

CHAPTER 288

HEALTH CARE POLICY AND FINANCING

SENATE BILL 15-228

BY SENATOR(S) Steadman, Grantham, Lambert, Aguilar, Heath, Hill, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Roberts, Todd;
also REPRESENTATIVE(S) Rankin, Hamner, Young, Ginal, Kraft-Tharp, Lontine, Mitsch Bush, Moreno, Primavera, Rosenthal, Williams, Winter, Hullinghorst.

AN ACT

CONCERNING A PROCESS FOR THE PERIODIC REVIEW OF PROVIDER RATES UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 25.5-4-401.5 as follows:

25.5-4-401.5. Review of provider rates - advisory committee - recommendations - repeal. (1) (a) **ON OR BEFORE SEPTEMBER 1, 2015,** THE STATE DEPARTMENT SHALL ESTABLISH A SCHEDULE FOR AN ANNUAL REVIEW OF PROVIDER RATES PAID UNDER THE "COLORADO MEDICAL ASSISTANCE ACT" SO THAT EACH PROVIDER RATE IS REVIEWED AT LEAST EVERY FIVE YEARS AND SHALL PROVIDE THE SCHEDULE TO THE JOINT BUDGET COMMITTEE. **IF THE STATE DEPARTMENT RECEIVES ANY PETITIONS OR PROPOSALS FOR PROVIDER RATES TO BE REVIEWED OR ADJUSTED, THE STATE DEPARTMENT MUST FORWARD A COPY OF THE PETITION OR PROPOSAL TO THE ADVISORY COMMITTEE.**

(b) THE STATE DEPARTMENT SHALL REVIEW EACH OF THE PROVIDER RATES SCHEDULED FOR REVIEW PURSUANT TO THE PROCESS DESCRIBED IN THIS SECTION. **ADDITIONALLY, THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SUBSECTION (3) OF THIS SECTION, BY A MAJORITY VOTE, OR THE JOINT BUDGET COMMITTEE, BY A MAJORITY VOTE, MAY DIRECT THAT THE STATE DEPARTMENT CONDUCT A REVIEW OF A PROVIDER RATE THAT IS NOT SCHEDULED FOR REVIEW DURING THAT YEAR. THE ADVISORY COMMITTEE OR THE JOINT BUDGET COMMITTEE SHALL NOTIFY THE STATE DEPARTMENT BY DECEMBER 1 OF THE YEAR PRIOR TO THE YEAR IN WHICH THE OUT-OF-CYCLE REVIEW WILL TAKE PLACE OF THE REQUEST FOR AN OUT-OF-CYCLE REVIEW.**

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

(c) (I) THE STATE DEPARTMENT MAY PROPOSE TO EXCLUDE RATES FROM THE SCHEDULE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) IF THOSE RATES ARE ADJUSTED ON A PERIODIC BASIS AS A RESULT OF OTHER STATE STATUTE OR FEDERAL LAW OR REGULATION. THE STATE DEPARTMENT SHALL INCLUDE THE PROPOSED LIST OF EXCLUSIONS WITH THE SCHEDULE ESTABLISHED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1).

(II) THE ADVISORY COMMITTEE OR THE JOINT BUDGET COMMITTEE MAY BY A MAJORITY VOTE DIRECT THE STATE DEPARTMENT TO INCLUDE ANY RATE THAT THE STATE DEPARTMENT HAS PROPOSED TO EXCLUDE FROM THE SCHEDULE.

(2) (a) IN THE FIRST PHASE OF THE REVIEW PROCESS, THE STATE DEPARTMENT SHALL CONDUCT AN ANALYSIS OF THE ACCESS, SERVICE, QUALITY, AND UTILIZATION OF EACH SERVICE SUBJECT TO A PROVIDER RATE REVIEW. THE STATE DEPARTMENT SHALL COMPARE THE RATES PAID WITH AVAILABLE BENCHMARKS, INCLUDING MEDICARE RATES AND USUAL AND CUSTOMARY RATES PAID BY PRIVATE PAY PARTIES, AND USE QUALITATIVE TOOLS TO ASSESS WHETHER PAYMENTS ARE SUFFICIENT TO ALLOW FOR PROVIDER RETENTION AND CLIENT ACCESS AND TO SUPPORT APPROPRIATE REIMBURSEMENT OF HIGH-VALUE SERVICES. ON OR BEFORE MAY 1, 2016, AND EACH MAY 1 THEREAFTER, THE STATE DEPARTMENT SHALL PROVIDE A REPORT ON THE ANALYSIS REQUIRED BY THIS PARAGRAPH (a) TO THE ADVISORY COMMITTEE, THE JOINT BUDGET COMMITTEE, AND ANY STAKEHOLDER GROUPS IDENTIFIED BY THE STATE DEPARTMENT WHOSE RATES ARE REVIEWED.

(b) FOLLOWING THE REPORT REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2), THE STATE DEPARTMENT SHALL WORK WITH THE ADVISORY COMMITTEE AND ANY STAKEHOLDERS IDENTIFIED BY THE STATE DEPARTMENT TO REVIEW THE REPORT AND DEVELOP STRATEGIES FOR RESPONDING TO THE FINDINGS, INCLUDING ANY NONFISCAL APPROACHES OR REBALANCING OF RATES.

(c) FOLLOWING THE REVIEW REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (2), THE STATE DEPARTMENT SHALL WORK WITH THE OFFICE OF STATE PLANNING AND BUDGETING TO DETERMINE ACHIEVABLE GOALS AND EXECUTIVE BRANCH PRIORITIES WITHIN THE STATEWIDE BUDGET.

(d) ON OR BEFORE NOVEMBER 1, 2016, AND EACH NOVEMBER 1 THEREAFTER, THE STATE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT TO THE JOINT BUDGET COMMITTEE AND THE ADVISORY COMMITTEE CONTAINING ITS RECOMMENDATIONS ON ALL OF THE PROVIDER RATES REVIEWED PURSUANT TO THE SECTION AND ALL OF THE DATA RELIED UPON BY THE STATE DEPARTMENT IN MAKING ITS RECOMMENDATIONS. THE JOINT BUDGET COMMITTEE SHALL CONSIDER THE RECOMMENDATIONS IN FORMULATING THE BUDGET FOR THE STATE DEPARTMENT.

(3) (a) THERE IS CREATED IN THE STATE DEPARTMENT THE MEDICAID PROVIDER RATE REVIEW ADVISORY COMMITTEE, REFERRED TO IN THIS SECTION AS THE "ADVISORY COMMITTEE", TO ASSIST THE STATE DEPARTMENT IN THE REVIEW OF THE PROVIDER RATE REIMBURSEMENTS UNDER THE "COLORADO MEDICAL ASSISTANCE ACT". THE ADVISORY COMMITTEE SHALL:

(I) REVIEW THE SCHEDULE FOR ANNUAL REVIEW OF PROVIDER RATES

ESTABLISHED BY THE STATE DEPARTMENT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND RECOMMEND ANY CHANGES TO THE SCHEDULE;

(II) REVIEW THE REPORTS PREPARED BY THE STATE DEPARTMENT ON ITS ANALYSIS OF PROVIDER RATES PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION AND PROVIDE COMMENTS AND FEEDBACK TO THE STATE DEPARTMENT ON THE REPORTS;

(III) WITH THE STATE DEPARTMENT, CONDUCT PUBLIC MEETINGS TO ALLOW PROVIDERS, RECIPIENTS, AND OTHER INTERESTED PARTIES AN OPPORTUNITY TO COMMENT ON THE REPORT REQUIRED BY PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION;

(IV) REVIEW PROPOSALS OR PETITIONS FOR PROVIDER RATES TO BE REVIEWED OR ADJUSTED RECEIVED BY THE ADVISORY COMMITTEE;

(V) DETERMINE WHETHER ANY PROVIDER RATES NOT SCHEDULED FOR REVIEW DURING THE NEXT CALENDAR YEAR SHOULD BE REVIEWED DURING THAT CALENDAR YEAR;

(VI) RECOMMEND TO THE STATE DEPARTMENT AND TO THE JOINT BUDGET COMMITTEE ANY CHANGES TO THE PROCESS OF REVIEWING PROVIDER RATES, INCLUDING MEASURES TO INCREASE ACCESS TO THE PROCESS SUCH AS BY PROVIDING FOR ELECTRONIC COMMENTS BY PROVIDERS AND THE PUBLIC; AND

(VII) PROVIDE OTHER ASSISTANCE TO THE STATE DEPARTMENT AS REQUESTED BY THE STATE DEPARTMENT OR THE JOINT BUDGET COMMITTEE.

(b) THE ADVISORY COMMITTEE CONSISTS OF THE FOLLOWING TWENTY-FOUR MEMBERS:

(I) THE FOLLOWING MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE:

(A) A RECIPIENT WITH A DISABILITY OR A REPRESENTATIVE OF RECIPIENTS WITH A DISABILITY;

(B) A REPRESENTATIVE OF HOSPITALS PROVIDING SERVICES TO RECIPIENTS RECOMMENDED BY A STATEWIDE ASSOCIATION OF HOSPITALS;

(C) A REPRESENTATIVE OF PROVIDERS OF TRANSPORTATION;

(D) A REPRESENTATIVE OF RURAL HEALTH CENTERS;

(E) A REPRESENTATIVE OF HOME HEALTH PROVIDERS RECOMMENDED BY A STATEWIDE ORGANIZATION OF HOME HEALTH PROVIDERS; AND

(F) A REPRESENTATIVE OF PROVIDERS OF DURABLE MEDICAL EQUIPMENT RECOMMENDED BY A STATEWIDE ASSOCIATION OF DURABLE MEDICAL EQUIPMENT PROVIDERS;

(II) THE FOLLOWING MEMBERS APPOINTED BY THE MINORITY LEADER OF THE SENATE:

(A) A REPRESENTATIVE OF PROVIDERS OF BEHAVIORAL HEALTH CARE SERVICES;

(B) A REPRESENTATIVE OF PRIMARY CARE PHYSICIANS WHO SEE RECIPIENTS RECOMMENDED BY A STATEWIDE ASSOCIATION OF PRIMARY CARE PHYSICIANS;

(C) A REPRESENTATIVE OF DENTISTS PROVIDING SERVICES TO RECIPIENTS RECOMMENDED BY A STATEWIDE ASSOCIATION OF DENTISTS;

(D) A REPRESENTATIVE OF FEDERALLY QUALIFIED HEALTH CENTERS;

(E) A REPRESENTATIVE OF NONMEDICAL HOME- AND COMMUNITY-BASED SERVICE PROVIDERS; AND

(F) A REPRESENTATIVE OF PROVIDERS SERVING RECIPIENTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(III) THE FOLLOWING MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

(A) A REPRESENTATIVE OF CHILD RECIPIENTS WITH A DISABILITY;

(B) A REPRESENTATIVE OF SPECIALTY CARE PHYSICIANS NOT EMPLOYED BY A HOSPITAL WHO SEE RECIPIENTS RECOMMENDED BY A STATEWIDE ASSOCIATION WHOSE MEMBERS INCLUDE AT LEAST ONE-THIRD OF THE DOCTORS OF MEDICINE OR OSTEOPATHY LICENSED BY THE STATE;

(C) A REPRESENTATIVE OF PROVIDERS OF ALTERNATIVE CARE FACILITIES RECOMMENDED BY A STATEWIDE ASSOCIATION OF ALTERNATIVE CARE FACILITIES;

(D) A REPRESENTATIVE OF SINGLE ENTRY POINT AGENCIES;

(E) A REPRESENTATIVE OF AMBULATORY SURGICAL CENTERS;

(F) A REPRESENTATIVE OF HOSPICE PROVIDERS RECOMMENDED BY A STATEWIDE ASSOCIATION OF HOSPICE AND PALLIATIVE CARE PROVIDERS; AND

(IV) THE FOLLOWING MEMBERS APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES:

(A) A REPRESENTATIVE OF SUBSTANCE USE DISORDER PROVIDERS RECOMMENDED BY A STATEWIDE ASSOCIATION OF SUBSTANCE USE DISORDER PROVIDERS;

(B) A REPRESENTATIVE OF FACILITY-BASED PHYSICIANS WHO SEE RECIPIENTS. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (B), "FACILITY-BASED PHYSICIANS" INCLUDE ANESTHESIOLOGISTS, EMERGENCY ROOM PHYSICIANS, NEONATOLOGISTS, PATHOLOGISTS, AND RADIOLOGISTS.

(C) A REPRESENTATIVE OF PHARMACISTS PROVIDING SERVICES TO RECIPIENTS;

(D) A REPRESENTATIVE OF MANAGED CARE HEALTH PLANS;

(E) A REPRESENTATIVE OF ADVANCED PRACTICE NURSES RECOMMENDED BY A STATEWIDE ASSOCIATION OF NURSES; AND

(F) A REPRESENTATIVE OF PHYSICAL THERAPISTS OR OCCUPATIONAL THERAPISTS RECOMMENDED BY A STATEWIDE ASSOCIATION REPRESENTING OCCUPATIONAL OR PHYSICAL THERAPISTS.

(c) THE APPOINTING AUTHORITIES SHALL MAKE THEIR INITIAL APPOINTMENTS TO THE ADVISORY COMMITTEE NO LATER THAN AUGUST 1, 2015. IN MAKING APPOINTMENTS TO THE ADVISORY COMMITTEE, THE APPOINTING AUTHORITIES SHALL MAKE A CONCERTED EFFORT TO INCLUDE MEMBERS OF DIVERSE POLITICAL, RACIAL, CULTURAL, INCOME, AND ABILITY GROUPS AND MEMBERS FROM URBAN AND RURAL AREAS.

(d) EACH MEMBER OF THE ADVISORY COMMITTEE SERVES AT THE PLEASURE OF THE OFFICIAL WHO APPOINTED THE MEMBER. EACH MEMBER OF THE ADVISORY COMMITTEE SERVES A FOUR-YEAR TERM AND MAY BE REAPPOINTED.

(e) THE MEMBERS OF THE ADVISORY COMMITTEE SERVE WITHOUT COMPENSATION AND WITHOUT REIMBURSEMENT FOR EXPENSES.

(f) AT THE FIRST MEETING OF THE ADVISORY COMMITTEE, TO BE HELD ON OR AFTER SEPTEMBER 1, 2015, THE MEMBERS SHALL ELECT A CHAIR AND VICE-CHAIR FROM AMONG THE MEMBERS.

(g) THE ADVISORY COMMITTEE SHALL MEET AT LEAST ONCE EVERY QUARTER. THE CHAIR MAY CALL SUCH ADDITIONAL MEETINGS AS MAY BE NECESSARY FOR THE ADVISORY COMMITTEE TO COMPLETE ITS DUTIES.

(h) THE ADVISORY COMMITTEE SHALL DEVELOP BYLAWS AND PROCEDURES TO GOVERN ITS OPERATIONS.

(i) (I) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.

(II) PRIOR TO REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL CONDUCT A SUNSET REVIEW OF THE ADVISORY COMMITTEE PURSUANT TO THE PROVISIONS OF SECTION 2-3-1203, C.R.S.

SECTION 2. In Colorado Revised Statutes, 2-3-1203, **add** (3) (II) as follows:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates on which the statutory authorization for the designated advisory committee is scheduled for repeal:

(II) SEPTEMBER 1, 2025:

(I) THE MEDICAID PROVIDER RATE REVIEW ADVISORY COMMITTEE CREATED IN SECTION 25.5-4-401.5, C.R.S.

SECTION 3. Appropriation. (1) For the 2015-16 state fiscal year, \$269,912 is appropriated to the department of health care policy and financing. This appropriation is from the general fund and is based on an assumption that the department of health care policy and financing will require an additional 4.0 FTE. To implement this act, the department of health care policy and financing may use this appropriation to establish an annual rate review process as follows:

- (a) \$133,606 for personal services;
- (b) \$11,306 for operating expenses; and
- (c) \$125,000 for general professional services and special projects.

(2) For the 2015-16 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$269,911 in federal funds for an annual rate review process. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

- (a) \$133,605 for personal services;
- (b) \$11,306 for operating expenses; and
- (c) \$125,000 for general professional services and special projects.

SECTION 4. 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, 2015