CHAPTER 278

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 23-1228

BY REPRESENTATIVE(S) McCluskie and Willford, Amabile, Bird, Boesenecker, Brown, Daugherty, Dickson, Duran, Frizell, Froelich, Hamrick, Herod, Jodeh, Joseph, Lieder, Lindstedt, Marshall, Martinez, McCormick, Michaelson Jenet, Sharbini, Sirota, Snyder, Titone, Valdez, Velasco, Woodrow, Young;
also SENATOR(S) Zenzinger and Smallwood, Bridges, Buckner, Cutter, Exum, Ginal, Hansen, Marchman, Mullica, Pelton B., Pelton R., Will.

AN ACT

CONCERNING NURSING FACILITY REIMBURSEMENT RATE SETTING, 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, 25.5-6-202, **amend** (5), (6), (9)(b)(I), and (9)(c)(I); **repeal** (9)(c)(II); and **add** (9)(b)(I.5), (13), (14), (15), and (16) as follows:

25.5-6-202. Providers - nursing facility provider reimbursement - exemption - rules - repeal. (5) Subject to available ~~moneys~~ APPROPRIATIONS and the priority of the uses of the provider fees as established in section 25.5-6-203 (2)(b), in addition to the reimbursement rate components paid pursuant to subsections (1) to (4) of this section, the state department shall make a supplemental medicaid payment based upon performance to those nursing facility providers that provide services that result in better care and higher quality of life for their residents. ~~This amount shall be determined by~~ The state department SHALL DETERMINE THE PAYMENT AMOUNT based upon performance measures established in rules adopted by the state board in the domains of quality of life, quality of care, and facility management. ~~The payment shall be computed annually as of July 1, 2009, and each July 1 thereafter, and shall not be less than twenty-five hundredths of one percent of the statewide average per diem rate for the combined rate components determined pursuant to subsections (1) to (4) of this section.~~ BEGINNING JULY 1, 2024, THE PAYMENT MUST NOT BE LESS THAN TWELVE PERCENT OF TOTAL PROVIDER FEE PAYMENTS AND MUST BE ADJUSTED FOR FISCAL YEARS 2024-25 AND 2025-26. NO LATER THAN JULY 1, 2026, THE PAYMENT MUST NOT BE LESS THAN FIFTEEN PERCENT

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OF TOTAL PROVIDER FEE PAYMENTS AND MUST BE ANNUALLY ADJUSTED THEREAFTER. During each state fiscal year, the state department may discontinue the supplemental medicaid payment established pursuant to this subsection (5) to any nursing facility provider that fails to comply with the established performance measures during the state fiscal year, and the state department may initiate the supplemental medicaid payment established pursuant to this subsection (5) to any provider ~~who~~ THAT comes into compliance with the established performance measures during the state fiscal year.

(6) Subject to available ~~money~~ APPROPRIATIONS and the priority of the uses of the provider fees as established in section 25.5-6-203 (2)(b), in addition to the reimbursement rate components PAID pursuant to subsections (1) to (5) of this section, the state department shall make a supplemental medicaid payment to nursing facility providers that ~~have~~ SERVE residents: ~~who have moderately to very severe mental health conditions, dementia diseases and related disabilities, or acquired brain injury as follows:~~

(a) ~~A supplemental medicaid payment shall be made to nursing facility providers that serve residents~~ Who have severe mental health conditions that are classified at a level II by the medicaid program's preadmission screening and resident review assessment tool. The state department shall compute this payment annually as of July 1, 2009, and each July 1 thereafter, and it ~~shall be~~ MUST not BE less than two percent of the statewide average per diem rate for the combined rate components determined pursuant to subsections (1) to (4) of this section. BEGINNING JULY 1, 2023, THE STATE DEPARTMENT SHALL ANNUALLY ADJUST THE RATE TO ENSURE ACCESS TO CARE FOR RESIDENTS WHO HAVE SEVERE MENTAL HEALTH CONDITIONS.

(b) ~~A supplemental medicaid payment shall be made to nursing facility providers that serve residents~~ With severe dementia diseases and related disabilities or acquired brain injury. The state department shall calculate the payment based upon the resident's cognitive assessment established in rules adopted by the state board. The state department shall compute this payment annually as of July 1, 2009, and each July 1 thereafter, and it ~~shall be~~ MUST not BE less than one percent of the statewide average per diem rate for the combined rate components determined ~~under~~ PURSUANT TO subsections (1) to (4) of this section. BEGINNING JULY 1, 2023, THE STATE DEPARTMENT SHALL ANNUALLY ADJUST THE RATE TO ENSURE ACCESS TO CARE FOR RESIDENTS WITH SEVERE DEMENTIA DISEASES AND RELATED DISABILITIES OR ACQUIRED BRAIN INJURY.

(9) (b) (I) Except for changes in the number of patient days, THE STATE DEPARTMENT SHALL ESTABLISH the general fund share of the aggregate statewide average of the per diem rate net of patient payment pursuant to subsections (1) to (4) of this section. ~~shall be limited to an annual increase of three percent~~ The state's share of the reimbursement rate components pursuant to subsections (1) to (4) of this section may be funded through the provider fee assessed pursuant to ~~the provisions of~~ section 25.5-6-203 and any associated federal funds. Any provider fee used as the state's share and all federal funds ~~shall~~ MUST be excluded from the calculation of the general fund ~~limitation on the annual increase~~ SHARE. For the fiscal year commencing July 1, 2009, and for each fiscal year thereafter, THE STATE DEPARTMENT SHALL CALCULATE the general fund share of the aggregate statewide average per diem rate net of patient payment pursuant to subsections (1) to (4) of

this section ~~shall be calculated~~ using the rates that were effective on July 1 of that fiscal year; EXCEPT THAT:

(A) FOR FISCAL YEAR 2023-24, THE STATE DEPARTMENT SHALL INCREASE THE AGGREGATE STATEWIDE AVERAGE OF THE PER DIEM RATE BY AT LEAST TEN PERCENT;

(B) FOR FISCAL YEAR 2024-25, THE STATE DEPARTMENT SHALL INCREASE THE AGGREGATE STATEWIDE AVERAGE OF THE PER DIEM RATE BY AT LEAST THREE PERCENT;

(C) FOR FISCAL YEAR 2025-26, THE STATE DEPARTMENT SHALL INCREASE THE AGGREGATE STATEWIDE AVERAGE OF THE PER DIEM RATE BY AT LEAST ONE AND ONE-HALF PERCENT; AND

(D) BEGINNING IN FISCAL YEAR 2026-27, AND FOR EACH FISCAL YEAR THEREAFTER, THE STATE DEPARTMENT SHALL ESTABLISH THE AGGREGATE STATEWIDE AVERAGE OF THE PER DIEM RATE.

(I.5) WHEN INCREASING THE AGGREGATE STATEWIDE AVERAGE OF THE PER DIEM RATE FOR FISCAL YEARS 2023 THROUGH 2027, THE REIMBURSEMENT RATE FOR A CLASS I NURSING FACILITY THAT OPERATES EFFICIENTLY AND ECONOMICALLY MUST BE REASONABLE AND ADEQUATE TO MEET THE NURSING HOME'S COSTS IN ORDER TO PROVIDE CARE AND SERVICES IN CONFORMITY WITH APPLICABLE STATE AND FEDERAL LAWS, REGULATIONS, AND QUALITY AND SAFETY STANDARDS, AND MUST BE BASED ON THE MOST RECENT AUDITED AND FINALIZED COST AND UTILIZATION DATA AVAILABLE.

(c) (I) The general assembly finds that the historical growth in nursing facility provider rates has significantly exceeded the rate of inflation. These increases have been caused in part by the inclusion of medicare costs in medicaid cost reports. The state of Colorado has an interest in limiting these exceptional increases in medicaid nursing facility provider rates by removing medicare ~~part B direct~~ costs from the medicaid nursing facility provider rates and by imposing a ceiling on the medicare part A ancillary costs that are included in calculating medicaid nursing facility rates. NO LATER THAN JULY 1, 2023, THE STATE DEPARTMENT SHALL INITIATE A PROCESS TO REMOVE MEDICARE COSTS FROM THE PROVIDER RATE SETTING BY JULY 1, 2026. THE STATE BOARD SHALL PROMULGATE RULES ESTABLISHING THE SPECIFIC METHODOLOGY USED FOR REMOVING MEDICARE COSTS.

(II) ~~For all rates effective on or after July 1, 1997, for each class I nursing facility provider, only such costs as are reasonable, necessary, and patient-related may be reported for reimbursement purposes. Nursing facility providers may include the level of medicare part A ancillary costs that was included and allowed in the facility's last medicaid cost report filed prior to July 1, 1997. Any subsequent increase in this amount shall be limited to either the increase in the facility's allowable medicare part A ancillary costs or the percentage increase in the cost of medical care reported in the United States department of labor bureau of labor statistics consumer price index for the same time period, whichever is lower. Part B direct costs for medicare shall be excluded from the allowable reimbursement for facilities.~~

(13) (a) AS A CONDITION OF RECEIVING MEDICAID FUNDS, THE STATE DEPARTMENT MAY REQUIRE A NURSING FACILITY TO SUBMIT ANY DOCUMENTATION NECESSARY TO ENSURE THE STATE'S INTEREST IN TRANSPARENCY, STABILITY, AND SOUND FISCAL STEWARDSHIP, INCLUDING, BUT NOT LIMITED TO:

(I) ANNUAL AUDITED FINANCIAL STATEMENTS, PREPARED BY AN INDEPENDENT ACCOUNTANT, FOR A FACILITY, MANAGEMENT COMPANY, AND ANY RELATED PARTY CONDUCTING BUSINESS WITH A MEDICAID-CERTIFIED NURSING FACILITY, INCLUDING AUDITED AND CONSOLIDATED FINANCIAL STATEMENTS FOR ANY PARENT COMPANY THAT ACCEPTS, OR WHOSE SUBSIDIARIES ACCEPT, MEDICAID PAYMENTS FROM THE STATE OF COLORADO;

(II) DETAILS ON TRANSACTIONS BETWEEN RELATED PARTIES OR ENTITIES THAT HAVE COMMON OWNERSHIP; AND

(III) OWNERSHIP INTEREST IN REAL ESTATE, MANAGEMENT COMPANIES, FACILITY OPERATORS, AND ALL RELATED PARTIES.

(b) THE STATE DEPARTMENT SHALL DETERMINE THE FORMAT FOR THE DOCUMENTATION PROVIDED BY EACH NURSING FACILITY.

(c) THE STATE BOARD SHALL ESTABLISH BY RULE ANY PENALTIES FOR NONCOMPLIANCE WITH THE FINANCIAL REPORTING REQUIRED PURSUANT TO THIS SUBSECTION (13).

(d) THE COSTS ASSOCIATED WITH THE FINANCIAL REPORTING REQUIRED PURSUANT TO THIS SUBSECTION (13), INCLUDING ANY AUDIT COSTS INCURRED BY A NURSING FACILITY, ARE AN ALLOWABLE EXPENSE ON THE MEDICAID COST REPORT AND MUST BE INCORPORATED AS A COMPONENT OF THE OVERALL REIMBURSEMENT METHODOLOGY.

(14) THE GENERAL ASSEMBLY FINDS THAT THE INFLEXIBLE NATURE OF STATUTORILY FIXED REIMBURSEMENT RATES IS NOT IN THE BEST INTEREST OF THE STATE OF COLORADO. THEREFORE, THE STATE DEPARTMENT SHALL DEVELOP AND IMPLEMENT A TRANSITION PLAN TO REGULATE NURSING FACILITY REIMBURSEMENT AIMED AT IMPROVING THE HEALTH AND SAFETY OF RESIDENTS, PROMOTING INNOVATION AND IMPROVED INFECTION CONTROL EFFORTS, IMPROVING ACCESS TO CARE, AND PROMOTING INNOVATION IN COLORADO NURSING FACILITIES. AS PART OF THIS PROCESS, THE STATE DEPARTMENT SHALL:

(a) NO LATER THAN JULY 1, 2026, DEFINE "NURSING HOME REIMBURSEMENT" THROUGH RULES PROMULGATED BY THE STATE BOARD AND PROVIDE PAYMENTS TO NURSING FACILITIES CONSISTENT WITH THE PROMULGATED RULES;

(b) ENGAGE WITH STAKEHOLDERS REGULARLY TO SEEK INPUT ON ANY PROPOSED METHODOLOGY CHANGES AND ENSURE THE METHODOLOGY IS REASONABLE AND ADEQUATE TO MEET THE COSTS OF AN EFFICIENTLY AND ECONOMICALLY OPERATED NURSING FACILITY THAT PROVIDES CARE AND SERVICES IN CONFORMITY WITH APPLICABLE STATE AND FEDERAL LAWS, REGULATIONS, AND QUALITY AND SAFETY STANDARDS BASED ON THE MOST RECENT AUDIT AND FINALIZED COST AND UTILIZATION DATA AVAILABLE; AND

(c) FROM NOVEMBER 1, 2023, TO NOVEMBER 1, 2026, SUBMIT AN ANNUAL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY REGARDING THE IMPLEMENTATION PROGRESS DESCRIBED IN THIS SUBSECTION (14), INCLUDING, AT A MINIMUM:

(I) RECORDS OF STAKEHOLDER ENGAGEMENT;

(II) CONCLUSIONS DRAWN FROM FINANCIAL OVERSIGHT ACTIVITIES;

(III) ISSUES REGARDING PAYMENT EQUITY AND ACCESS TO CARE COORDINATION; AND

(IV) EXPECTED BUDGETARY IMPACTS OF ANY METHODOLOGY CHANGE.

(15) (a) EACH NURSING FACILITY THAT RECEIVES MEDICAID FUNDS SHALL DEVELOP AND SUBMIT A PLAN TO THE STATE DEPARTMENT THAT MEETS STATE DEPARTMENT STANDARDS AND DEMONSTRATES HOW THE NURSING FACILITY WILL:

(I) IMPROVE THE HEALTH AND SAFETY OF THE NURSING FACILITY'S RESIDENTS, INCLUDING INFECTION CONTROL AND STAFFING;

(II) INCREASE ACCESS TO CARE;

(III) IMPROVE FINANCIAL SUSTAINABILITY, INCLUDING OPPORTUNITIES FOR DIVERSIFICATION OF BUSINESS LINES AND STABILIZATION OF REVENUE STREAMS; AND

(IV) PROMOTE INNOVATION TO MEET THE EMERGING NEEDS OF INDIVIDUALS WITH DISABILITIES AND AGING AND OLDER ADULTS.

(b) THE STATE BOARD SHALL PROMULGATE RULES IMPLEMENTING THIS SUBSECTION (15).

(16) SUBSECTIONS 1 TO 9 OF THIS SECTION AND THIS SUBSECTION (16) ARE REPEALED, EFFECTIVE JULY 1, 2026.

SECTION 2. In Colorado Revised Statutes, 25.5-6-203, **amend** (1)(c) as follows:

25.5-6-203. Nursing facilities - provider fees - federal waiver - fund created - rules - repeal. (1) (c) (I) In accordance with the redistributive method set forth in 42 CFR 433.68 (e)(1) and (e)(2), the state department shall seek a waiver from the broad-based provider fees requirement or the uniform provider fees requirement, or both, to exclude nursing facility providers from the provider fee. The state department shall exempt the following nursing facility providers to obtain federal approval and minimize the financial impact on nursing facility providers:

~~(I)~~ (A) A facility operated as a continuing care retirement community that provides a continuum of services by one operational entity providing independent living services, assisted living services, and skilled nursing care on a single, contiguous campus. Assisted living services include an assisted living residence as

defined in section 25-27-102 ~~C.R.S.,~~ or that provides assisted living services on-site, twenty-four hours per day, seven days per week.

~~(II)~~ (B) A skilled nursing facility owned and operated by the state;

~~(III)~~ (C) A nursing facility that is a distinct part of a facility that is licensed as a general acute care hospital; and

~~(IV)~~ (D) A facility that has forty-five or fewer licensed beds.

(II) NO LATER THAN JULY 1, 2026, THE STATE DEPARTMENT SHALL PROMULGATE RULES MAINTAINING THE EXEMPTIONS IDENTIFIED IN THIS SUBSECTION (1)(c) IN ORDER TO MINIMIZE THE FINANCIAL IMPACT ON NURSING FACILITY PROVIDERS.

(III) THIS SUBSECTION (1)(c) IS REPEALED, EFFECTIVE JULY 1, 2028.

SECTION 3. In Colorado Revised Statutes, 25.5-6-208, **add** (7) as follows:

25.5-6-208. Nursing facility provider reimbursement - rules - definition - repeal. (7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2026.

SECTION 4. In Colorado Revised Statutes, 25.5-6-210, **amend** (10); **repeal** (1)(a), (1)(b), (6), (7), (8), and (9); and **add** (1)(c) and (1)(d) as follows:

25.5-6-210. Additional supplemental payments - nursing facilities - funding methodology - reporting requirement - rules - repeal. (1) Notwithstanding any other provision of law to the contrary and subject to available appropriations, for the purposes of reimbursing a medicaid-certified class I nursing facility provider, the state department shall issue additional supplemental payments to nursing facility providers that meet the requirements outlined in this section and the state department's subsequent regulation as follows:

(a) ~~For the 2021-22 state fiscal year, funds appropriated by the general assembly are for the purposes of supporting nursing facility providers experiencing increased staffing costs resulting from the COVID-19 pandemic, nursing facility providers with high medicaid utilization rates, or nursing facility providers currently serving individuals with complex needs.~~

(b) ~~Payments made in addition to those specified in subsection (1)(a) of this section may also be made to nursing facility providers that accept new admissions of medicaid-enrollment individuals with complex needs.~~

(c) A PAYMENT TO A NURSING FACILITY WITH DISPROPORTIONATELY HIGH MEDICAID UTILIZATION OR GEOGRAPHICALLY CRITICAL TO ENSURING ACCESS TO CARE. IN DETERMINING QUALIFYING FACILITIES FOR THIS PAYMENT, THE STATE DEPARTMENT SHALL CONSIDER ANY ACCESS TO CARE IMPACTS TO INDIVIDUALS NOT COVERED BY MEDICAID, INCLUDING, BUT NOT LIMITED TO, VETERANS ADMINISTRATION BENEFICIARIES, INDIVIDUALS WITHOUT HEALTH-CARE COVERAGE, AND INDIVIDUALS PENDING MEDICAID COVERAGE.

(d) A PAYMENT TO A NURSING FACILITY ADMITTING COMPASSIONATE RELEASE

INDIVIDUALS FROM THE DEPARTMENT OF CORRECTIONS WHO NEED ADDITIONAL SERVICES TO ENSURE ACCESS TO CARE.

(6) ~~To receive an additional payment pursuant to subsection (1)(b) of this section, a nursing facility provider shall work with a hospital to facilitate the timely discharge of medicaid members from the hospital into the nursing facility, serve medicaid members with complex needs, or accept compassionate release individuals from the department of corrections.~~

(7) ~~On or before November 1, 2022, the state department shall engage with stakeholders and submit a report and recommendations to the joint budget committee, the health and human services committee of the senate, and the public and behavioral health and human services committee of the house of representatives, or any successor committees, concerning suggested changes for permanently changing medicaid nursing facility provider reimbursement policy in Colorado to prioritize quality, sustainability, and sound fiscal stewardship to avoid further one-time cash infusions. The report must include changes that can be made to affirm a nursing facility provider's commitment to accountability and must include, at a minimum:~~

~~(a) Infection control and culture change practices, including:~~

~~(I) Single occupancy rooms;~~

~~(II) Smaller facility models; and~~

~~(III) Innovative facility models;~~

~~(b) Behavioral health needs;~~

~~(c) Practices regarding individuals who have complex needs requiring hospital discharge;~~

~~(d) Practices regarding care and services to compassionate release individuals from the department of corrections;~~

~~(e) Options for diversified funding streams to ensure continuity of services;~~

~~(f) Competitive staffing practices;~~

~~(g) The timeline and costs associated with implementing the recommended changes, including the impact on nursing facility provider rates; and~~

~~(h) Identification of the amount of supplemental payments to each nursing facility provider and the outcome evaluation required pursuant to subsection (3) of this section.~~

(8) ~~The state department shall meet with the following stakeholders, at a minimum, to seek input on any proposed reimbursement methodology changes and report as required by this section:~~

~~(a) A representative from an urban nursing facility provider;~~

~~(b) A representative from a rural nursing facility provider;~~

~~(c) A representative from a nursing facility trade organization;~~

~~(d) A representative from a nursing facility with a high medicaid utilization rate; and~~

~~(e) A representative from a nursing facility that serves individuals with complex needs.~~

(9) ~~The state board shall promulgate any rules necessary to implement this section.~~

(10) This section is repealed, effective July 1, ~~2023~~ 2026.

SECTION 5. In Colorado Revised Statutes, 25-48-102, **amend** (4) as follows:

25-48-102. Definitions. As used in this article 48, unless the context otherwise requires:

(4) "Health-care provider" or "provider" means a person who is licensed, certified, registered, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession. The term includes a health-care facility, including a long-term care facility as defined in section 25-3-103.7 (1)(f.3) and a continuing care retirement community as described in section 25.5-6-203 ~~(1)(c)(I), C.R.S.~~ (1)(c)(I)(A).

SECTION 6. Appropriation. (1) For the 2023-24 state fiscal year, $30,509,457 is appropriated to the department of health care policy and financing. This appropriation is from the general fund, which is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year. To implement this act, the department may use this appropriation for medical and long-term care services for Medicaid eligible individuals.

(2) For the 2023-24 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive $31,754,740 in federal funds for medical and long-term care services for Medicaid eligible individuals to implement this act. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 30, 2023