

## CHAPTER 281

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**HUMAN SERVICES - SOCIAL SERVICES**


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**HOUSE BILL 10-1146**

BY REPRESENTATIVE(S) Hullinghorst, Gagliardi, Kefalas, Kerr J., Labuda, Miklosi, Pommer, Primavera, Apuan, Fischer, Gerou, Merrifield, Ryden, Schafer S., Soper, Todd, Vigil;  
also SENATOR(S) Tochtrop, Newell, Steadman, Tapia, Boyd, Hudak, Schwartz.

**AN ACT**

**CONCERNING CERTAIN STATE-FUNDED, COMMUNITY-BASED, LONG-TERM CARE ASSISTANCE PROVIDED TO RECIPIENTS OF CERTAIN PUBLIC BENEFIT PROGRAMS, AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1. Repeal.** 26-2-114 (2) (a) (I) and (2) (a) (II) (A), Colorado Revised Statutes, are repealed as follows:

**26-2-114. Amount of assistance payments - old age pension.** (2) (a) (I) ~~The state board in the department of human services, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive old age pension. For the purposes of this subparagraph (I), "adult foster care" means the care and services defined in section 26-2-122.3.~~

(II) (A) ~~The state board in the department of human services, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive old age pensions. For the purposes of this subparagraph (II), "home care allowance" means care and services defined in section 26-2-122.3.~~

**SECTION 2.** 26-2-119 (1), (1.5), and (2), Colorado Revised Statutes, are amended to read:

**26-2-119. Amount of assistance payments - aid to the needy disabled.** (1) The amount of assistance payments ~~which~~ THAT shall be granted to a recipient under the program for aid to the needy disabled shall be on the basis of budgetary need, as determined by the county department with due regard to any income,

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

property, or other resources available to the recipient, within available appropriations, and in accordance with rules ~~and regulations~~ of the state department. ~~which may include the use of statistics, averages, tables, standards, and other criteria with respect to such determination of budgetary need.~~ The rules ~~and regulations~~ of the state department may require an applicant or recipient who may be eligible for benefits under another federal or state program or who may have a right to receive or recover other income or resources to take reasonable steps to apply for, otherwise pursue, and accept such benefits, income, or resources.

~~(1.5) (a) In addition to the amount of assistance available pursuant to subsection (1) of this section, the state board in the state department, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive aid to the needy disabled. For the purposes of this paragraph (a), "adult foster care" means the care and services defined in section 26-2-122.3.~~

~~(b) In addition to the amount of assistance available pursuant to subsection (1) of this section, the state board in the state department, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive aid to the needy disabled. For the purposes of this paragraph (b), "home care allowance" means care and services defined in section 26-2-122.3.~~

~~(2) In computing budgetary need pursuant to subsection (1) of this section, due consideration shall, subject to available appropriations, be given to the special needs of the needy disabled recipient. Medical care payments in behalf of recipients may be provided under rules and regulations of the state department to nursing homes, intermediate care, and residential care facilities not covered by Title XIX of the social security act or the "Colorado Medical Assistance Act".~~

**SECTION 3.** 26-2-120 (1), (1.5), and (2), Colorado Revised Statutes, are amended to read:

**26-2-120. Amount of assistance payments - aid to the blind.** (1) The amount of assistance payments ~~which~~ THAT shall be granted to a recipient under the program for aid to the blind shall be on the basis of budgetary need, as determined by the county department with due regard to any income, property, or other resources available to the recipient, within available appropriations, and in accordance with rules ~~and regulations~~ of the state department. ~~which may include the use of statistics, averages, tables, standards, and other criteria with respect to such determination of budgetary need.~~ The rules ~~and regulations~~ of the state department may require an applicant or recipient who may be eligible for benefits under another federal or state program or who may have a right to receive or recover other income or resources to take reasonable steps to apply for, otherwise pursue, and accept such benefits, income, or resources.

~~(1.5) (a) In addition to the amount of assistance available pursuant to subsection (1) of this section, the state board, with the consent of the general assembly and subject to available funds, may provide adult foster care for persons eligible to receive aid to the blind. For the purposes of this paragraph (a), "adult foster care" means the care and services defined in section 26-2-122.3.~~

~~(b) In addition to the amount of assistance available pursuant to subsection (1) of this section, the state board, with the consent of the general assembly and subject to available funds, may provide a home care allowance for persons eligible to receive aid to the blind. For the purposes of this paragraph (b), "home care allowance" means care and services defined in section 26-2-122.3.~~

~~(2) In computing budgetary need pursuant to subsection (1) of this section, due consideration shall, subject to available appropriations, be given to the special needs of the blind recipient. Medical care payments in behalf of recipients may be provided under rules and regulations of the state department to nursing homes, intermediate care, and residential care facilities not covered by Title XIX of the social security act or the "Colorado Medical Assistance Act".~~

**SECTION 4.** 26-2-122.3 (1) (a) (I), (1) (b), and (3), Colorado Revised Statutes, are amended to read:

**26-2-122.3. Adult foster care and home care allowance.** (1) (a) (I) ~~In addition to the amount of assistance available pursuant to the provisions of this article, the state board in~~ The state department, ~~with the consent of the general assembly and~~ subject to available funds APPROPRIATIONS, may provide adult foster care for persons eligible to receive old age pension, aid to the needy disabled, or aid to the blind. For purposes of this paragraph (a), "adult foster care" means care and services that, in addition to room and board, may include, but are not limited to, personal services, recreational opportunities, transportation, utilization of volunteer services, and special diets. Such care and services are provided to recipients of federal supplemental security income benefits who are also eligible for the Colorado supplement program for aid to the needy disabled or aid to the blind and who do not require skilled nursing care or intermediate health care and cannot remain in or return to their residences but who need to reside in a supervised nonmedical setting on a twenty-four-hour basis. Those persons with developmental disabilities as defined in section 27-10.5-102, C.R.S., or who are receiving or are eligible to receive services pursuant to any provision of title 27, C.R.S., do not qualify for adult foster care under this paragraph (a).

~~(b) (I) In addition to the amount of assistance available pursuant to paragraph (a) of this subsection (1), the state board in~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), the state department, ~~with the consent of the general assembly and~~ subject to available funds APPROPRIATIONS, may provide a home care allowance for persons ~~eligible to receive~~ WHO MEET THE FUNCTIONAL IMPAIRMENT AND FINANCIAL ELIGIBILITY CRITERIA AS ESTABLISHED BY THE STATE DEPARTMENT BY RULE AND ARE RECEIVING old age pension, aid to the needy disabled, ~~or~~ aid to the blind, OR SUPPLEMENTAL SOCIAL SECURITY INCOME BENEFITS.

(II) PERSONS ELIGIBLE TO RECEIVE HOME- AND COMMUNITY-BASED SERVICES PURSUANT TO ARTICLE 6 OF TITLE 25.5, C.R.S., SHALL NOT BE ELIGIBLE FOR HOME CARE ALLOWANCE UNDER THIS PARAGRAPH (b).

(III) For the purposes of this paragraph (b), "home care allowance" is a program that provides payments, subject to available appropriations, to functionally impaired persons who ~~are, or who would be but for their income, eligible to receive old age pension pursuant to section 26-2-114, aid to the needy disabled pursuant to section~~

~~26-2-119, or aid to the blind pursuant to section 26-2-120. To be eligible for a home care allowance, a person's monthly gross income shall be less than the applicable monthly grant standard for the old age pension, aid to the needy disabled, or aid to the blind programs, plus the person's authorized monthly home care allowance grant; MEET THE CRITERIA SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) as determined in accordance with rules promulgated pursuant to this paragraph (b).~~ The payments allow recipients who are in need of long-term care to purchase community-based services as defined in ~~section 25.5-6-104 (2) (c), C.R.S.~~ RULES ADOPTED BY THE STATE DEPARTMENT. These services may include, but need not be limited to, the supervision of self-administered medications, assistance with activities of daily living as defined in section 25.5-6-104 (2) (a), C.R.S., and assistance with instrumental activities of daily living as defined in section 25.5-6-104 (2) (g), C.R.S. The rules adopted by the state ~~board~~ DEPARTMENT shall specify, in accordance with the provisions of this section, the services available under the program and shall specify eligibility criteria for the home care allowance program, ~~which shall be in addition to the eligibility criteria for the old age pension, aid to the needy disabled, or aid to the blind programs.~~ In addition, the rules shall specifically provide for a determination as to the person's functional impairment and the person's unmet need for paid care and shall address amounts awarded to persons eligible for home care allowance. The state ~~board~~ DEPARTMENT shall specify in the rules the methods for determining the unmet need for paid care and the amount of a home care allowance that may be awarded to eligible persons. Such methods may be based on how often a person experiences unmet need for paid care or any other method that the state board determines is valid in correlating unmet need for paid care with an amount of a home care allowance award. The state ~~board~~ DEPARTMENT shall require that eligibility and unmet need for paid care be determined through the use of a comprehensive and uniform client assessment instrument prescribed by the state department. The state ~~board~~ DEPARTMENT may adjust income eligibility criteria, including any functional impairment standard, or the amounts awarded to eligible persons or may limit or suspend enrollments as necessary to manage the home care allowance program within the funds appropriated by the general assembly. In addition, the state ~~board~~ DEPARTMENT may adjust which services are available under the program; except that the adjustment shall be consistent with the provisions of this subsection (1).

(3) ~~The rules of the medical services board pertaining to home care allowance and adult foster care shall be in effect until amended, modified, or repealed by the state board of human services.~~

**SECTION 5.** 26-2-122.3 (5), Colorado Revised Statutes, is amended to read:

**26-2-122.3. Adult foster care and home care allowance as services under certain public assistance programs - administered by department of human services.** (5) ~~The STATE department of health care policy and financing shall continue to contract with the single entry point agencies for the financing, assessment, and case management functions of the home care allowance and adult foster care programs PURSUANT TO THE TERMS OF THE CONTRACT OR RULE OF THE STATE DEPARTMENT.~~

**SECTION 6.** 26-2-122.3 (1) (b) (I), Colorado Revised Statutes, as amended in House Bill 10-1146, is amended to read:

**26-2-122.3. Adult foster care and home care allowance.** (1) (b) (I) Except as provided in subparagraph (II) of this paragraph (b), the state department, subject to available appropriations, may provide home care allowance for persons who meet the functional impairment and financial eligibility criteria as established by the state department by rule and:

(A) ~~are~~ WERE receiving old age pension BENEFITS AND HOME CARE ALLOWANCE ON THE DAY PRIOR TO THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (A) AND REMAIN CONTINUOUSLY ELIGIBLE FOR SUCH BENEFITS; OR

(B) ARE RECEIVING aid to the needy disabled, aid to the blind, or supplemental social security income benefits.

**SECTION 7. Appropriation - adjustment in 2010 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, from the general fund, to the department of health care policy and financing, for medical services premiums, for the fiscal year beginning July 1, 2010, the sum of one hundred thirty-one thousand sixty dollars (\$131,060), 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, 2010, the department of health care policy and financing will receive the sum of one hundred sixty-five thousand four hundred twenty-one dollars (\$165,421) 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.

(2) For the implementation of this act, the general fund appropriation to the department of health care policy and financing, medical services premiums, for single entry point contracts for the home care allowance program, for the fiscal year beginning July 1, 2010, shall be decreased by one million nine hundred two dollars (\$1,000,902).

(3) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, for allocation to the department of human services medicaid-funded programs, office of information technology services - medicaid funding, for the Colorado benefits management system, for the fiscal year beginning July 1, 2010, the sum of ninety-two thousand two hundred fifty-two dollars (\$92,252), or so much thereof as may be necessary, for the implementation of this act. Of said sum, ninety-one thousand four hundred thirty-four dollars (\$91,434) shall be from the general fund, four hundred forty-one dollars (\$441) shall be cash funds from the old age pension fund created in article XXIV of the Colorado constitution, and three hundred seventy-seven dollars (\$377) shall be cash funds from the children's basic health plan trust created in section 25.5-8-105 (1), Colorado Revised Statutes. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2010, the department of health care policy and financing will receive the sum of ninety-two thousand one hundred thirty-five dollars (\$92,135) 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.

(4) In addition to any other appropriation, there is hereby appropriated, to the department of human services, for allocation to the office of information technology services, for the Colorado benefits management system, for the fiscal year beginning July 1, 2010, the sum of three hundred twenty-eight thousand seventy-nine dollars (\$328,079), or so much thereof as may be necessary, for the implementation of this act. Of said sum, one hundred twenty thousand eight hundred seventy dollars (\$120,870) shall be from the general fund, twenty-two thousand eight hundred twenty-two dollars (\$22,822) shall be cash funds from the old age pension fund created in article XXIV of the Colorado constitution, and one hundred eighty-four thousand three hundred eighty-seven dollars (\$184,387) shall be from reappropriated funds transferred from the department of health care policy and financing from the appropriation in subsection (3) of this section. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2010, the department of human services will receive the sum of one hundred sixty-one thousand nine hundred twenty-one dollars (\$161,921) 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.

(5) For the implementation of this act, the general fund appropriation to the department of human services, adult assistance programs, for home care allowance, for the fiscal year beginning July 1, 2010, shall be decreased by three hundred sixty thousand five hundred forty-five dollars (\$360,545).

(6) In addition to any other appropriation, there is hereby appropriated, from the general fund, to the department of human services, adult assistance programs, for single entry point contracts for the home care allowance program, for the fiscal year beginning July 1, 2010, the sum of one million nine hundred two dollars (\$1,000,902).

(7) In addition to any other appropriation, there is hereby appropriated, to the Governor-Lieutenant Governor-office of state planning and budgeting, for allocation to the office of information technology, for the Colorado benefits management system, for the fiscal year beginning July 1, 2010, the sum of four hundred ninety thousand dollars (\$490,000), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from reappropriated funds received from the department of human services out of the appropriation made in subsection (4) of this section.

**SECTION 8. Specified effective date.** (1) This section and section 9 of this act shall take effect upon passage.

(2) Sections 1 through 4 of this act shall take effect January 1, 2011.

(3) Sections 5 and 7 of this act shall take effect July 1, 2010.

(4) Section 6 of this act shall take effect upon the earlier of:

(a) January 1, 2014; or

(b) The date upon which the revisor of statutes receives notification from the

executive director of the department of health care policy and financing that the federal centers for medicare and medicaid services, having taken into consideration the requirements for maintenance of effort for medicaid eligibility contained in the federal "American Reinvestment and Recovery Act", Pub.L. 111-5, or any amendment thereto, and in the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, or any amendment thereto, has authorized Colorado to reduce eligibility for its medicaid program consistent with the provisions of this act without federal penalty.

**SECTION 9. 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