

CHAPTER 428

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 08-1072

BY REPRESENTATIVE(S) Soper, Pommer, Buescher, Carroll T., Fischer, Green, Kefalas, Labuda, Madden, McFadyen, McGihon, Merrifield, Middleton, Mitchell V., Peniston, Primavera, Solano, Stafford, Todd, Butcher, Carroll M., Frangas, Garza-Hicks, and Hodge;
also SENATOR(S) Williams, Bacon, Boyd, Gibbs, Groff, Isgar, Keller, Morse, Sandoval, Shaffer, Spence, Tupa, Ward, and Windels.

AN ACT

CONCERNING EMPLOYMENT INCENTIVES FOR PEOPLE WITH DISABILITIES THROUGH A MEDICAID BUY-IN PROGRAM, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Article 6 of title 25.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 14
MEDICAID BUY-IN**

25.5-6-1401. Legislative declaration. THE GENERAL ASSEMBLY HEREBY DECLARES ITS SUPPORT FOR THE FULL EMPLOYMENT OF PEOPLE WITH DISABILITIES. IT IS THE GENERAL ASSEMBLY'S INTENT TO ENACT THIS PART 14 FOR THE PURPOSE OF ALLOWING AN INDIVIDUAL WITH DISABILITIES TO PURCHASE MEDICAID COVERAGE THAT WILL ENABLE THE INDIVIDUAL TO MAINTAIN EMPLOYMENT WITHOUT LOSING HIS OR HER MEDICAID BENEFITS.

25.5-6-1402. Definitions. AS USED IN THIS PART 14, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BASIC COVERAGE GROUP" MEANS THE CATEGORY OF ELIGIBILITY UNDER THE FEDERAL "TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999", PUB.L. 106-170, THAT PROVIDES AN OPPORTUNITY TO BUY INTO MEDICAID CONSISTENT WITH THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. 1396a (a) (10) (A) (ii) (XV), AS AMENDED, FOR EACH WORKER WITH DISABILITIES WHO IS AT LEAST

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

SIXTEEN YEARS OF AGE BUT LESS THAN SIXTY-FIVE YEARS OF AGE AND WHO, EXCEPT FOR EARNINGS, WOULD BE ELIGIBLE FOR THE SUPPLEMENTAL SECURITY INCOME PROGRAM. A PERSON WHO IS ELIGIBLE UNDER THE BASIC COVERAGE GROUP MAY ALSO BE A HOME- AND COMMUNITY-BASED SERVICES WAIVER RECIPIENT.

(2) "FAMILY" MEANS AN INDIVIDUAL, THE INDIVIDUAL'S SPOUSE, AND ANY DEPENDENT CHILD OF THE INDIVIDUAL.

(3) "HEALTH INSURANCE" MEANS SURGICAL, MEDICAL, HOSPITAL, MAJOR MEDICAL, OR OTHER HEALTH SERVICE COVERAGE, INCLUDING A SELF-INSURED HEALTH PLAN, BUT DOES NOT INCLUDE HOSPITAL INDEMNITY POLICIES OR ANCILLARY COVERAGES SUCH AS INCOME CONTINUATION, LOSS OF TIME, OR ACCIDENT BENEFITS.

(4) "MEDICAID BUY-IN PROGRAM" MEANS A PROGRAM THAT GIVES EACH PERSON WITH DISABILITIES THE OPPORTUNITY TO BUY INTO MEDICAID IF THE PERSON MEETS THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION 25.5-6-1404.

(5) "MEDICAL IMPROVEMENT GROUP" MEANS THE CATEGORY OF ELIGIBILITY UNDER THE FEDERAL "TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999", PUB.L. 106-170, THAT PROVIDES AN OPPORTUNITY TO BUY INTO MEDICAID CONSISTENT WITH THE FEDERAL "SOCIAL SECURITY ACT", 42 U.S.C. 1496a (a) (10) (A) (ii) (XV), AS AMENDED, FOR EACH WORKER WITH A MEDICALLY IMPROVED DISABILITY WHO IS AT LEAST SIXTEEN YEARS OF AGE BUT LESS THAN SIXTY-FIVE YEARS OF AGE AND WHO WAS PREVIOUSLY IN THE BASIC COVERAGE GROUP AND IS NO LONGER ELIGIBLE FOR THE BASIC COVERAGE GROUP DUE TO MEDICAL IMPROVEMENT. A PERSON WHO IS ELIGIBLE UNDER THE MEDICAL IMPROVEMENT GROUP MAY ALSO BE A HOME- AND COMMUNITY-BASED SERVICES WAIVER RECIPIENT.

25.5-6-1403. Waivers and amendments. (1) ON OR BEFORE JANUARY 1, 2010, THE STATE DEPARTMENT SHALL SUBMIT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY A REPORT ON THE ACTUARIAL STUDY AND THE FISCAL ANALYSIS OF THE PREMIUMS BASED ON THE STUDY AND THE RULES ADOPTED PURSUANT TO THIS SECTION.

(2) IF APPROVED BY THE JOINT BUDGET COMMITTEE FOLLOWING ITS REVIEW OF THE REPORT AND SUBJECT TO AVAILABLE APPROPRIATIONS, THE STATE DEPARTMENT SHALL SUBMIT TO THE FEDERAL HEALTH CARE FINANCING ADMINISTRATION AN AMENDMENT TO THE STATE MEDICAL ASSISTANCE PLAN, AND SHALL REQUEST ANY NECESSARY WAIVERS FROM THE SECRETARY OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO PERMIT THE STATE DEPARTMENT TO EXPAND MEDICAL ASSISTANCE ELIGIBILITY AS PROVIDED IN THIS PART 14 FOR THE PURPOSE OF IMPLEMENTING A MEDICAID BUY-IN PROGRAM FOR PEOPLE WITH DISABILITIES WHO ARE IN THE BASIC COVERAGE GROUP OR THE MEDICAL IMPROVEMENT GROUP. IN ADDITION, THE STATE DEPARTMENT SHALL APPLY TO THE SECRETARY OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR A MEDICAID INFRASTRUCTURE GRANT, IF AVAILABLE, TO DEVELOP AND IMPLEMENT THE FEDERAL "TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999", PUB.L. 106-170.

(3) IF THE STATE MEDICAL ASSISTANCE PLAN AMENDMENT AND ALL NECESSARY WAIVERS ARE APPROVED, THE STATE DEPARTMENT SHALL IMPLEMENT THE MEDICAID BUY-IN PROGRAM PROVIDED IN THIS PART 14 NOT LATER THAN THREE MONTHS AFTER RECEIVING FULL FEDERAL APPROVAL, WHICHEVER IS LATER.

25.5-6-1404. Medicaid buy-in program - eligibility - premiums - medicaid buy-in cash fund - report. (1) **Eligibility.** AN INDIVIDUAL IS ELIGIBLE FOR AND SHALL RECEIVE MEDICAID PROVIDED IN THIS PART 14 THROUGH A MEDICAID BUY-IN PROGRAM WITHOUT LOSING ELIGIBILITY FOR MEDICAID IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(a) THE INDIVIDUAL MEETS THE REQUIREMENTS FOR THE BASIC COVERAGE GROUP OR THE INDIVIDUAL WAS PREVIOUSLY IN THE BASIC COVERAGE GROUP AND NOW MEETS THE REQUIREMENTS FOR THE MEDICAL IMPROVEMENT GROUP;

(b) THE INDIVIDUAL MAINTAINS PREMIUM PAYMENTS CALCULATED BY THE STATE DEPARTMENT IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION, UNLESS THE INDIVIDUAL IS EXEMPTED FROM PREMIUM PAYMENTS UNDER RULES PROMULGATED BY THE STATE BOARD; AND

(c) THE INDIVIDUAL MEETS ALL OTHER REQUIREMENTS ESTABLISHED BY RULE OF THE STATE BOARD.

(2) THERE IS NO INCOME OR ASSET LIMITATION FOR A PARTICIPANT IN THE MEDICAID BUY-IN PROGRAM. IN ADDITION, THERE IS NO INCOME OR ASSET LIMITATION FOR AN INDIVIDUAL WHO PARTICIPATES IN THE MEDICAID BUY-IN PROGRAM AND ALSO RECEIVES HOME- AND COMMUNITY-BASED SERVICES.

(3) **Premiums.** (a) AN INDIVIDUAL WHO IS ELIGIBLE FOR AND RECEIVES MEDICAID UNDER SUBSECTION (1) OF THIS SECTION SHALL PAY A PREMIUM PURSUANT TO A PAYMENT SCHEDULE ESTABLISHED BY THE STATE DEPARTMENT. THE AMOUNT OF THE PREMIUM SHALL BE DETERMINED FROM A SLIDING-FEE SCALE ADOPTED BY RULE OF THE STATE BOARD THAT IS BASED ON A PERCENTAGE OF THE INDIVIDUAL'S INCOME ADJUSTED FOR FAMILY SIZE AND ON ANY IMPAIRMENT-RELATED WORK EXPENSES; EXCEPT THAT, CONSISTENT WITH FEDERAL LAW, IF THE AMOUNT OF THE INDIVIDUAL'S ADJUSTED GROSS INCOME EXCEEDS SEVENTY-FIVE THOUSAND DOLLARS, THE INDIVIDUAL SHALL BE RESPONSIBLE FOR PAYING ONE HUNDRED PERCENT OF THE PREMIUM. THE ACTUARIAL STUDY SHALL ALSO CONSIDER CONTRIBUTIONS FROM EMPLOYERS PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION. THE RULES SHALL SPECIFY THE AMOUNT OF UNEARNED INCOME THE STATE DEPARTMENT SHALL DISREGARD IN CALCULATING THE INDIVIDUAL'S INCOME.

(b) THE RULES SETTING THE PREMIUMS AND THE SLIDING-FEE SCALE SHALL BE BASED ON AN ACTUARIAL STUDY OF THE DISABLED POPULATION IN THIS STATE. THE STATE DEPARTMENT MAY SOLICIT AND ACCEPT FEDERAL GRANTS TO COVER THE COSTS OF THE ACTUARIAL STUDY. MONEYS RECEIVED THROUGH ANY GRANTS AND ANY PREMIUMS SHALL BE CREDITED TO THE MEDICAID BUY-IN CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. MONEYS IN THE FUND SHALL BE APPROPRIATED BY THE GENERAL ASSEMBLY AND EXPENDED BY THE STATE DEPARTMENT FOR THE PURPOSE OF CONDUCTING IMPLEMENTATION ACTIVITIES AS

DETERMINED BY THE STATE DEPARTMENT, INCLUDING CONDUCTING THE ACTUARIAL STUDY. PREMIUMS SHALL BE CREDITED TO THE FUND FOR THE PURPOSE OF OFFSETTING PROGRAM COSTS.

(c) WITHIN THREE YEARS AFTER IMPLEMENTATION OF THE MEDICAID BUY-IN PROGRAM PURSUANT TO THIS PART 14, THE STATE DEPARTMENT SHALL SUBMIT A REPORT ON THE EFFECTIVENESS OF THE PROGRAM TO THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY.

(4) Private health insurance. (a) THE STATE DEPARTMENT SHALL, ON BEHALF OF AN INDIVIDUAL WHO IS ELIGIBLE FOR MEDICAID UNDER SUBSECTION (1) OF THIS SECTION, PAY PREMIUMS FOR OR PURCHASE INDIVIDUAL COVERAGE OFFERED BY THE INDIVIDUAL'S EMPLOYER IF THE STATE DEPARTMENT DETERMINES THAT PAYING THE PREMIUMS OR PURCHASING THE COVERAGE WILL BE LESS THAN PROVIDING MEDICAID COVERAGE. ANY EMPLOYER-SPONSOR HEALTH INSURANCE PLAN SHALL BE THE PRIMARY PAYER, AND ANY PAYMENTS MADE UNDER MEDICAID SHALL BE SECONDARY. IN THE EVENT THAT THE EMPLOYER-SPONSORED HEALTH INSURANCE PLAN PROVIDES BENEFITS THAT ARE NOT EQUIVALENT TO THE BENEFITS PROVIDED UNDER MEDICAID, MEDICAID SHALL PROVIDE ALL ADDITIONAL BENEFITS THAT ARE NOT PROVIDED BY THE EMPLOYER-SPONSORED HEALTH INSURANCE PLAN.

(b) IF AN INDIVIDUAL IS ELIGIBLE FOR MEDICAID UNDER SUBSECTION (1) OF THIS SECTION AND THE INDIVIDUAL'S EMPLOYER WOULD PAY FOR ALL OR A PORTION OF THE INDIVIDUAL'S PRIVATE INSURANCE, THE STATE DEPARTMENT MAY ACCEPT CONTRIBUTIONS FROM THE INDIVIDUAL'S EMPLOYER TO OFFSET PART OF THE COST OF PROVIDING SERVICES PURSUANT TO THIS SECTION.

(5) Medicare. IF FEDERAL FINANCIAL PARTICIPATION IS AVAILABLE, SUBJECT TO AVAILABLE APPROPRIATIONS, THE STATE DEPARTMENT MAY PAY MEDICARE PART A AND PART B PREMIUMS FOR INDIVIDUALS WHO ARE ELIGIBLE FOR MEDICARE AND FOR MEDICAID UNDER SUBSECTION (1) OF THIS SECTION.

25.5-6-1405. Rule-making authority. (1) THE STATE BOARD SHALL PROMULGATE RULES NECESSARY TO IMPLEMENT AND ADMINISTER THE MEDICAID BUY-IN PROGRAM CREATED IN THIS PART 14, INCLUDING THE ESTABLISHMENT OF APPROPRIATE PREMIUM AND COST-SHARING CHARGES ON A SLIDING-FEE SCALE BASED ON INCOME. THE PREMIUMS AND COST-SHARING CHARGES SHALL BE BASED UPON AN ACTUARIAL STUDY OF THE DISABLED POPULATION IN THIS STATE.

(2) ANY RULES ADOPTED BY THE STATE BOARD SHALL BE CONSISTENT WITH THE FEDERAL "TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999", PUB.L. 106-170.

25.5-6-1406. Availability of federal financial assistance under medical assistance. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THIS PART 14 SHALL BE IMPLEMENTED ONLY IF, AND TO THE EXTENT THAT, THE STATE DEPARTMENT DETERMINES THAT FEDERAL FINANCIAL PARTICIPATION IS AVAILABLE UNDER THE MEDICAID PROGRAM.

SECTION 2. 25.5-5-201 (1), Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW PARAGRAPH to read:

25.5-5-201. Optional provisions - optional groups. (1) The federal government allows the state to select optional groups to receive medical assistance. Pursuant to federal law, any person who is eligible for medical assistance under the optional groups specified in this section shall receive both the mandatory services specified in sections 25.5-5-102 and 25.5-5-103 and the optional services specified in sections 25.5-5-202 and 25.5-5-203. Subject to the availability of federal financial aid funds, the following are the individuals or groups that Colorado has selected as optional groups to receive medical assistance pursuant to this article and articles 4 and 6 of this title:

(o) INDIVIDUALS WITH DISABILITIES WHO ARE PARTICIPATING IN THE MEDICAID BUY-IN PROGRAM ESTABLISHED IN PART 14 OF ARTICLE 6 OF THIS TITLE.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, for allocation to the executive director's office, general professionals services and special projects, for the fiscal year beginning July 1, 2008, the sum of twenty-seven thousand five hundred dollars (\$27,500), or so much thereof as may be necessary, for the implementation of this act. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2008, the department of health care policy and financing will receive the sum of twenty-seven thousand five hundred dollars (\$27,500) in federal funds for the implementation of this act. Although the federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds in developing state appropriation amounts.

SECTION 4. Effective date. (1) Except as otherwise provided in subsection (2) of this section, this act shall take effect upon passage.

(2) Sections 1, 2, and 3 of this act shall take effect on July 1, 2008 only if:

(a) (I) The final fiscal estimate for Senate Bill 08-090, as reflected in the appropriations clause for said act, shows a net general fund savings that is equal to or greater than the final general fund fiscal estimate for this act, as reflected in section 3 of this act; and

(II) Senate Bill 08-090 is enacted at the second regular session of the sixty-sixth general assembly and becomes law; or

(b) (I) The final fiscal estimate for House Bill 08-1409, as reflected in the appropriations clause for said act, shows a net general fund savings that is equal to or greater than the final general fund fiscal estimate for this act, as reflected in section 3 of this act; and

(II) House Bill 08-1409 is enacted at the second regular session of the sixty-sixth general assembly and becomes law; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 15, 2008, that one of the requirements set forth

in paragraph (a) 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: June 5, 2008