACILITATOR TO ASSIST IN THE WORK OF THE ADVISORY COMMITTEE. THE ADVISORY COMMITTEE SHALL CONSIST OF TWENTY-TWO MEMBERS, AS FOLLOWS:

(a) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

(b) THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT, OR THE EXECUTIVE DIRECTOR'S DESIGNEE;

(c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES, OR THE STATE DIRECTOR ON AGING SERVICES WITHIN THE DEPARTMENT OF HUMAN SERVICES;

(d) THE COLORADO STATE LONG-TERM CARE OMBUDSMAN OR THE OMBUDSMAN'S DESIGNEE;

(e) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT SHALL APPOINT ONE MEMBER WHO IS A LICENSED PHYSICIAN, ONE MEMBER WHO IS A REGISTERED NURSE, AND ONE MEMBER WHO IS A LICENSED PSYCHIATRIST, ALL OF WHOM ARE FAMILIAR WITH THE NEEDS OF CLIENTS IN LONG-TERM CARE SETTINGS;

(f) ON OR BEFORE AUGUST 1, 2005, THE PRESIDENT OF THE SENATE SHALL APPOINT:

(I) THREE MEMBERS WHO ARE REPRESENTATIVES OF PROVIDERS OF COMMUNITY LONG-TERM CARE SERVICES:

(A) ONE OF WHOM IS A REPRESENTATIVE OF HOME- AND COMMUNITY-BASED SERVICES HOME CARE PROVIDERS AND ONE OF WHOM IS A CERTIFIED HOME HEALTH CARE PROVIDER, BOTH OF WHOM SHALL BE APPOINTED FROM A RECOMMENDATION OF AN ASSOCIATION REPRESENTING HOME CARE AGENCIES; AND

(B) ONE OF WHOM IS A REPRESENTATIVE OF ADULT DAY PROGRAMS.

(II) TWO MEMBERS WHO ARE REPRESENTATIVES OF ELDERLY AND DISABLED LONG-TERM CARE CONSUMERS FAMILIAR WITH THE NEEDS OF CLIENTS IN LONG-TERM CARE SETTINGS;

(III) ONE MEMBER WHO IS A REPRESENTATIVE OF THE HOME- AND COMMUNITY-BASED SERVICES PROVIDER COMMUNITY WITH EXPERIENCE IN MULTI-SERVICE COORDINATION;

(IV) ONE MEMBER WHO IS A REPRESENTATIVE OF THE PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY; AND

(V) ONE MEMBER WHO IS A SOCIAL WORKER WITH A MASTER'S DEGREE IN SOCIAL WORK.

(VI) OF THE ADVISORY COMMITTEE MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE PURSUANT TO THIS PARAGRAPH (f), ONE MEMBER SHALL BE FROM A RURAL AREA OF COLORADO.

(g) ON OR BEFORE AUGUST 1, 2005, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT:

(I) ONE MEMBER WHO IS A REPRESENTATIVE OF THE AFFORDABLE HOUSING COMMUNITY;

(II) ONE MEMBER WHO IS A REPRESENTATIVE OF THE SINGLE ENTRY POINT SYSTEM;

(III) ONE MEMBER WHO IS A PHARMACIST WITH EXPERIENCE WITH CLIENTS IN LONG-TERM CARE SETTINGS;

(IV) TWO MEMBERS WHO ARE NURSING HOME ADMINISTRATORS LICENSED IN THE STATE OF COLORADO, ONE OF WHOM IS A REPRESENTATIVE OF A NONPROFIT NURSING HOME WHO SHALL BE APPOINTED FROM A RECOMMENDATION OF AN ASSOCIATION REPRESENTING NONPROFIT NURSING HOMES AND ONE OF WHOM IS A REPRESENTATIVE OF A FOR-PROFIT NURSING HOME WHO SHALL BE APPOINTED FROM A RECOMMENDATION OF AN ASSOCIATION REPRESENTING FOR-PROFIT NURSING HOMES;

(V) ONE MEMBER WHO IS AN EXECUTIVE DIRECTOR OF AN ASSISTED LIVING RESIDENCE IN COLORADO; AND

(VI) ONE MEMBER WHO IS A PRIMARY CARE PROVIDER FROM A FEDERALLY QUALIFIED HEALTH CENTER AND WHO HAS SIGNIFICANT EXPERIENCE SERVING PERSONS WITH DISABILITIES.

(VII) OF THE ADVISORY COMMITTEE MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES PURSUANT TO THIS PARAGRAPH (g), ONE MEMBER SHALL BE FROM A RURAL AREA OF COLORADO.

(3) THE ADVISORY COMMITTEE SHALL IDENTIFY PROGRAMS AND PROGRAM MODIFICATIONS THAT FURTHER THE INTENT OF THE LEGISLATIVE DECLARATION AND WILL:

(a) CREATE INCREASED FLEXIBILITY FOR CLIENTS AND SERVICE DELIVERY ALONG THE FULL CONTINUUM OF COMMUNITY LONG-TERM CARE, INCLUDING BUT NOT LIMITED TO: ADULT DAY PROGRAMS; INDEPENDENT LIVING; ALTERNATE CARE FACILITIES; HOME CARE; ASSISTED LIVING RESIDENCES, CONGREGATE HOUSING,

SUBSIDIZED HOUSING, AND SKILLED NURSING FACILITIES;

(b) EXPLORE A SHIFT FROM CERTIFIED PROVIDERS AND PROPERTIES TO ELIGIBLE CLIENTS AND SERVICES ALONG THE CONTINUUM;

(c) ALLOW CONSUMER CHOICE IN THE LEAST RESTRICTIVE ENVIRONMENT;

(d) BE RESEARCH-DRIVEN, CLIENT-FOCUSED, AND ENSURE MEDICAID FUNDS ARE UTILIZED IN THE MOST COST-EFFECTIVE MANNER POSSIBLE;

(e) PROVIDE GREATER OPPORTUNITIES ON THE PART OF CLIENTS TO DIRECT THE CARE AND SUPPORT THEY RECEIVE;

(f) PROVIDE INCENTIVES FOR SKILLED NURSING FACILITIES TO REDUCE THE NUMBER OF MEDICAID-CERTIFIED NURSING HOME BEDS IN PURSUIT OF ALTERNATE MODELS OF CARE;

(g) CREATE AN INTEGRATED CONTINUUM OF LONG-TERM CARE BENEFITS AND SERVICES, INCLUDING BUT NOT LIMITED TO AN INTEGRATED MODEL FOR REIMBURSEMENT FOR COMMUNITY- AND FACILITY-BASED, LONG-TERM CARE SETTINGS;

(h) EXPLORE OPTIONS AND MODELS FOR INTEGRATING ACUTE CARE AND LONG-TERM CARE INCLUDING BUT NOT LIMITED TO INTEGRATED FINANCING AND SERVICES;

(i) DEVELOP CRITERIA FOR THE STATE DEPARTMENT TO USE IN EVALUATING AND APPROVING COORDINATED CARE PILOT PROGRAM PROPOSALS PURSUANT TO SECTION 26-4-426;

(j) FACILITATE ACCOUNTABILITY BETWEEN THE STATE DEPARTMENT AND PARTICIPATING PROVIDERS IN ORDER FOR PROVIDERS TO BE EFFICIENT, HIGH-QUALITY PERFORMERS, DEDICATED TO IMPROVED CLIENT AND PROGRAM OUTCOMES.

(4) THE ADVISORY COMMITTEE SHALL MAKE RECOMMENDATIONS TO THE STATE DEPARTMENT ON OR BEFORE JULY 1, 2006, ON PROGRAMS OR PROGRAM MODIFICATIONS THAT WILL EFFECTUATE THE CREATION OF A COORDINATED CONTINUUM OF LONG-TERM CARE SERVICES AND DELIVERY SYSTEMS, IMPROVED STRUCTURE AND QUALITY OF PROVIDER OPERATIONS AND PROCEDURES, AND ENHANCED QUALITY OF LIFE FOR PROGRAM PARTICIPANTS. PRIOR TO THE ADVISORY COMMITTEE SUBMITTING THE COMMITTEE'S RECOMMENDATIONS, THE ADVISORY COMMITTEE SHALL PRESENT THE COMMITTEE'S PROGRESS TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY IN DECEMBER 2005 AND APRIL 2006. ON OR BEFORE AUGUST 1, 2006, THE STATE DEPARTMENT SHALL FORWARD THE ADVISORY COMMITTEE'S RECOMMENDATIONS TO THE GOVERNOR'S OFFICE, THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, AND THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES. THE RECOMMENDATIONS SHALL INCLUDE ANY LEGISLATION OR RULE CHANGES NECESSARY TO IMPLEMENT PROGRAMS AND PROGRAM MODIFICATIONS THAT WILL ENHANCE THE CURRENT CONTINUUM OF COMMUNITY LONG-TERM CARE SERVICES AND SERVICE DELIVERY SYSTEMS. ON OR BEFORE NOVEMBER 1, 2006, THE STATE DEPARTMENT

SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THE DEPARTMENT'S PROGRESS IN IMPLEMENTING THE RECOMMENDATIONS OF THE ADVISORY COMMITTEE.

(5) THE STATE DEPARTMENT MAY ACCEPT GIFTS, GRANTS, OR DONATIONS TO FACILITATE THE WORK OF THE ADVISORY COMMITTEE AND TO FACILITATE THE STATE'S PARTICIPATION IN PROPOSED OR EMERGING SERVICE DELIVERY MODELS OR RESEARCH. ANY MONEYS RECEIVED AS GIFTS, GRANTS, OR DONATIONS BY THE STATE DEPARTMENT SHALL BE DEPOSITED INTO THE STATE DEPARTMENT'S CASH FUND ESTABLISHED IN SECTION 25.5-1-109, C.R.S.

(6) (a) IF THE STATE DEPARTMENT RECEIVES SUFFICIENT GIFTS, GRANTS, OR DONATIONS, THE STATE DEPARTMENT SHALL CONVENE THE ADVISORY COMMITTEE AND HIRE THE INDEPENDENT FACILITATOR, AS REQUIRED UNDER SUBSECTION (2) OF THIS SECTION.

(b) TO AVOID ANY CONFLICT OF INTEREST, NEITHER THE INDEPENDENT FACILITATOR NOR THE ADVISORY COMMITTEE MEMBERS SHALL BE GIVEN INFORMATION BY THE STATE DEPARTMENT REGARDING THE SOURCE OF THE GIFTS, GRANTS, AND DONATIONS.

(7) MEMBERS OF THE ADVISORY COMMITTEE SHALL RECEIVE NO COMPENSATION BUT SHALL BE REIMBURSED FOR THEIR ACTUAL AND NECESSARY EXPENSES. ANY ACTUAL OR NECESSARY EXPENSES INCURRED BY THE MEMBERS OF THE ADVISORY COMMITTEE SHALL BE PAID FOR THROUGH THE GIFTS, GRANTS, OR DONATIONS RECEIVED PURSUANT TO SUBSECTION (6) OF THIS SECTION.

(8) FOR PURPOSES OF THIS SECTION, "COMMUNITY LONG-TERM CARE SERVICES" INCLUDES, BUT IS NOT LIMITED TO: ADULT DAY PROGRAMS; INDEPENDENT LIVING; ALTERNATE CARE FACILITIES; HOME CARE; ASSISTED LIVING RESIDENCES; CONGREGATE HOUSING; SUBSIDIZED HOUSING; AND SKILLED NURSING FACILITIES.

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

26-4-426. Community long-term care - coordinated care pilot program - federal authorization - rules - repeal. (1) NOTWITHSTANDING SECTION 26-4-113 (1.5) (b), THE STATE DEPARTMENT SHALL ACCEPT AND MAY APPROVE PROPOSALS FOR A THREE-YEAR COORDINATED CARE PILOT PROGRAM FOR COMMUNITY LONG-TERM CARE SERVICES, REFERRED TO IN THIS SECTION AS THE "PILOT PROGRAM". THE PILOT PROGRAM SHALL INCLUDE AT LEAST TWO RURAL COMMUNITIES, THREE URBAN COMMUNITIES, AND SPECIFIC POPULATIONS DESIGNATED BY THE STATE DEPARTMENT.

(2) ORGANIZATIONS MAY DEVELOP PROPOSALS FOR THE PILOT PROGRAM AND SUBMIT THE PROPOSALS TO THE STATE DEPARTMENT FOR APPROVAL. THE STATE DEPARTMENT SHALL OVERSEE ANY APPROVED PILOT PROGRAM. THE APPROVED PILOT PROGRAM SHALL INCLUDE, BUT NEED NOT BE LIMITED TO THE FOLLOWING COMPONENTS:

(a) VOLUNTARY RECIPIENT ENROLLMENT AND PARTICIPATION IN THE PILOT PROGRAM;

(b) VOLUNTARY PROVIDER PARTICIPATION IN THE COORDINATED CARE PILOT;

(c) PROVIDER NETWORK ADEQUACY;

(d) CONTRACTING WITH ORGANIZATIONS CAPABLE OF COORDINATING CARE FOR MEDICAID PATIENTS USING A MODEL THAT DEMONSTRATES COST SAVINGS, INCLUDING BUT NOT LIMITED TO, THE COORDINATION OF SERVICES AND MAINTENANCE OF AN ADEQUATE NETWORK OF PROVIDERS FOR COVERED SERVICES;

(e) AN EVALUATION OF THE PILOT PROGRAM'S OUTCOMES, INCLUDING BUT NOT LIMITED TO PROGRAM COSTS, THE BENEFITS TO THE RECIPIENT AND THE STATE, AND ANY NET FISCAL SAVINGS.

(3) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, THE STATE DEPARTMENT SHALL HAVE FLEXIBILITY IN DETERMINING THE REIMBURSEMENT FOR ACUTE CARE PROVIDERS, LONG-TERM CARE COMMUNITY PROVIDERS, AND CLASS I NURSING FACILITIES WHEN IT IS NECESSARY TO SERVE A PILOT PROGRAM PARTICIPANT IN A MORE MEDICALLY APPROPRIATE AND COST-EFFECTIVE SETTING.

(4) THE STATE BOARD SHALL PROMULGATE ANY RULES NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION.

(5) IT IS THE GENERAL ASSEMBLY'S INTENT THAT COORDINATING THE CARE OF MEDICAID PATIENTS UNDER THE PILOT PROGRAM WILL BE COST-EFFECTIVE FOR THE STATE'S MEDICAID PROGRAM. THE STATE DEPARTMENT, THEREFORE, IS AUTHORIZED TO USE SAVINGS IN THE MEDICAL SERVICES PREMIUMS APPROPRIATIONS TO FUND THE PILOT PROGRAM AUTHORIZED IN THIS SECTION.

(6) THE STATE DEPARTMENT SHALL SEEK ANY NECESSARY FEDERAL AUTHORIZATION FOR THE IMPLEMENTATION OF THIS SECTION AND CONTRACT WITH AN OUTSIDE ENTITY FOR SUCH PURPOSES, CONTINGENT ON THE RECEIPT OF SUFFICIENT GIFTS, GRANTS, OR DONATIONS.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2010.

SECTION 2. 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: April 5, 2005