0328 Legislative Tax Force on Long-Term Health Care

Colorado Legislative Council

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COLORADO

GENERAL ASSEMBLY

LEGISLATIVE TASK FORCE ON LONG-TERM HEALTH CARE
FIRST PROGRESS REPORT AND RECOMMENDATIONS

NOVEMBER, 1988
PROGRESS REPORT
AND RECOMMENDATIONS FOR 1989

LEGISLATIVE TASK FORCE ON
LONG-TERM HEALTH CARE

Report to the
Colorado General Assembly

Research Publication No. 328
November, 1988
To Members of the Fifty-seventh Colorado General Assembly:

Submitted herewith is the first progress report of the Legislative Task Force on Long-Term Health Care. The Task Force was appointed by the President of the Senate and the Speaker of the House pursuant to House Bill 1046, 1988 session.

At its meeting on October 24, the Legislative Council reviewed this report. A motion to forward the report and recommendations of the Task Force on Long-Term Health Care to the Fifty-seventh General Assembly was approved.

Respectfully submitted,

Ted Strickland
Senator Ted Strickland
Chairman
Colorado Legislative Council

TS/sw
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LETTER OF TRANSMITTAL</td>
<td>iii</td>
</tr>
<tr>
<td>TABLE OF CONTENTS</td>
<td>v</td>
</tr>
<tr>
<td>TASK FORCE ON LONG-TERM HEALTH CARE</td>
<td></td>
</tr>
<tr>
<td>Members of Task Force</td>
<td>1</td>
</tr>
<tr>
<td>Background Report</td>
<td>3</td>
</tr>
<tr>
<td>Legislative Recommendations</td>
<td>8</td>
</tr>
<tr>
<td>LEGISLATION MANDATED BY THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987</td>
<td></td>
</tr>
<tr>
<td>Bill 1 -- Rights of Certain Residents in Nursing Homes</td>
<td>11</td>
</tr>
<tr>
<td>Bill 2 -- Remedies Which May Be Assessed Against Certain Nursing Care Facilities</td>
<td>13</td>
</tr>
<tr>
<td>LEGISLATION MANDATED BY THE MEDICARE CATASTROPHIC COVERAGE ACT OF 1988</td>
<td></td>
</tr>
<tr>
<td>Bill 3 -- Certain Medicaid Benefits to Medicare-Eligible and Disabled Individuals</td>
<td>17</td>
</tr>
<tr>
<td>Bill 4 -- Impact of Institutionalization on the Financial Resources</td>
<td>19</td>
</tr>
<tr>
<td>of Certain Individuals</td>
<td></td>
</tr>
<tr>
<td>OTHER LONG-TERM HEALTH CARE LEGISLATION</td>
<td></td>
</tr>
<tr>
<td>Bill 5 -- Provision of Long-Term Services to Persons With Health</td>
<td>23</td>
</tr>
<tr>
<td>Conditions Related to AIDS</td>
<td></td>
</tr>
<tr>
<td>Bill 6 -- Uniformity of Personal Care Boarding Home Building and</td>
<td>27</td>
</tr>
<tr>
<td>Fire Standards</td>
<td></td>
</tr>
<tr>
<td>Bill 7 -- Prohibition Against Reimbursing Personal Care Services</td>
<td>29</td>
</tr>
<tr>
<td>Provided by a Spouse</td>
<td></td>
</tr>
</tbody>
</table>
TASK FORCE ON LONG-TERM HEALTH CARE

Members of the Task Force

Sen. Dottie Wham, Chairman
Rep. Norma Anderson, Vice Chairman
Sen. Dennis Gallagher
Rep. Wilma Webb
Bob Wilson
Henry Solano
Mildred Simmons
Youlon Savage
Tom Sangster
Anita Sanborn
Darlene Park
Denny O’Malley

Dr. Bernard Nelson
Dr. Mark Litvin
Arlene Linton
Mary Kaufmann
Charles Hayes
Virginia Fraser
Kathy Dick
Margaret Cranson
John Collins
Dr. Paul Bell
Alice Archibald
Arlan Anderson

Legislative Council Staff

Jim Hill
Senior Analyst

Stephen Wheelock
Senior Research Assistant

Legislative Legal Services Staff

Elaine Sabyan
Staff Attorney

Melissa Davis
Staff Attorney

Office of State Auditor

Herb Covey
Senior Auditor
Purpose

Due to the expansion of the elderly and disabled populations in Colorado, the number of persons in need of long-term health care is expected to more than double between the years 1980 and 2000. In addition, long-term care provided in home and community settings is both preferred by clients and is frequently more cost-effective than care in nursing homes. With these premises in mind, the purpose of the task force is to study comprehensively the need for the development and support of a well-organized, managed, and controlled long-term health care system in the state and to recommend legislation to improve Colorado's long-term health care system.

Towards this end, a twenty-four member task force was appointed by the Speaker of the House and the President of the Senate pursuant to House Bill 1046. In addition to four legislators, members of the task force include those knowledgeable about hospitals, nursing homes, dietetics, government regulations, mental health, strokes, Alzheimer's Disease, paralyzed veterans, and retired persons. Membership also includes the state's Long-term Care Ombudsman, the Chancellor of the University of Colorado Health Sciences Center, and the executive directors of the Departments of Health, Institutions, and Social Services.

The task force began its work in July 1988, will continue to meet through the legislative session, and then will conclude its study in November of 1989. In April, an annual report will be made to the General Assembly, and by January 1, 1990, the task force plans to deliver its final report on recommendations for legislation concerning the long-term health care system.

Development of a Study Plan

In an effort to better address the numerous study charges of House Bill 1046 and to effectively utilize the time of the task force, six subcommittees were established. Two subcommittees were created by statute (Alzheimer's Disease and case management) and four more were established by the task force: financing/case mix reimbursement; quality of care; continuum of care; and special populations. Interested legislators and other individuals were invited to serve on the subcommittees, resulting in over 150 persons volunteering to participate. The six subcommittees serve as the working groups of the task force.
Task force members suggested that the subcommittees develop commonalities among their individual study charges. The subcommittees agreed to: identify the strengths and weaknesses of the present health care system; review existing studies; consider the roles of the state, the local governments, and the private sector relating to long-term health care; evaluate ways to improve long-term care access; review recent federal legislation concerning long-term health care that impacts the state; and study the urban and rural systems of long-term health care. Each subcommittee and its charges are listed below.

**Subcommittee on Financing/Case Mix Reimbursement System (Chairman: Tom Sangster, Colorado Hospital Association)**

- Study innovative funding mechanisms, including but not limited to long-term care insurance, social health maintenance organizations, reverse home equity programs, and individual medical accounts.
- Consider tax incentives and sources of private and public funds.
- Review rate and reimbursement methodology for community-based and institutional services.
- Evaluate the relationship of the rates for private pay nursing home residents compared with rates under the Colorado Medical Assistance Act.
- Review reimbursement of dietetic services under insurance laws.
- Study reimbursement for those persons under the age of 65.
- Consider ways to address spousal impoverishment.
- Address the "Utah Gap," which refers to individuals with income above welfare eligibility but who are still in need of assistance.

**Subcommittee on Special Populations (Chairman: Arlene Linton, Colorado Health Care Association)**

- Study the needs of special populations requiring long-term care.
- Evaluate the needs of the developmentally disabled.
- Study the diagnosis and treatment of certain diseases and conditions, including AIDS.
- Review disabled adult protection, including guardianship programs.
Consider the special needs of the veteran population.

Evaluate the special needs of the elderly blind.

Study the special needs of the chronically mentally ill population to determine which services may be lacking.

Subcommittee on Quality of Care (Chairman: Virginia Fraser, Long-term Care Ombudsman)

- Study the methods to ensure adequate standards for board and care.
- Evaluate nutrition and education training programs.
- Consider the need for the development of nutrition services to prevent chronic disease and to improve the general health of citizens.
- Review the impact on the long-term care system of shortages of physical therapists, nurses, and other health care providers.
- Study the impact a continuum of care would have on the quality of long-term care.

Subcommittee on Continuum of Long-Term Health Care, Including Nursing Homes, Home Health Care, and Other Alternative Care (Chairman: Representative Norma Anderson)

- Integrate programs and services into a continuum of care.
- Consider support of family caregivers.
- Evaluate respite care services.
- Discuss education and training of the public and of caregivers.
- Review nursing home regulations.
- Study hospice care services.

Subcommittee on Alzheimer’s Disease (Chairman: Senator Dennis Gallagher)

- Study all aspects of Alzheimer’s disease from diagnosis through treatment, cure, and research, and the impacts of the disease on the health care system, family systems, social support system, and financing system.
- Consider the current interaction of relevant policies and programs and make recommendations for improvements and recommend methods to improve coordination and reduce duplication of effort.

- Review available data and recommend other types of data that would be useful to collect.

- Discuss issues including: assistance for persons under 65 years; family support; nursing home regulations; access to care; diagnosis and treatment; public and new sources of private financing; education and training of caregivers, including physicians; public information; Alzheimer's specific programs; and continuum of care models with case management.

- Develop specific programs for Alzheimer's Disease.

**Subcommittee on Case Management (Chairman: Senator Dottie Wham)**

For the developmentally disabled, chronically mentally ill, physically disabled, including the frail elderly, and the emotionally or behaviorally disturbed populations, the case management subcommittee shall:

- Study the delivery, administrative structure, and financing implications of case management services.

- Consider the feasibility and cost-effectiveness of establishing an independent and external case management system which is separated from any service provider, and would serve clients of the Departments of Education, Health, Institutions, Corrections, and Social Services.

- Review the "citywide" case management demonstration project operated in the city and county of Denver.

- Review the delivery of case management services in urban, suburban, and rural areas of the state.

- Discuss similar case management programs in other states.

- Study the impact of case management on Medicaid funding.

- Review client assessment.

- Evaluate the development of the long-term care access system.
Meetings, Testimony and Recommendations

The three formal meetings since the inception of the task force in July have been informational in nature. The task force heard testimony from representatives of the Departments of Health, Institutions, Regulatory Agencies, and Social Services on the following topics: nursing home revisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA), including the community placement of chronically mentally ill persons; the expansion of certain Medicaid benefits to elderly and disabled individuals; and protection against impoverishment for spouses of Medicaid funded nursing home residents under the Medicare Catastrophic Coverage Act of 1988.

The Omnibus Budget Reconciliation Act of 1987, a far reaching nursing home reform law, contains a number of provisions which require states to develop intermediate sanctions for noncompliance of nursing homes to federal standards, a nursing home patient's bill of rights, and a nurses aide registry and certification. Failure to comply with the provisions of OBRA could jeopardize millions of federal Medicaid dollars used each year to care for the elderly and disabled in Colorado nursing homes.

Members of the task force had initially agreed to wait until the 1990 legislative session before recommending any changes to the long-term health care system. Although the federal government is phasing in the required OBRA changes over a period of four years, enabling legislation is required now to allow the Department of Health and the Department of Social Services to implement OBRA and to be eligible for federal matching funds. The rationale behind the nursing home reform act is to improve the quality of care in long-term care facilities by enhancing residents’ rights, adding nursing training requirements, and increasing regulatory sensitivity to true indicators of quality of care.

The Medicare Catastrophic Coverage Act of 1988 has been described as the most sweeping expansion of Medicare in its 23 year history. In addition to its impact on the Medicare Program, this act also has significant impacts on the Medicaid program and requires modifications in Colorado's Medicaid statutes. This act mandates that the state protect spouses of Medicaid-funded nursing home residents from impoverishment. The act also expands certain Medicaid benefits to Medicare eligible and disabled individuals.

In addition to legislation originating from OBRA and the Catastrophic Coverage Act, the task force recommends three other long-term health care bills that were determined to be of critical importance. The proposals include: a bill designed to contain costs associated with the treatment of AIDS patients; a recommendation concerning building and fire code standards for personal care boarding homes; and a bill to comply with a federal requirement in the state Medicaid manual concerning reimbursement of personal care services under the state Home and Community-Based Services and Home Health Act.
Legislation Mandated by the Federal
Omnibus Budget Reconciliation Act of 1987

Concerning the Rights of Certain Residents in Nursing Homes -- Bill 1

Bill 1 requires Medicaid-certified skilled and intermediate care nursing facilities to protect and promote the rights of Medicaid patients as provided in the federal Omnibus Budget Reconciliation Act of 1987 (OBRA). Included in the list of specific residents' rights are the following: free choice of a personal physician, freedom from restraints, privacy, confidentiality, the accommodation of needs, participation in resident and family groups, and other rights concerning transfer and discharge, access and visitation, and the protection of resident funds.

Concerning the Development of Remedies Which May Be Assessed Against Certain Skilled and Intermediate Nursing Care Facilities for Violations of Nursing Home Standards -- Bill 2

In accordance with the federal Omnibus Reconciliation Act of 1987, Bill 2 authorizes the Department of Health to promulgate rules and regulations establishing a series of remedies which could be imposed upon a nursing facility when there is a violation of any federal regulation of the Medicaid or Medicare program. It also specifies that such remedies shall include the imposition of civil penalties and sets forth criteria which shall be considered in determining the penalty amount.

The bill would also authorize the Department of Health to make recommendations to the Department of Social Services regarding the imposition of civil penalties. In turn, the Department of Social Services is authorized to access and enforce the series of remedies established by the Department of Health, including the assessment of civil penalties.

In addition, the bill would create a nursing home penalty cash fund, administered by the Department of Health, into which monies from civil penalties would be deposited. The department would determine under which circumstances such funds would be distributed in order to protect the health or property of individuals residing in nursing facilities which have violated federal regulations. Finally, the Department of Social Services is required to promulgate rules and regulations concerning the procedures for nursing facilities to appeal such an assessment.
Legislation Mandated by the Federal Medicare Catastrophic Coverage Act of 1988


Bill 3 expands the definition of "categorically needy" to include Medicare eligible elderly and disabled individuals who meet income and resource levels under the federal Medicare Catastrophic Coverage Act of 1988. The bill specifies that the Department of Social Services is not required to extend to such individuals the full services available to others who are deemed categorically needy. Benefits are limited for such individuals under the Medical Assistance program to only those mandated by the federal act.

Concerning the Impact of Institutionalization on the Financial Resources of Certain Individuals, and Making an Appropriation in Connection Therewith -- Bill 4

The Medicare Catastrophic Coverage Act of 1988 mandates that the state protect spouses of Medicaid-funded nursing home residents from impoverishment. Bill 4 establishes the amount of income to which a noninstitutionalized spouse is entitled if the institutionalized spouse is eligible for medical assistance and has income which is available to the noninstitutionalized spouse. The bill also provides that resources of a couple shall be split fifty-fifty when the institutionalized spouse is eligible for medical assistance and establishes the minimum and maximum amount of resources which the noninstitutionalized spouse may retain. In addition, the bill authorizes the Department of Social Services to promulgate rules and regulations to ensure that these amounts are not utilized for the cost of the institutionalized spouse's care and that a process exists for appealing any determination of the department regarding the treatment of a married couple's income and resources. The amount paid to an institutionalized individual for personal needs is also increased.

Other Long-Term Health Care Legislation

Concerning the Provision of Long-Term Care Services to Persons With Health Conditions Related To Acquired Immune Deficiency Syndrome in Home and Community-Based Settings, and Making an Appropriation in Connection Therewith -- Bill 5

Bill 5 allows the Department of Social Services to apply for a Medicaid waiver to provide at-home and community-based care for persons with acquired immune deficiency syndrome (AIDS) and AIDS-related conditions (ARC). The department is authorized to provide services to AIDS and ARC clients when such services are less costly than institutional care.
The bill also authorizes the department to conduct a feasibility study and a pilot program concerning the payment of employee health insurance premiums for eligible individuals with AIDS. Persons eligible are those who have been diagnosed as having AIDS, who have been terminated from employment, and who no longer have the income to pay insurance premiums. This provision resulted from a State Auditor's recommendation that Colorado reduce its Medicaid expenditures by paying employee health insurance premiums for AIDS patients instead of paying for their direct medical costs through Medicaid funds.

**Concerning Uniformity in Personal Care Boarding Home Building and Fire Standards, and Making an Appropriation in Connection Therewith -- Bill 6**

The bill directs the Department of Health's personal care boarding home advisory board to study and develop uniform building and fire standards for personal care boarding homes. These standards shall be recommended as regulations, and upon promulgation by the department, shall be conditions of licensure of such facilities unless more stringent, but appropriate, local standards exist. The bill also requires that individuals inspecting personal care boarding homes for licensure have knowledge and practical experience in building and fire safety.

**Concerning the Prohibition Against Reimbursing Personal Care Services Provided by a Spouse Under the "Home and Community-Based Services and Home Health Act" -- Bill 7**

State law permits family members to be reimbursed for providing personal care services, but the federal government has recently ruled that spouses may no longer be reimbursed for providing such care. Bill 7 is recommended to comply with the new federal requirement and prevent jeopardizing the home and community based services Medicaid waiver in future federal compliance reviews. Under Bill 7, the spouse of a person receiving personal care services may no longer be reimbursed for the provision of such services.
A BILL FOR AN ACT
CONCERNING THE RIGHTS OF CERTAIN RESIDENTS IN NURSING HOMES.

Bill Summary
(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires medicaid-certified skilled and intermediate care nursing facilities to protect and promote the rights of residents as provided in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, (P.L. 100-203).

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

SECTION 1. 25-1-120 (3) (a) and (8).

Colorado Revised Statutes, 1982 Repl. Vol., are amended, and the said 25-1-120 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25-1-120. Nursing and intermediate care facilities - rights of patients. (3) (a) A resident of any facility, the resident's RESIDENTS' advisory council, or the sibling, child, spouse, or parent of any resident may formally complain in the manner described in this subsection (3) about any conditions, treatment, or violations of his rights by the facility or its staff or about any treatment, conditions, or violations of the rights of any other resident, regardless of the consent of the victim of the alleged improper treatment, condition, or violation of rights by the facility or its staff.

(8) (a) A patient who is eligible to receive medicaid benefits pursuant to article 4 of title 26, C.R.S., 1973, and who qualifies for skilled or intermediate nursing care shall have the right to select any skilled or intermediate nursing care facility certified by the department of health under Title XIX of the FEDERAL "Social Security Act", AS AMENDED, as a provider of medicaid services and licensed by the department pursuant to article 3 of this title where space is available, and the department of social services shall reimburse the selected facility for services pursuant to section 26-4-110 (5), C.R.S., 1973, unless such nursing care facility shall have been notified by the department of social services at the time of or prior to action on its application for certificate of public necessity that it may not qualify as a provider of medicaid services.

(b) A PATIENT WHO IS RESIDING IN SUCH NURSING CARE FACILITY SHALL BE ASSURED THE RESIDENT RIGHTS WHICH ARE PROVIDED BY SECTION 4211 OF TITLE IV OF THE FEDERAL "OMNIBUS BUDGET RECONCILIATION ACT OF 1987", AS AMENDED, (P.L. 100-203). FAILURE TO PROTECT AND PROMOTE THOSE RIGHTS SHALL SUBJECT THE VIOLATING FACILITY TO SANCTIONS IMPOSED BY THE DEPARTMENT.

(9) A PATIENT WHO IS ELIGIBLE TO RECEIVE BENEFITS FROM A
SKILLED OR INTERMEDIATE NURSING CARE FACILITY CERTIFIED BY THE
DEPARTMENT UNDER TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY
ACT", AS AMENDED, AS A PROVIDER OF MEDICARE SERVICES SHALL BE
ASSURED THE SAME RIGHTS AS PROVIDED IN PARAGRAPH (a) OF
SUBSECTION (B) OF THIS SECTION.

SECTION 2. 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.
A BILL FOR AN ACT

CONCERNING THE DEVELOPMENT OF REMEDIES WHICH MAY BE ASSESSED AGAINST CERTAIN SKILLED AND INTERMEDIATE NURSING CARE FACILITIES FOR VIOLATIONS OF NURSING HOME STANDARDS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Authorizes the department of health to establish, pursuant to rules and regulations, a series of remedies in accordance with the federal "Omnibus Reconciliation Act of 1987", as amended, which may be imposed upon a nursing facility when there is a violation by such facility of any federal regulation for participation in the medicaid or medicare program. Specifies that such remedies shall include the imposition of civil money penalties and sets forth criteria which shall be considered in determining the penalty amount. Authorizes the department of health to make recommendations to the department of social services regarding the imposition of civil money penalties. Authorizes the department of social services to assess and enforce the series of remedies established by the department of health, including the assessment of civil money penalties. Creates a nursing home penalty cash fund into which civil money penalties shall be credited. Directs the department of health to administer the fund and to establish circumstances under which the funds may be distributed in order to protect the health or property of individuals residing in nursing facilities which have been found to be in violation of federal regulations for participation. Requires the department to promulgate rules and regulations which provide any nursing facility which is assessed a civil money penalty the opportunity to appeal such assessment and which govern the procedures for such appeal.

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

SECTION 1. Part 1 of article 1 of title 25, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended by the addition of a new section to read:

25-1-107.5. Additional authority of the department - remedies against nursing facilities - criteria for assessing civil penalties - cooperation with the department of social services - maintaining the nursing home penalty cash fund.

(1) For the purposes of this section, unless the context otherwise requires:

(a) "Federal regulations for participation" means the regulations found at 42 C.F.R. 405.1101 et seq. and 42 C.F.R. 442.1250 et seq. for participation under Title XVIII and Title XIX of the federal "Social Security Act," as amended.

(b) "Nursing facility" means any skilled or intermediate nursing care facility which receives federal funds under Title XVIII of the federal "Social Security Act," as amended or federal and state funds under Title XIX of the federal "Social Security Act," as amended.

(2) (a) The department, as the state agency responsible for certifying skilled and intermediate nursing facilities which receive federal funds under Title XVIII of the federal "Social Security Act", as amended, and federal and state funds under Title XIX of the federal "Social Security Act", as amended, is hereby given the authority to adopt rules and
regulations necessary to establish a series of remedies in accordance with the federal "Omnibus Reconciliation Act of 1987" (P.L. 100-203), as amended, which may be imposed by the department of social services when a nursing facility violates federal regulations for participation in medicaid and medicare programs. The remedies which are established shall include any remedies required under federal law and shall include the imposition of civil money penalties.

(b) Any rules and regulations promulgated by the department with regard to the assessment of civil money penalties shall include:

(I) That the penalty assessed shall not be less than one hundred dollars nor more than ten thousand dollars, with the legal rate of interest, for each day the facility violates federal regulations for participation under Title XVIII and Title XIX of the federal "Social Security Act", as amended; and

(II) That criteria for assessing the amount of the penalty shall include:

(A) The period of time over which the violation occurred;

(B) The frequency of the violation;

(C) The nursing facility's history concerning the type of violation for which the penalty is assessed;

(D) The nursing facility's intent or reason for the violation;

(E) The effect, if any, of the violation on residents' health, safety, security, or welfare;

(F) The existence of other violations, in combination with the violation for which the penalty is assessed, which increase the risk of residents' health, safety, security, or welfare;

(G) The accuracy and extent of the nursing facility's records regarding the violation and the availability of such records to the department;

(H) The number of additional related violations occurring within the same time span as the violation in question.

(3) (a) In accordance with the rules and regulations promulgated under this section, the department shall be authorized to recommend to the department of social services an appropriate civil money penalty based on the nature of the federal regulation for participation violation.

(b) The department of social services, after receiving a recommendation from the department shall be authorized to assess, enforce, and collect the civil money penalty pursuant to section 26-4-120, C.R.S., for credit to the nursing home penalty cash fund, created pursuant to section 26-4-120 (3)(a), C.R.S.

(c) The department shall have the authority for administering the nursing home penalty cash fund. This authority shall include establishing circumstances under which funds may be distributed in order to protect the health or property of individuals residing in nursing facilities which
either the department or the secretary of the United States department of health and human services has found to be in violation of federal regulations for participation in medicaid and medicare programs.

(d) Circumstances which shall be considered as a basis for distribution from the nursing home penalty cash fund shall include, but need not be limited to, paying costs to:

(I) Relocate residents to other nursing facilities;

(II) Maintain the operation of a nursing facility pending correction of violations;

(III) Close a nursing facility;

(IV) Reimburse residents for personal funds lost.

(e) The department shall not be authorized under paragraph (c) of this subsection (3) to utilize moneys from the nursing home penalty cash fund for the purpose of paying the department's cost for administering such fund.

SECTION 2. Article 4 of title 26, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

26-4-120. Collection of penalties assessed against nursing facilities - creation of a cash fund. (1) (a) The state department shall assess, enforce, and collect any civil penalties which are recommended by the department of health pursuant to the authority granted under section 25-1-107.5, C.R.S.

(b) Prior to the denial of medicaid payments or the assessment of a civil money penalty against a nursing facility, the nursing facility shall be offered by the state department an opportunity for a hearing in accordance with the provisions of section 24-4-105, C.R.S. Such hearing shall be held and determined prior to the enforcement and collection of the denial of medicaid payments or civil money penalty.

(2) In conjunction with the authority granted under subsection (1) of this section, the state department shall promulgate rules and regulations which:

(a) Provide any nursing facility assessed a civil penalty the opportunity to appeal such assessment;

(b) Govern the procedures for such appeals, including the right of a nursing facility to thirty days' notice prior to the assessment of any civil money penalty; and

(c) Are otherwise necessary to implement this section.

(3) (a) Any civil penalties collected by the state department pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the nursing home penalty cash fund, which fund is hereby created.

(b) (I) The moneys in the fund are hereby continuously appropriated to the department of health for the purposes set forth in section 25-1-107.5, C.R.S., including establishing circumstances under which funds may be distributed in order to protect the health or property of residents of nursing facilities which are found to be in violation of federal standards.

(II) Such money shall be used in the manner prescribed in section 25-1-107.5, C.R.S., and the rules and regulations
promulgated thereunder.

(c) All interest derived from the deposit and investment
of moneys in the fund shall be credited to the fund.

(d) At the end of any fiscal year, all unexpended and
unencumbered moneys remaining in the fund shall remain therein
and shall not be credited or transferred to the general fund
or any other fund.

SECTION 3. 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.
A BILL FOR AN ACT

CONCERNING THE EXPANSION OF CERTAIN MEDICAID BENEFITS TO

MEDICARE-ELIGIBLE ELDERLY AND DISABLED INDIVIDUALS UNDER

THE FEDERAL "MEDICARE CATASTROPHIC COVERAGE ACT OF 1988",

AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Expands the definition of "categorically needy" to include medicare-eligible elderly and disabled individuals with an income and resource level which qualifies them as medicare-eligible under section 301 of Title III of the federal "Medicare Catastrophic Coverage Act of 1988", as amended, (P.L. 100-360). For the purposes of this article, such individuals shall be referred to as "indigent medicare beneficiaries".

SECTION 2. 26-4-104, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

26-4-104. Medical programs - limitation on services.

(1) The state department, by rules and regulations, shall establish a program of medical assistance to provide necessary medical care for the categorically needy. The state department is hereby designated as the single state agency to administer such program in accordance with Title XIX and this article. Such program shall not be required to furnish recipients under sixty-five years of age the benefits that are provided to recipients sixty-five years of age and over under Title XVIII of the social security act; but said program shall otherwise be uniform to the extent required by Title XIX of the social security act.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE STATE DEPARTMENT SHALL NOT BE REQUIRED TO PROVIDE INDIGENT MEDICARE BENEFICIARIES, AS DEFINED IN SECTION 26-4-103 (2) (e), THE ENTIRE RANGE OF SERVICES SET FORTH IN SECTION 26-4-105.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the department and resources at a level which qualifies them as medicare-eligible under section 301 of Title III of the federal "Medicare Catastrophic Coverage Act of 1988", as amended, (P.L. 100-360). For the purposes of this article, such individuals shall be referred to as "indigent medicare beneficiaries".

SECTION 2. 26-4-104, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

26-4-104. Medical programs - limitation on services.

(1) The state department, by rules and regulations, shall establish a program of medical assistance to provide necessary medical care for the categorically needy. The state department is hereby designated as the single state agency to administer such program in accordance with Title XIX and this article. Such program shall not be required to furnish recipients under sixty-five years of age the benefits that are provided to recipients sixty-five years of age and over under Title XVIII of the social security act; but said program shall otherwise be uniform to the extent required by Title XIX of the social security act.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE STATE DEPARTMENT SHALL NOT BE REQUIRED TO PROVIDE INDIGENT MEDICARE BENEFICIARIES, AS DEFINED IN SECTION 26-4-103 (2) (e), THE ENTIRE RANGE OF SERVICES SET FORTH IN SECTION 26-4-105.

SECTION 3. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the department and resources at a level which qualifies them as medicare-eligible under section 301 of Title III of the federal "Medicare Catastrophic Coverage Act of 1988", as amended, (P.L. 100-360). For the purposes of this article, such individuals shall be referred to as "indigent medicare beneficiaries".

SECTION 2. 26-4-104, Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

26-4-104. Medical programs - limitation on services.

(1) The state department, by rules and regulations, shall establish a program of medical assistance to provide necessary medical care for the categorically needy. The state department is hereby designated as the single state agency to administer such program in accordance with Title XIX and this article. Such program shall not be required to furnish recipients under sixty-five years of age the benefits that are provided to recipients sixty-five years of age and over under Title XVIII of the social security act; but said program shall otherwise be uniform to the extent required by Title XIX of the social security act.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, THE STATE DEPARTMENT SHALL NOT BE REQUIRED TO PROVIDE INDIGENT MEDICARE BENEFICIARIES, AS DEFINED IN SECTION 26-4-103 (2) (e), THE ENTIRE RANGE OF SERVICES SET FORTH IN SECTION 26-4-105.
of social services, for the fiscal year beginning July 1, 1989, the sum of _______ dollars ($_______), or so much thereof as may be necessary, for the implementation of this act. Of said sum, _______ dollars ($_______) shall be from the general fund, and _______ dollars ($_______) shall be from federal funds.

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.
A BILL FOR AN ACT

CONCERNING THE IMPACT OF INSTITUTIONALIZATION ON THE FINANCIAL
RESOURCES OF CERTAIN INDIVIDUALS, AND MAKING AN
APPROPRIATION IN CONNECTION THEREWITH.

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BILL Summary
(Note: This summary applies to this bill as introduced
and does not necessarily reflect any amendments which may be
subsequently adopted.)

Establishes the monthly amount of income to which
a noninstitutionalized spouse is entitled prior to payment for
the costs of care in an institution if the institutionalized
spouse is eligible for medical assistance and has income which
is available to the noninstitutionalized spouse. Provides
that resources of a couple shall be split fifty-fifty when the
institutionalized spouse is eligible for medical assistance
and establishes the minimum and maximum amount of resources
which can be retained by the noninstitutionalized spouse.
Authorizes the department of social services to promulgate
rules and regulations to provide that these amounts are not
utilized for the cost of the institutionalized spouse's care
and that a process exists for appealing any determination of
the department regarding the treatment of a married couple's
income and resources.

Increases the amount paid to an institutionalized
individual for personal needs.

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4 Re 26-4-107, as amended, is amended BY THE ADDITION OF A NEW
SUBSECTION to read:
5 26-4-107. Application - verification of eligibility -
eligibility for the elderly, blind, and disabled requiring
intermediate care. (1.5) (a) Any married couple, at the
beginning of a continuous period of institutionalization of
one spouse, may request the county department to assess and
document the total joint income and resources of the couple,
if the couple supplies to the county department the necessary
information and documentation which is needed to make such an
assessment.

(b) Any assessment prepared by the county department and
provided to a couple shall contain a procedure for appealing
any determinations which have been made.

(c) If a request for assessment and documentation is not
part of an application for medical assistance, the county
department may establish a fee to cover the direct and
indirect costs of such assessment and documentation by the
county department.

SECTION 1. Article 4 of title 26, Colorado Revised
Statutes, 1982 Repl. Vol., as amended, is amended BY THE
ADDITION OF A NEW SECTION to read:

26-4-107.5. Protection of income and resources for
community spouse - definitions - amounts retained -
responsibility of state department - right to appeal. (1) As
used in this section, unless the context otherwise requires:
(a) "Community spouse" means the spouse of a person who
is in an institution or nursing facility.

-2-
(b) "Community spouse monthly income allowance" means the amount that the minimum monthly maintenance needs allowance exceeds the amount of monthly income which is available to the community spouse.

(c) "Community spouse resource allowance" means the amount of assets, excluding the value of the home and other exempt resources under federal law, which the community spouse shall be allowed to retain and which shall not be available to cover an institutionalized spouse's cost of care.

(d) "Institutionalized spouse" means an individual who is in an institution or nursing facility who is married to a spouse who is not in an institution or nursing facility.

(e) "Minimum monthly maintenance needs allowance" means the monthly income level which is retained by the community spouse from the income of the institutionalized spouse and which is made available to the community spouse.

(2) (a) In order to implement the medical assistance program in compliance with the federal "Medicare Catastrophic Coverage Act of 1988", as amended, the state department shall ensure, when an institutionalized spouse is eligible for medical assistance under this article, that the community spouse retain a minimum monthly maintenance needs allowance which is equal to an applicable percent of the official federal poverty line (increased annually by the consumer price index for all urban consumers), as defined by the federal office of management and budget, for a family unit of two members but only to the extent that income of the institutionalized spouse is made available to the community spouse.

(b) (I) For the purposes of paragraph (a) of subsection (2) of this section, the applicable percent shall be:

(A) As of September 30, 1989, one hundred twenty-two percent;

(B) As of July 1, 1991, one hundred thirty-three percent;

(C) As of July 1, 1992, one hundred fifty percent.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), the minimum monthly maintenance needs allowance may be increased on an individual basis if any one of the following factors is present:

(A) The community spouse has shelter and utilities expenses that exceed thirty percent of the minimum monthly maintenance needs allowance; except that the total allowance shall not exceed fifteen hundred dollars (increased annually by the consumer price index for all urban consumers);

(B) Either spouse is responsible for a dependent family member, including children, parents, or siblings who reside with the community spouse;

(C) The community spouse has exceptional circumstances which would result in significant financial duress.

(c) (I) The resources available to the married couple at the time the institutionalized spouse becomes eligible for medical assistance, shall be divided fifty-fifty with the provision that the community spouse retain the first twelve thousand dollars in resources, up to a maximum of sixty thousand dollars (increased annually by the consumer price index for all urban consumers).
(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), if either spouse establishes that the community spouse resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, an amount adequate to provide the minimum monthly maintenance needs allowance shall be substituted.

(3) The state department shall have the authority to promulgate any rules and regulations which are necessary to implement the provisions of this section in accordance with the federal "Medicare Catastrophic Coverage Act of 1988", as amended. The rules adopted by the state department shall include, as a minimum, provisions regarding the following matters:

(a) The treatment of a married couple's income and resources before and after eligibility for medical assistance is established, including the basis for dividing such income and resources between the two parties;

(b) The process for appealing any determinations regarding income and resources which are made pursuant to these rules and regulations.

SECTION 3. 26-4-115.5 (1), Colorado Revised Statutes, 1982 Repl. Vol., is amended to read:

26-4-115.5. **Amount of personal needs payments.** (1) The basic minimum amount payable pursuant to section 26-4-106 (2) for personal needs to any recipient admitted to a nursing care facility or intermediate care facility shall be twenty-nine

THIRTY-FOUR dollars monthly.

SECTION 4. **Appropriation.** In addition to any other appropriation, there is hereby appropriated, to the department of social services, for the fiscal year beginning July 1, 1989, the sum of _____ dollars ($____), or so much thereof as may be necessary, for the implementation of the provisions of section 26-4-107.5, Colorado Revised Statutes. Of said sum, _____ dollars ($____) shall be from the general fund, and _____ dollars ($____) shall be from federal funds.

SECTION 5. **Effective date.** This act shall take effect September 30, 1989.

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.
A BILL FOR AN ACT

CONCERNING THE PROVISION OF LONG-TERM CARE SERVICES TO PERSONS WITH HEALTH CONDITIONS RELATED TO ACQUIRED IMMUNE DEFICIENCY SYNDROME IN HOME AND COMMUNITY-BASED SETTINGS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary
(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Allows the department of social services to apply for a medicaid waiver to provide home and community-based care for persons with acquired immune deficiency syndrome (AIDS) and AIDS-related conditions (ARC). Authorizes the department to provide services to AIDS and ARC clients when such services are less costly than institutional care.

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

SECTION 1. 26-4.5-103, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended by the addition of the following new subsections, to read:

26-4.5-103. Definitions. (1.5) "AIDS" means the acquired immune deficiency syndrome.

(1.7) "ARC" means an AIDS-related condition which is defined by the center for disease control of the United States public health service.

(11.5) "Hospice care" means a comprehensive program of palliative, supportive, and interdisciplinary team services which provide physical, psychological, sociological, and spiritual care for persons who are terminally ill and their families. Services are provided within a continuum of inpatient care, home care, and follow-up bereavement services, available twenty-four hours a day, seven days a week. Hospice care is predominantly provided in the individual's home on a routine or continuous basis, with intermittent inpatient stays in a hospital, inpatient hospice, or nursing home. Inpatient stays are for pain control, symptom management, or occasional inpatient respite in order to temporarily relieve the provider of care.

SECTION 2. 26-4.5-104.5 (1), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended by the addition of a new paragraph to read:

26-4.5-104.5. Services for long-term-care eligible persons. (1.1) Home and community based services for persons with AIDS or ARC as alternatives to more expensive institutionalization.

SECTION 3. 26-4.5-104.5 (2) and (3), Colorado Revised Statutes, 1982 Repl. Vol., as amended, are amended, and the said 26-4.5-104.5 is further amended by the addition of a new subsection, to read:

26-4.5-104.5. Services for long-term-care eligible
persons. (2)(a) The provision of the services set forth in subsection (1) of this section shall be subject to the availability of federal matching medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended, for payment of the costs for administration and costs for the provision of such services.

(b) THE HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH AIDS AND AIDS-RELATED CONDITIONS SHALL INCLUDE THE FOLLOWING LONG-TERM CARE SERVICES:
(I) CASE MANAGEMENT SERVICES;
(II) PERSONAL CARE AND HOMEMAKER SERVICES;
(III) HOME HEALTH SERVICES;
(IV) ADULT DAY CARE SERVICES;
(V) HOSPICE SERVICES;
(VI) PRIVATE DUTY NURSING SERVICES;
(VII) INTENSIVE SUPERVISION FOR FOSTER CARE CHILDREN WITH AIDS OR ARC; and
(VIII) MENTAL HEALTH SERVICES, UNLESS THE STATE DEPARTMENT DETERMINES THAT INCLUSION OF SUCH SERVICES WOULD JEOPARDIZE THE AVAILABILITY OF FEDERAL MATCHING MEDICAID FUNDS.

(3) (a) If the state department or the case management agency makes a determination, in the case of a specific long-term-care eligible person, that the costs for the provision of services necessary to allow such person to avoid nursing home placement exceeds or would exceed, if such services were provided, the average cost of intermediate nursing home care, such person shall not be considered eligible for home and community-based services. The state department or the case management agency may provide for any long-term-care eligible person any of the services set forth in subsection (1) of this section subject to the provisions of this part 1.

(b) IF THE STATE DEPARTMENT OR THE CASE MANAGEMENT AGENCY MAKES A DETERMINATION THAT THE COST FOR THE PROVISION OF HOME AND COMMUNITY-BASED SERVICES NECESSARY TO ALLOW EITHER AN AIDS OR AN ARC CLIENT TO AVOID INSTITUTIONALIZATION EXCEEDS OR WOULD EXCEED THE AVERAGE COST OF HOSPITAL CARE OR NURSING HOME CARE, SUCH CLIENT SHALL NOT BE CONSIDERED ELIGIBLE FOR HOME AND COMMUNITY-BASED SERVICES.


(d) PLACEMENT FOR THE PROVISION OF HOME AND COMMUNITY-BASED SERVICES SHALL BE MADE IN CONSULTATION AND AGREEMENT WITH THE CASE MANAGEMENT AGENCY AND THE AIDS OR ARC CLIENT.

(6)(a) The state department shall conduct a feasibility study and a pilot program concerning payment of employee health insurance premiums for certain individuals with AIDS.
Persons eligible for this program are those who have been diagnosed as having AIDS, who have been terminated from employment, and who no longer have incomes from which to pay insurance premiums. The feasibility study shall determine the cost-effectiveness of such a program and establish cost-effectiveness criteria for payments on individual employee insurance policies. If a determination is made by the state department that such an effort would be cost-effective, a pilot program shall begin on or after January 1, 1990, as part of the HCBS-AIDS waiver program. The pilot program shall end on June 30, 1992, unless extended by the general assembly.

(b) This subsection (6) is repealed, effective June 30, 1992.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of social services, for the fiscal year beginning July 1, 1989, the sum of ___ dollars ($___) and 2.0 FTE for administration of the waiver program and 1.5 FTE for continuation of employee health insurance premiums for AIDS and ARC clients, or so much thereof as may be necessary, to be used for the purpose only of conducting a feasibility study and pilot program pursuant to section 26-4.5-104.5 (6), Colorado Revised Statutes.

SECTION 5. Effective date. This act shall take effect July 1, 1989.

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.
A BILL FOR AN ACT

CONCERNING UNIFORMITY IN PERSONAL CARE BOARDING HOME BUILDING
AND FIRE STANDARDS, AND MAKING AN APPROPRIATION IN
CONNECTION THEREWITH.

Bill Summary
(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Directs the committee which advises the department of health on personal care boarding homes to study and develop uniform building and fire standards for such homes. Provides that these uniform standards shall be recommended to the department for adoption as regulations and that, upon adoption, such standards shall be a condition of licensure unless more stringent, but appropriate, local standards exist. Allows the department of health to decide whether a more stringent local standard is appropriate for licensure of personal care boarding homes.

Requires that individuals inspecting personal care boarding homes for licensure have knowledge and practical experience in building and fire safety.

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

SECTION 1. 25-27-104 (2) (a), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended, and the said 25-27-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25-27-104. Minimum standards for personal care boarding homes - rules. (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, compliance with all applicable zoning, housing, fire, sanitary, and all other codes and ordinances of the city, city and county, or county where the home is situated;

(3) (a) The department shall promulgate regulations adopting uniform building and fire standards for personal care boarding homes, based on recommendations of the advisory committee pursuant to section 25-27-110 (2.5).

(b) Except as provided in paragraph (c) of this subsection (3), compliance with such building and fire standards shall be required for licensure.

(c) When a city, city and county, or county where the personal care boarding home is situated, has adopted building and fire standards which are more stringent than those adopted by the department, compliance with such local standards shall be required for licensure if the department finds that the local standards are an appropriate and not unduly burdensome requirement for the licensure of a personal care boarding home.

SECTION 2. 25-27-105 (2), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

25-27-105. License - application - inspection - issuance. (2) (a) The department shall investigate and pass on each original application and each renewal application for
a license. The department shall inspect or cause to be inspected the facilities to be operated by an applicant for an original license before the license is granted and shall annually thereafter inspect or cause to be inspected the facilities of all licensees. The department shall make such other inspections as it deems necessary to insure that the health, safety, and welfare of the residents are being protected.

(b) ALL INVESTIGATIONS PERFORMED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL BE COMPLETED BY INDIVIDUALS WITH KNOWLEDGE AND PRACTICAL EXPERIENCE IN BUILDING AND FIRE SAFETY.

SECTION 3. 25-27-110, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-27-110. Advisory committee - development of uniform building and fire standards - sunset review. (2.5) The advisory committee shall study and develop by July 1, 1990, uniform building and fire standards applicable to personal care boarding homes of different sizes. Such standards shall be recommended to the department for adoption as regulations.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of health for allocation to the advisory committee created pursuant to section 25-27-110, Colorado Revised Statutes, for the fiscal year beginning July 1, 1989, the sum of ______ dollars ($_____), or so much thereof as may be necessary, for the implementation of this act.

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

SECTION 1. 26-4.5-109.5 (2), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended to read:

26-4.5-109.5. Personal care services provided by a family. (2) (a) The maximum reimbursement for the services provided by a member of a person's family per year for each client shall not exceed five thousand dollars per family per year or fifty percent of the maximum amount of expenditures authorized as provided in section 26-4.5-111 (2), whichever is less.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), PERSONAL CARE SERVICES PROVIDED BY THE PERSON'S SPOUSE SHALL NOT BE SUBJECT TO REIMBURSEMENT.

SECTION 2. 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.