

CHAPTER 276

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 10-1053

BY REPRESENTATIVE(S) Riesberg, Kefalas, Apuan, Court, Fischer, Labuda, Looper, Ryden, Schafer S., Todd, Vigil, Merrifield;
also SENATOR(S) Boyd, Newell, Williams.

AN ACT

CONCERNING COMMUNITY LONG-TERM CARE SAVINGS, AND MAKING AN APPROPRIATION THEREFOR.

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

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

(a) The state demographer in the department of local affairs estimates that between 2005 and 2015, the portion of Colorado's population that is over sixty-five years of age will increase by more than twenty-three percent;

(b) The state demographer in the department of local affairs estimates that between 2007 and 2035, the portion of Colorado's population that is over sixty years of age will double;

(c) This drastic increase in the older adult population is driven by the aging "baby boomer" generation and will result in a parallel increase in a demand for community long-term care services;

(d) Older adults and their families need quality health care coverage and choice and flexibility in accessing in-home community long-term care services that support their independence and ability to live in the least restrictive environment;

(e) Coloradans deserve to have access to appropriate long-term care services and supports and the proper level of health care;

(f) The state needs a long-term care delivery system that addresses the needs of

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

older adults and their families, and health care coverage and coordination should not be fragmented or difficult to access but instead should be integrated to meet the needs of older adults and families;

(g) A community long-term care system needs to provide maximum service delivery and make efficient use of available public funds;

(h) Home- and community-based services can be a less costly alternative to institutional placement;

(i) In 2005, the general assembly passed Senate Bill 05-173, concerning long-term care services under the "Colorado Medical Assistance Act", in which a long-term care advisory committee, referred to in this section as the "LTC advisory committee", was appointed. The LTC advisory committee submitted a report to the joint budget committee and the health and human services committees of the Senate and House of Representatives with eighteen recommendations to improve the long-term care delivery system in Colorado, including changing the rate structure for alternative care facilities in Colorado, referred to in this section as "ACFs".

(j) One of the recommendations from the LTC advisory committee was to implement a tiered system of care for alternative care residences;

(k) A pilot program that evaluates, financially models, and then implements a tiered-rate payment system for ACFs to care for seniors could result in Coloradans not being discharged to nursing homes prematurely because of incontinence, Alzheimer's disease, or dementia;

(l) The department of health care policy and financing should conduct one or more studies of community-based services to reduce the overall state costs through the use of home- and community-based services, including a study of past or current home- and community-based clients who could potentially benefit from ACF tiered rates. If a study evaluating the system shows cost containment through proper utilization controls, the state would then implement the program statewide within the home- and community-based medicaid waivers.

(m) In 2000, the general assembly passed Senate Bill 00-1072, creating the older Coloradans program, which provides moneys to area agencies on aging to award grants for community-based services to persons sixty years of age or older to enable such persons to live in their own homes and communities for as long as possible;

(n) The department of human services should conduct a study of persons sixty years of age or older who could potentially benefit from older Coloradans program services with the understanding that, if the study evaluating the program shows cost savings through the provision of community-based services, the state would then develop a long-term strategic implementation plan for providing services through the older Coloradans program.

(2) The general assembly further supports the efforts of community organizations to facilitate a coalition of business leaders and allied advocacy and trade organizations, as well as stakeholders, similar to those included in the LTC advisory committee. This support includes asking for technical assistance to bring together

stakeholders to outline a three-year plan to reconstitute the LTC advisory committee and make recommendations through legislation and rule for the implementation of the LTC advisory committee's recommendations.

SECTION 2. Part 1 of article 6 of title 25.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25.5-6-108.5. Community long-term care studies - authority to implement - alternative care facility report. (1) (a) SUBJECT TO THE RECEIPT OF SUFFICIENT MONEYS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), THE STATE DEPARTMENT SHALL CONTRACT FOR ONE OR MORE STUDIES OF THE POPULATION OF RECIPIENTS RECEIVING SERVICES UNDER THE HOME- AND COMMUNITY-BASED WAIVERS AUTHORIZED PURSUANT TO THIS ARTICLE. THE STATE DEPARTMENT SHALL MAKE NECESSARY DATA AVAILABLE TO THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO DATA ON ACTIVITIES OF DAILY LIVING. IN SELECTING A CONTRACTOR TO PERFORM ANY STUDY CONDUCTED PURSUANT TO THIS SUBSECTION (1), THE STATE DEPARTMENT IS NOT REQUIRED TO FOLLOW THE COMPETITIVE BIDDING REQUIREMENTS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S. THE STATE DEPARTMENT SHALL PROVIDE COPIES OF ALL STUDIES CONDUCTED PURSUANT TO THIS SUBSECTION (1) TO MEMBERS OF THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE GENERAL ASSEMBLY, OR ANY SUCCESSOR COMMITTEES, AND TO THE MEMBERS OF THE JOINT BUDGET COMMITTEE.

(b) IF A STUDY CONDUCTED PURSUANT TO THIS SUBSECTION (1) CONCLUDES THAT A PROGRAM OF HOME- AND COMMUNITY-BASED SERVICES WOULD RESULT IN COST SAVINGS, THE STATE DEPARTMENT SHALL SEEK ANY NECESSARY FEDERAL AUTHORIZATION TO IMPLEMENT THE PROGRAM. IF FEDERAL AUTHORIZATION TO IMPLEMENT THE PROGRAM IS OBTAINED, THE STATE DEPARTMENT SHALL REQUEST, THROUGH THE STATE BUDGET PROCESS, THAT THE PROGRAM BE IMPLEMENTED. THE STATE DEPARTMENT SHALL REPORT TO THE JOINT BUDGET COMMITTEE ANNUALLY CONCERNING THE AMOUNT OF ANY SAVINGS REALIZED FROM THE PROGRAM.

(c) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE AND PUBLIC SOURCES FOR THE PURPOSES OF THIS SUBSECTION (1); EXCEPT THAT THE STATE DEPARTMENT MAY NOT ACCEPT A GIFT, GRANT, OR DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH THIS SUBSECTION (1) OR ANY OTHER LAW OF THE STATE. THE STATE DEPARTMENT SHALL TRANSMIT ALL PRIVATE AND PUBLIC MONEYS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING CASH FUND CREATED IN SECTION 25.5-1-109.

(2) (a) SUBJECT TO THE RECEIPT OF SUFFICIENT MONEYS, ONE OF THE STUDIES CONTRACTED FOR PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL INCLUDE RESEARCH AND ANALYSIS OF:

(1) THE NUMBER OF RECIPIENTS WITH INCONTINENCE, ALZHEIMER'S DISEASE, DEMENTIA, OR OTHER DIAGNOSES OF A CHRONIC INCAPACITATING CONDITION THAT SEVERELY LIMIT THEIR ACTIVITIES OF DAILY LIVING WHO WOULD BENEFIT FROM RECEIVING ADDITIONAL SERVICES THROUGH AN ALTERNATIVE CARE FACILITY THEREBY AVOIDING NURSING HOME PLACEMENT;

(II) THE ACTUARIALLY SOUND RATE FOR PROVIDING SERVICES FOR THE RECIPIENTS AT AN ALTERNATIVE CARE FACILITY;

(III) THE AMOUNT OF SAVINGS ASSOCIATED WITH PROVIDING SERVICES AT AN ALTERNATIVE CARE FACILITY;

(IV) RECOMMENDATIONS FOR UTILIZATION CONTROLS OR PROGRAM CONTROLS FOR A PROGRAM TO PROVIDE SERVICES AT AN ALTERNATIVE CARE FACILITY;

(V) THE EXPERIENCES OF THE PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY, CREATED PURSUANT TO SECTION 25.5-5-412, WITH TIERED RATES FOR ALTERNATIVE CARE FACILITIES, INCLUDING COST SAVINGS OR COST AVOIDANCE;

(VI) OTHER STATES' EXPERIENCES WITH TIERED RATES FOR ALTERNATIVE CARE FACILITIES, INCLUDING COST SAVINGS OR COST AVOIDANCE; AND

(VII) RECOMMENDATIONS FOR MAINTAINING OR IMPROVING QUALITY OF CARE.

(b) THE STUDY CONDUCTED PURSUANT TO THIS SUBSECTION (2) SHALL BE COMPLETED BY JANUARY 1, 2011, AND, IF FEDERAL APPROVAL IS OBTAINED PRIOR TO FINAL FIGURE-SETTING FOR THE FISCAL YEAR COMMENCING JULY 1, 2011, THE STATE DEPARTMENT SHALL SUBMIT A REQUEST THROUGH THE BUDGET PROCESS FOR IMPLEMENTATION OF THE APPROVED CHANGES FOR THAT FISCAL YEAR.

SECTION 3. Part 2 of article 11 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-11-205.7. Community long-term care study - strategic plan - authority to implement. (1)(a) SUBJECT TO THE RECEIPT OF SUFFICIENT MONEYS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), THE STATE DEPARTMENT OR, IF APPROPRIATE, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL CONTRACT FOR A STUDY OF THE POPULATION ELIGIBLE FOR SERVICES UNDER THE OLDER COLORADANS PROGRAM CREATED PURSUANT TO SECTION 26-11-205.5. THE STATE DEPARTMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL MAKE NECESSARY DATA AVAILABLE TO THE CONTRACTOR. IN SELECTING A CONTRACTOR TO PERFORM THE STUDY, THE STATE DEPARTMENTS ARE NOT REQUIRED TO FOLLOW THE COMPETITIVE BIDDING REQUIREMENTS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S. THE STUDY SHALL INCLUDE RESEARCH AND ANALYSIS OF:

(I) THE DEMOGRAPHIC CHANGES THAT WILL IMPACT THE DEMAND FOR LONG-TERM CARE SERVICES AND SUPPORTS;

(II) THE NUMBER OF PERSONS SIXTY YEARS OF AGE OR OLDER WHO WOULD BENEFIT FROM RECEIVING ADDITIONAL SERVICES THROUGH THE OLDER COLORADANS PROGRAM THEREBY AVOIDING MORE EXPENSIVE CARE NEEDS;

(III) THE TYPES OF SERVICES AND SUPPORTS NEEDED BY PERSONS OVER SIXTY YEARS OF AGE TO REMAIN IN THEIR OWN RESIDENCES AND COMMUNITIES FOR AS LONG AS POSSIBLE AND ANY EXISTING OR PROJECTED NEEDS FOR THOSE SERVICES AND SUPPORTS;

(IV) THE OVERALL AMOUNT OF SAVINGS TO THE STATE ACROSS THE CONTINUUM OF CARE ASSOCIATED WITH PROVIDING SERVICES TO OLDER ADULTS IN THEIR OWN HOMES AND COMMUNITIES;

(V) OTHER STATES' EXPERIENCES WITH LONG-TERM CARE SERVICES AND SUPPORTS, INCLUDING COST SAVINGS OR COST AVOIDANCE; AND

(VI) RECOMMENDATIONS FOR A LONG-TERM STRATEGIC IMPLEMENTATION PLAN FOR PROVIDING SERVICES THROUGH THE OLDER COLORADANS PROGRAM.

(b) (I) THE STATE DEPARTMENT IS AUTHORIZED TO SEEK AND ACCEPT GIFTS, GRANTS, OR DONATIONS FROM PRIVATE AND PUBLIC SOURCES FOR THE PURPOSES OF THIS SECTION; EXCEPT THAT THE STATE DEPARTMENT MAY NOT ACCEPT A GIFT, GRANT, OR DONATION THAT IS SUBJECT TO CONDITIONS THAT ARE INCONSISTENT WITH THIS SECTION OR ANY OTHER LAW OF THE STATE. THE STATE DEPARTMENT SHALL TRANSMIT ALL PRIVATE AND PUBLIC MONEYS RECEIVED THROUGH GIFTS, GRANTS, OR DONATIONS TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE OLDER COLORADANS STUDY CASH FUND, WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE STATE DEPARTMENT FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THIS SECTION.

(II) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SECTION MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(2) IF THE STUDY CONDUCTED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION CONCLUDES THAT INCREASING FUNDING FOR COMMUNITY-BASED SERVICES AS PROVIDED IN THE OLDER COLORADANS PROGRAM WOULD RESULT IN COST SAVINGS, BY JULY 1, 2011, SUBJECT TO THE RECEIPT OF SUFFICIENT MONEYS PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THE STATE DEPARTMENT SHALL REPORT TO THE MEMBERS OF THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, AND TO THE MEMBERS OF THE JOINT BUDGET COMMITTEE A LONG-TERM STRATEGIC IMPLEMENTATION PLAN, DEVELOPED IN COOPERATION WITH THE AREA AGENCIES ON AGING CREATED PURSUANT TO SECTION 26-11-204, THAT IDENTIFIES THE EXPECTED NEEDS FOR SERVICES AND RECOMMENDS POTENTIAL FUNDING SOURCES.

(3) IF THE STUDY CONDUCTED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION CONCLUDES THAT ONE OR MORE CHANGES WOULD RESULT IN COST SAVINGS TO THE STATE, WITHOUT ADVERSELY AFFECTING THE CARE PROVIDED, AND THE CHANGES ARE RECOMMENDED IN THE STRATEGIC IMPLEMENTATION PLAN DEVELOPED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE DEPARTMENT OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL

REQUEST, THROUGH THE STATE BUDGET PROCESS, THAT THE CHANGES BE IMPLEMENTED AND, IF NECESSARY, SHALL RECOMMEND LEGISLATION TO IMPLEMENT THE CHANGES TO THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, OR THE JOINT BUDGET COMMITTEE.

(4) (a) IF THE STRATEGIC IMPLEMENTATION PLAN DEVELOPED PURSUANT TO SUBSECTION (2) OF THIS SECTION IDENTIFIES ADDITIONAL STUDIES THAT SHOULD BE CONDUCTED, SUBJECT TO THE RECEIPT OF SUFFICIENT MONEYS PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, THE STATE DEPARTMENT OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL CONTRACT FOR ONE OR MORE STUDIES IDENTIFIED IN THE STRATEGIC IMPLEMENTATION PLAN. THE STATE DEPARTMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL MAKE NECESSARY DATA AVAILABLE TO ALL THE CONTRACTORS. IN SELECTING A CONTRACTOR TO PERFORM ANY STUDY CONDUCTED PURSUANT TO THIS SUBSECTION (4), THE STATE DEPARTMENTS ARE NOT REQUIRED TO FOLLOW THE COMPETITIVE BIDDING REQUIREMENTS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.

(b) IF ONE OR MORE STUDIES CONDUCTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) CONCLUDES THAT IMPLEMENTING THE CHANGES RECOMMENDED BY THE STUDY WOULD RESULT IN COST SAVINGS TO THE STATE, WITHOUT ADVERSELY AFFECTING THE CARE PROVIDED, THE STATE DEPARTMENT OR THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL REQUEST, THROUGH THE STATE BUDGET PROCESS, THAT THE CHANGES BE IMPLEMENTED AND, IF NECESSARY, SHALL RECOMMEND LEGISLATION TO IMPLEMENT THE CHANGES TO THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, OR TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY.

SECTION 4. 25.5-6-313, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25.5-6-313. Rules - federal authorization. (1.5) THE RULES ADOPTED BY THE STATE BOARD PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL INCLUDE THE FOLLOWING PROVISIONS CONCERNING ADULT DAY CARE FACILITIES:

(a) A DEFINITION OF A RESTRICTED ENVIRONMENT AND A RESTRICTIVE EGRESS ALERT DEVICE;

(b) PARAMETERS GOVERNING HOW THE RESTRICTIVE EGRESS ALERT DEVICE SHALL BE USED AND TESTED AND THE STAFF ROLES REGARDING THE USE AND OVERSIGHT OF THE DEVICE; AND

(c) PARAMETERS GOVERNING A RESTRICTED ENVIRONMENT, INCLUDING BUT NOT LIMITED TO STAFFING AND TRAINING REQUIREMENTS; APPROPRIATENESS OF PLACEMENT; ASSESSMENT; PARTICIPANT'S RIGHTS; RECORDS AND REPORTING REQUIREMENTS; BUILDING REQUIREMENTS INCLUDING GROUNDS AND FIRE SAFETY; RESTRICTIVE EGRESS ALERT SYSTEMS AND DEVICES; FENCING OR OTHER ENCLOSURES; AND THE APPLICATION PROCESS TO OFFER A RESTRICTED ENVIRONMENT.

SECTION 5. Appropriation. (1) 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 professional services and special projects, for the fiscal year beginning July 1, 2010, the sum of seventy-five thousand dollars (\$75,000), or so much thereof as may be necessary, for the implementation of this act. Of said sum, thirty-seven thousand five hundred dollars (\$37,500) shall be from the department of health care policy and financing cash fund created in section 25.5-1-109, Colorado Revised Statutes, and thirty-seven thousand five hundred dollars (\$37,500) shall be from federal funds.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of human services, for allocation to the executive director's office, for the fiscal year beginning July 1, 2010, the sum of two hundred thousand dollars (\$200,000), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from the older Coloradans study cash fund created in section 26-11-205.7 (1) (b) (I), Colorado Revised Statutes.

SECTION 6. 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, 2010