

CHAPTER 312

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 06-165

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also REPRESENTATIVE(S) Gardner, Balmer, Berens, Borodkin, Buescher, Carroll M., Carroll T., Curry, Garcia, Hodge, Hoppe, Jahn, Kerr A., Kerr J., King, Knoedler, Madden, Massey, McFadyen, Paccione, Penry, Riesberg, Romanoff, Rose, Stafford, Todd, and Witwer.

AN ACT

CONCERNING THE USE OF TELEMEDICINE TO PROMOTE EFFICIENCY IN THE DELIVERY OF HEALTH CARE SERVICES, AND, IN CONNECTION THEREWITH, ESTABLISHING PILOT PROGRAMS TO DEMONSTRATE SUCH EFFICIENCY, AND MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) The cost of medical care devours a large and ever-increasing share of America's wealth and productivity, whether measured on a personal, corporate, state, or national level;

(b) As the population ages, the need for medical care, particularly in the management of chronic conditions and the provision of long-term care, is projected to increase astronomically. In the year 2006, nine million Americans over the age of sixty-five will require long-term care, with that number increasing to twelve million by the year 2020. The federal department of health and human services estimates that forty percent of people reaching the age of sixty-five will require nursing home care and that of these, ten percent will require a stay of five years or longer.

(c) By far the greatest share of health care expenses are incurred by a relatively small number of patients who suffer from chronic medical conditions; and

(d) Telemedicine holds the potential to vastly increase the efficiency of managing

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

chronic conditions and providing long-term care. Telemedicine allows for appropriate medical intervention that significantly reduces the need for medical crisis management in emergency rooms or through hospitalizations. One pilot program showed a seventy-three percent reduction in overall costs, a ninety-five percent reduction in hospital charges, and the complete elimination of the need for emergency-room visits among patients with congestive heart failure. By regularly monitoring patients' blood pressure, blood sugar levels, heart and lung sounds, and other factors using monitoring devices that plug into the patients' home telephone lines, health practitioners were able to keep the patients stable rather than having to rescue them from recurring health crises. The result, expressed purely in financial terms, was a savings of one million dollars from an initial investment of approximately one hundred fifty thousand dollars.

(2) Therefore, Colorado should aggressively pursue research into the use of similar techniques to manage select conditions under the "Colorado Medical Assistance Act", enhancing the quality of life for Colorado's neediest patients and conserving taxpayer dollars for other necessary expenses.

SECTION 2. 12-36-106 (1) (g), Colorado Revised Statutes, is amended to read:

12-36-106. Practice of medicine defined - exemptions from licensing requirements - repeal. (1) For the purpose of this article, "practice of medicine" means:

(g) The delivery of telemedicine, which means the delivery of medical services and any diagnosis, consultation, OR treatment ~~transfer of medical data, or education related to health care services~~ using interactive audio, interactive video, or interactive data communication. Nothing in this paragraph (g) shall be construed TO AUTHORIZE PHYSICIANS TO DELIVER SERVICES OUTSIDE THEIR SCOPE OF PRACTICE NOR TO limit the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, interactive audio, interactive video, or interactive data communication.

SECTION 3. 26-4-405, Colorado Revised Statutes, is amended to read:

26-4-405. Providers - hospital reimbursement - rules. (1) ~~On or after July 1, 1987,~~ The state department shall pay all licensed or certified hospitals under this article, except those hospitals operated by the department of human services, pursuant to a system of prospective payment, generally based on the elements of the medicare system of diagnosis-related groups. ~~While developing the system of prospective payment, the state department shall constitute an advisory committee, whose members shall include hospital providers and be appointed by the executive director. The system of prospective payment shall consider utilizing the system of children's diagnosis-related groups, as developed by the national association of children's hospitals, for pediatric hospitalization, unless the medical services board finds that such groups are statistically invalid. If the state department determines that the medicare system of diagnosis-related groups has been expanded or revised sufficiently to reasonably apply to additional categories of providers under this article or if the state department develops a diagnosis-related groups system for additional categories of providers, which system includes hospitals operated by the department of human services, then the state department shall begin payment to~~

~~such categories of providers under this article pursuant to the system of prospective payment developed under this section.~~ The state department shall develop and administer a system for assuring appropriate utilization and quality of care provided by those providers who are reimbursed pursuant to the system of prospective payment developed under this section. The state department shall promulgate rules ~~and regulations~~ to provide for the implementation of this section.

(2) (a) A HOSPITAL THAT RECEIVES PAYMENT UNDER THIS ARTICLE FOR TELEMEDICINE SERVICES SHALL EMPLOY ITS EXISTING QUALITY-OF-CARE PROTOCOLS AND PATIENT CONFIDENTIALITY GUIDELINES TO ENSURE THAT SUCH SERVICES MEET THE REQUIREMENTS OF THIS ARTICLE.

(b) THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT SHALL ADOPT RULES IN FURTHERANCE OF THIS SUBSECTION (2), INCLUDING, WITHOUT LIMITATION, RULES TO:

(I) ENSURE THE PROVISION OF APPROPRIATE CARE TO PATIENTS;

(II) PREVENT FRAUD AND ABUSE; AND

(III) ESTABLISH METHODS AND PROCEDURES TO AVOID OVERUSE OF TELEMEDICINE SERVICES.

SECTION 4. 26-4-421 (3), Colorado Revised Statutes, is amended, and the said 26-4-421 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

26-4-421. Telemedicine - legislative intent. (3) On or after January 1, 2002, face-to-face contact between a health care provider and a patient ~~in a county with one hundred fifty thousand residents or less may~~ SHALL not be required under the managed care system created in part 1 of this article for services appropriately provided through telemedicine, subject to reimbursement policies developed by the department of health care policy and financing to compensate providers who provide health care services covered by the program created in section 26-4-104. Telemedicine services may only be used in areas of the state where the technology necessary for the provision of telemedicine exists. The audio and visual telemedicine system used shall, at a minimum, have the capability to meet the procedural definition of the most recent edition of the current procedural terminology that represents the service provided through telemedicine. The telecommunications equipment shall be of a level of quality to adequately complete all necessary components to document the level of service for the current procedural terminology fourth edition codes that are billed. If a peripheral diagnostic scope is required to assess the patient, it shall provide adequate resolution or audio quality for decision making.

(7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

(a) ALTER THE SCOPE OF PRACTICE OF ANY HEALTH CARE PROVIDER; OR

(b) AUTHORIZE THE DELIVERY OF HEALTH CARE SERVICES IN A SETTING OR MANNER NOT OTHERWISE AUTHORIZED BY LAW.

SECTION 5. Part 4 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-421.5. Telemedicine - reimbursement - disclosure statement. (1) ON OR AFTER JULY 1, 2006, IN-PERSON CONTACT BETWEEN A HEALTH CARE PROVIDER AND A PATIENT SHALL NOT BE REQUIRED UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM FOR HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE THAT ARE OTHERWISE ELIGIBLE FOR REIMBURSEMENT UNDER THE PROGRAM. THE SERVICES SHALL BE SUBJECT TO REIMBURSEMENT POLICIES DEVELOPED PURSUANT TO THE MEDICAL ASSISTANCE PROGRAM. THIS SECTION ALSO APPLIES TO MANAGED CARE ORGANIZATIONS THAT CONTRACT WITH THE STATE DEPARTMENT PURSUANT TO THE STATEWIDE MANAGED CARE SYSTEM ONLY TO THE EXTENT THAT:

(a) HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE ARE COVERED BY AND REIMBURSED UNDER THE MEDICAID PER DIEM PAYMENT PROGRAM; AND

(b) MANAGED CARE CONTRACTS WITH MANAGED CARE ORGANIZATIONS ARE AMENDED TO ADD COVERAGE OF HEALTH CARE SERVICES DELIVERED THROUGH TELEMEDICINE AND ANY APPROPRIATE PER DIEM RATE ADJUSTMENTS ARE INCORPORATED.

(2) THE REIMBURSEMENT RATE FOR A TELEMEDICINE SERVICE SHALL, AS A MINIMUM, BE SET AT THE SAME RATE AS THE MEDICAL ASSISTANCE PROGRAM RATE FOR A COMPARABLE IN-PERSON SERVICE. THE STATE DEPARTMENT MAY CONSIDER SETTING THE REIMBURSEMENT RATE ON A MONTHLY BASIS AS WELL AS ON A DAILY OR PER-VISIT BASIS.

(3) THE STATE DEPARTMENT SHALL ESTABLISH RATES FOR TRANSMISSION COST REIMBURSEMENT FOR TELEMEDICINE SERVICES, CONSIDERING, TO THE EXTENT APPLICABLE, REDUCTIONS IN TRAVEL COSTS BY HEALTH CARE PROVIDERS AND PATIENTS TO DELIVER OR TO ACCESS HEALTH CARE SERVICES AND SUCH OTHER FACTORS AS THE STATE DEPARTMENT DEEMS RELEVANT.

(4) A HEALTH CARE PROVIDER WHO DELIVERS HEALTH CARE SERVICES THROUGH TELEMEDICINE SHALL PROVIDE TO EACH PATIENT, BEFORE TREATING THAT PATIENT THROUGH TELEMEDICINE FOR THE FIRST TIME, THE FOLLOWING WRITTEN STATEMENTS:

(a) THAT THE PATIENT RETAINS THE OPTION TO REFUSE THE DELIVERY OF HEALTH CARE SERVICES VIA TELEMEDICINE AT ANY TIME WITHOUT AFFECTING THE PATIENT'S RIGHT TO FUTURE CARE OR TREATMENT AND WITHOUT RISKING THE LOSS OR WITHDRAWAL OF ANY PROGRAM BENEFITS TO WHICH THE PATIENT WOULD OTHERWISE BE ENTITLED;

(b) THAT ALL APPLICABLE CONFIDENTIALITY PROTECTIONS SHALL APPLY TO THE SERVICES; AND

(c) THAT THE PATIENT SHALL HAVE ACCESS TO ALL MEDICAL INFORMATION RESULTING FROM THE TELEMEDICINE SERVICES AS PROVIDED BY APPLICABLE LAW FOR PATIENT ACCESS TO HIS OR HER MEDICAL RECORDS.

(5) SUBSECTION (4) OF THIS SECTION SHALL NOT APPLY IN AN EMERGENCY.

SECTION 6. Article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 15
TELEMEDICINE PILOT PROGRAMS
FOR CHRONIC MEDICAL CONDITIONS

26-4-1501. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS THAT, CURRENTLY, A DISPROPORTIONATE SHARE OF THE MONEYS SPENT FOR MEDICAL CARE UNDER THIS ARTICLE PROVIDE SERVICES FOR A SMALL PERCENTAGE OF RECIPIENTS WHO SUFFER FROM CHRONIC MEDICAL CONDITIONS. HOWEVER, TELEMEDICINE TECHNOLOGY HAS EVOLVED TO THE POINT THAT IT MAY BE SUCCESSFULLY USED TO ASSIST RECIPIENTS AND HEALTH CARE PROVIDERS IN MONITORING AND CONTROLLING CHRONIC HEALTH CONDITIONS, RESULTING IN THE ELIMINATION OR NEAR-ELIMINATION OF THE NEED FOR EMERGENCY ROOM VISITS AND HOSPITAL ADMISSIONS FOR THESE PATIENTS. TELEMEDICINE IS A COMPLEMENTARY INTERVENTION TO OTHER MEDICAL TREATMENTS, SUCH AS HOME HEALTH CARE AND OFFICE VISITS. THE CORRESPONDING COST SAVINGS RANGE FROM SEVENTY TO NINETY PERCENT WHEN COMPARED TO THE COST OF MANAGING SUCH CONDITIONS WITHOUT THE COMPLEMENTARY USE OF TELEMEDICINE.

(2) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT IT IS IN THE PUBLIC INTEREST OF THE CITIZENS OF COLORADO:

(a) TO COMMISSION PILOT PROGRAMS TO DEMONSTRATE THE FEASIBILITY OF DELIVERING HEALTH CARE SERVICES THROUGH TELEMEDICINE WHEN MANAGING SELECT CHRONIC MEDICAL CONDITIONS SUFFERED BY PERSONS RECEIVING SERVICES UNDER THIS ARTICLE; AND

(b) TO DIRECT THE MONETARY AND OTHER RESOURCE SAVINGS RESULTING FROM SUCH PILOT PROGRAMS TO OTHER NECESSARY MEDICAL PURPOSES BENEFITING THE PEOPLE OF THIS STATE.

26-4-1502. Pilot programs - use of telemedicine - congestive heart failure - diabetes and indicative conditions. (1) (a) ON OR BEFORE AUGUST 1, 2006, THE STATE DEPARTMENT SHALL ISSUE REQUESTS FOR PROPOSALS TO CONDUCT PILOT PROGRAMS TO INVESTIGATE THE FEASIBILITY OF MANAGING AND TREATING RECIPIENTS WITH SPECIFIED CHRONIC MEDICAL CONDITIONS USING TELEMEDICINE WHENEVER APPROPRIATE.

(b) OTHER THAN THE USE OF TELEMEDICINE AND THE DOCUMENTATION OF SUCH USE FOR PURPOSES OF A PILOT PROGRAM UNDER THIS SECTION, THE COURSE OF TREATMENT FOR RECIPIENTS SELECTED FOR A PILOT PROGRAM SHALL NOT DIFFER FROM THOSE RECIPIENTS' PROBABLE COURSE OF TREATMENT HAD THEY NOT BEEN SELECTED.

(c) RECIPIENTS SHALL BE SELECTED BASED ON FACTORS THAT INCLUDE, BUT ARE NOT NECESSARILY LIMITED TO, THE FACT THAT THEY HAVE REQUIRED OR WILL REQUIRE MEDICAL SERVICES OF UNUSUALLY HIGH FREQUENCY, URGENCY, OR

DURATION; COGNITIVE ABILITY; LIVING SITUATION AND FAMILY OR CAREGIVER SUPPORT NETWORK; AND THE AVAILABILITY OF TOUCH-TONE TELEPHONE SERVICE. ANY NECESSARY TELEMEDICINE EQUIPMENT OR DEVICES SHALL BE SUPPLIED BY THE ENTITY CONDUCTING THE PILOT PROGRAM, AND CHARGES FOR RECIPIENTS SHALL BE BILLED ON A MONTHLY BASIS.

(2) THE CHRONIC MEDICAL CONDITIONS INCLUDED IN THE PILOT PROGRAMS SHALL BE:

- (a) CONGESTIVE HEART FAILURE;
- (b) DIABETES, ITS INDICATIVE CONDITIONS, OR BOTH; AND
- (c) CHRONIC OBSTRUCTIVE PULMONARY DISEASE.

(3) THE SUCCESSFUL BIDDER SHALL ADMINISTER THE PILOT PROGRAMS IN ACCORDANCE WITH DIRECTIVES DEVELOPED BY THE STATE DEPARTMENT, AND SHALL COLLECT SUCH DATA AS THE STATE DEPARTMENT MAY SPECIFY. THE DURATION OF THE PILOT PROGRAMS SHALL BE SPECIFIED BY THE STATE DEPARTMENT, BUT SHALL BE NO LESS THAN SIX MONTHS.

(4) AT INTERVALS SPECIFIED BY THE STATE DEPARTMENT, BUT NO LESS FREQUENTLY THAN EVERY SIX MONTHS, ANY IDENTIFIED SAVINGS RESULTING FROM THE PILOT PROGRAMS SHALL BE ACCOUNTED FOR AND TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE HEALTH CARE POLICY AND FINANCING CASH FUND CREATED IN SECTION 25.5-1-109, C.R.S. SUCH IDENTIFIED SAVINGS SHALL BE MADE AVAILABLE FOR USE IN PAYING FOR HOME- AND COMMUNITY-BASED SERVICES UNDER PART 6 OF THIS ARTICLE; COMMUNITY-BASED LONG-TERM CARE; AND HOME HEALTH SERVICES.

26-4-1503. Repeal of part - sunset review - independent evaluation. (1) THIS PART 15 IS REPEALED, EFFECTIVE JULY 1, 2010. PRIOR TO SUCH REPEAL, THE ADMINISTRATION OF THE PILOT PROGRAMS SHALL BE REVIEWED PURSUANT TO SECTION 24-34-104, C.R.S. THE REVIEW SHALL INCLUDE, BUT IS NOT LIMITED TO, CONSIDERATION OF THE FOLLOWING FACTORS:

(a) WHETHER THE PILOT PROGRAMS OPERATE IN THE PUBLIC INTEREST AND WHETHER THEIR OPERATION IS IMPEDED OR ENHANCED BY EXISTING STATUTES, RULES, PROCEDURES, AND PRACTICES OR BY ANY OTHER CIRCUMSTANCES, INCLUDING BUDGETARY, RESOURCE, OR PERSONNEL ISSUES;

(b) WHETHER AN ANALYSIS OF STATE DEPARTMENT OPERATIONS INDICATES THAT THE PROGRAMS FULFILL THEIR STATUTORY PURPOSE EFFICIENTLY AND EFFECTIVELY;

(c) WHETHER THE LIST OF CHRONIC MEDICAL CONDITIONS INCLUDED IN THE PILOT PROGRAMS, AS SET FORTH IN SECTION 26-4-1502 (2), SHOULD BE EXPANDED TO ENCOMPASS OTHER CONDITIONS AND, IF SO, WHAT OTHER CONDITIONS SHOULD BE ADDED; AND

(d) THE COST SAVINGS ASSOCIATED WITH THE PILOT PROGRAMS.

(2) THE REVIEW PURSUANT TO SECTION 24-34-104, C.R.S., AND ANY OTHER REVIEW, EVALUATION, OR ANALYSIS OF THE PILOT PROGRAMS, SHALL BE CONDUCTED ON A NEUTRAL AND OBJECTIVE BASIS BY PERSONS WITHOUT ANY FINANCIAL INTEREST IN, NOR CURRENT OR ANTICIPATED FUTURE AFFILIATION WITH, ANY ENTITY PROVIDING GOODS OR SERVICES UNDER THE PILOT PROGRAMS.

SECTION 7. 24-34-104 (41), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) The following agencies, functions, or both, shall terminate on July 1, 2010:

(s) THE ADMINISTRATION OF TELEMEDICINE PILOT PROGRAMS BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING PURSUANT TO PART 15 OF ARTICLE 4 OF TITLE 26, C.R.S.

SECTION 8. Appropriation - adjustments to 2006 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, 2006, shall be adjusted as follows:

(a) The appropriation to the executive director's office, for personal services, is increased by twenty-seven thousand eighty-six dollars (\$27,086) and 1.0 FTE. Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of twenty-seven thousand eighty-five dollars (\$27,085) in federal funds for the implementation of this act. Although these federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

(b) The appropriation to the executive director's office, for operating expenses, is increased by one thousand nine hundred thirty-seven dollars (\$1,937). Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of one thousand nine hundred thirty-eight dollars (\$1,938) in federal funds for the implementation of this act. Although these federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

(c) The appropriation for the executive director's office, for the medicaid management information system, is increased by thirteen thousand three hundred nineteen dollars (\$13,319). Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of thirty-nine thousand nine hundred sixty-one dollars (\$39,961) in federal funds for the implementation of this act. Although these federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative

to these funds.

(d) The appropriation for the medical services premiums is increased by one hundred sixty-one thousand two hundred sixteen dollars (\$161,216). Said sum shall be from the general fund and subject to the "(M)" notation as defined in the general appropriation act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2006, the department of health care policy and financing will receive the sum of one hundred sixty-one thousand two hundred fifteen dollars (\$161,215) in federal funds for the implementation of this act. Although these federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds.

SECTION 9. Relocation of harmonizable provisions. (1) Section 26-4-421.5, Colorado Revised Statutes, as enacted in section 5 of this act, will be renumbered as and relocated to section 25.5-5-320, Colorado Revised Statutes, only if Senate Bill 06-219 is enacted and becomes law.

(2) Part 15 of article 4 of title 26, Colorado Revised Statutes, as enacted in section 6 of this act, will be renumbered as and relocated to part 7 of article 5 of title 25.5, Colorado Revised Statutes, only if Senate Bill 06-219 is enacted and becomes law.

SECTION 10. Effective date. This act shall take effect July 1, 2006.

SECTION 11. 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 2, 2006