

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0419.01 Debbie Haskins

SENATE BILL 11-006

SENATE SPONSORSHIP

Lundberg,

HOUSE SPONSORSHIP

(None),

Senate Committees
Health and Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING THE DEVELOPMENT OF AN ALTERNATIVE MEDICAL
102 ASSISTANCE PROGRAM FOR THE ELDERLY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billssummaries>.)

The bill creates a voluntary alternative medical assistance program (program) for the medicaid-eligible elderly. An eligible participant agrees to receive an amount equal to 70% of the medical assistance benefits that he or she would have received if the participant were enrolled in the state's traditional medicaid program in exchange for 2

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

features currently not allowed under the traditional medicaid program:

- ! The participant can choose any provider; and
- ! The state waives the right to pursue all estate recovery methods from the participant's family after the participant dies.

The participant's physician assesses the level of care the participant needs. The department of health care policy and financing (department) then determines the expected costs to provide that level of care if the participant were enrolled in and were receiving services under the traditional medicaid program and allocates 70% of that amount annually to reimburse providers for the participant's care. The department issues a debit card to the participant that would be funded monthly with one-twelfth of the annual amount so allocated to the participant, which the participant uses to pay for medical services while enrolled in the alternative program. The eligible participant purchases long-term care services, assisted living services, home- and community-based services, home health services, prescribed drugs, or any health or dental care service at rates set by the provider, and the participant agrees to provide all additional resources needed for his or her care beyond the 70% medicaid benefit amount provided through the program. The participant is responsible for researching and selecting the services.

Each year, the department conducts a redetermination of the participant's eligibility for services and the participant's physician reassesses the level of care that the participant needs.

The department is required to seek a federal waiver for the program.

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

2 **SECTION 1.** Article 6 of title 25.5, Colorado Revised Statutes,
3 is amended BY THE ADDITION OF A NEW PART to read:

4 **PART 15**

5 **ALTERNATIVE MEDICAL ASSISTANCE PROGRAM**

6 **FOR THE ELDERLY**

7 **25.5-6-1501. Definitions.** AS USED IN THIS PART 15, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "ALTERNATIVE PROGRAM" MEANS THE ALTERNATIVE MEDICAL
10 ASSISTANCE PROGRAM FOR THE ELDERLY CREATED IN THIS PART 15.

1 (2) "PARTICIPANT" MEANS A PERSON WHO:
2 (a) IS ELIGIBLE FOR THE MEDICAL ASSISTANCE PROGRAM
3 ESTABLISHED IN THIS ARTICLE AND ARTICLES 4 AND 5 OF THIS TITLE;
4 (b) IS FIFTY-FIVE YEARS OF AGE OR OLDER; AND
5 (c) APPLIES TO PARTICIPATE IN AND ENROLLS IN THE ALTERNATIVE
6 PROGRAM.

7 (3) "SERVICE" MEANS A MANDATED SERVICE SPECIFIED IN SECTION
8 25.5-5-102, AN OPTIONAL SERVICE SPECIFIED IN SECTION 25.5-5-202, A
9 LONG-TERM CARE SERVICE SPECIFIED IN THIS ARTICLE, AN ASSISTED LIVING
10 SERVICE SPECIFIED IN THIS ARTICLE, A HOME- AND COMMUNITY-BASED
11 SERVICE SPECIFIED IN THIS ARTICLE, OR ANY OTHER MEDICAL OR DENTAL
12 CARE SERVICE. "SERVICE" ALSO INCLUDES HOME HEALTH SERVICES, AS
13 DEFINED IN SECTION 25.5-4-103 (7), AND PRESCRIBED DRUGS.

14 (4) "TRADITIONAL MEDICAID PROGRAM" MEANS THE STATE'S
15 MEDICAL ASSISTANCE PROGRAM ESTABLISHED IN THIS ARTICLE AND
16 ARTICLES 4 AND 5 OF THIS TITLE.

17 **25.5-6-1502. Alternative medical assistance program - federal**
18 **authorization - cost recovery - benefits - rules.** (1) SUBJECT TO
19 OBTAINING A FEDERAL WAIVER, THE STATE DEPARTMENT SHALL DEVELOP
20 AND IMPLEMENT AN ALTERNATIVE MEDICAL ASSISTANCE PROGRAM FOR
21 THE ELDERLY.

22 (2) A PARTICIPANT IN THE ALTERNATIVE PROGRAM:
23 (a) SHALL VOLUNTARILY APPLY TO PARTICIPATE IN THE
24 ALTERNATIVE PROGRAM, SHALL ELECT TO ENROLL IN THE ALTERNATIVE
25 PROGRAM IN LIEU OF ENROLLING IN THE TRADITIONAL MEDICAID
26 PROGRAM, AND MAY ELECT TO WITHDRAW FROM THE ALTERNATIVE
27 PROGRAM AFTER GIVING THIRTY DAYS' WRITTEN NOTICE TO THE STATE

1 DEPARTMENT;

2 (b) SHALL AGREE TO ACCEPT A TOTAL ANNUAL BENEFIT THAT IS
3 LIMITED TO SEVENTY PERCENT OF THE AMOUNT OF THE ANNUAL MEDICAID
4 BENEFITS THE PARTICIPANT COULD RECEIVE UNDER THE TRADITIONAL
5 MEDICAID PROGRAM AND AGREE TO PROVIDE ALL ADDITIONAL RESOURCES
6 NEEDED FOR HIS OR HER CARE BEYOND THE MEDICAID BENEFITS PROVIDED
7 THROUGH THE ALTERNATIVE PROGRAM, IN EXCHANGE FOR FLEXIBILITY IN
8 CHOOSING MEDICAL CARE PROVIDERS AND IN EXCHANGE FOR THE STATE
9 AGREEING NOT TO PURSUE ESTATE RECOVERY FOR MEDICAL ASSISTANCE
10 PAID TO OR ON BEHALF OF THE PARTICIPANT SO LONG AS THE PARTICIPANT
11 WAS ELIGIBLE FOR THE FULL PERIOD THAT BENEFITS WERE PAID; AND

12 (c) SHALL USE THE MONEYS PROVIDED PURSUANT TO PARAGRAPH
13 (b) OF THIS SUBSECTION (2) TO PURCHASE SERVICES FROM A PERSON OR
14 PROVIDER, REGARDLESS OF WHETHER THE PROVIDER IS AN APPROVED
15 PROVIDER UNDER THE TRADITIONAL MEDICAID PROGRAM. THE
16 PARTICIPANT SHALL BEAR THE RESPONSIBILITY FOR RESEARCHING AND
17 SELECTING THOSE SERVICES. THE PARTICIPANT'S PHYSICIAN SHALL
18 ANNUALLY DETERMINE THE LEVEL OF CARE THE PARTICIPANT NEEDS.

19 (3) THE STATE DEPARTMENT SHALL:

20 (a) DETERMINE THE EXPECTED COSTS TO PROVIDE THE LEVEL OF
21 CARE THE PHYSICIAN DETERMINES THE PARTICIPANT WOULD NEED IF THE
22 PARTICIPANT WERE ENROLLED IN AND WERE RECEIVING SERVICES UNDER
23 THE TRADITIONAL MEDICAID PROGRAM;

24 (b) ALLOCATE TO THE PARTICIPANT AN AMOUNT EQUAL TO
25 SEVENTY PERCENT OF THE COSTS OF PROVIDING THE MEDICAL ASSISTANCE
26 BENEFITS THAT THE PARTICIPANT WOULD HAVE RECEIVED IF HE OR SHE
27 HAD BEEN ENROLLED IN THE TRADITIONAL MEDICAID PROGRAM AND ISSUE

1 A DEBIT CARD TO THE PARTICIPANT, FUNDED MONTHLY WITH
2 ONE-TWELFTH OF THE ANNUAL AMOUNT SO ALLOCATED FOR THE
3 PARTICIPANT, WHICH THE PARTICIPANT SHALL USE TO PAY FOR SERVICES
4 WHILE ENROLLED IN THE ALTERNATIVE PROGRAM; AND

5 (c) WAIVE THE STATE'S RIGHT TO ALL ESTATE RECOVERY FOR
6 MEDICAL ASSISTANCE PAID TO OR ON BEHALF OF A PARTICIPANT WHILE
7 THE PARTICIPANT WAS PARTICIPATING IN THE ALTERNATIVE PROGRAM, SO
8 LONG AS THE PARTICIPANT WAS ELIGIBLE FOR THE FULL PERIOD THAT
9 BENEFITS WERE PAID.

10 (4) THE STATE DEPARTMENT SHALL ANNUALLY REDETERMINE THE
11 PARTICIPANT'S ELIGIBILITY FOR SERVICES AND CONSIDER THE ANNUAL
12 DETERMINATION BY THE PARTICIPANT'S PHYSICIAN OF THE LEVEL OF CARE
13 THAT THE PARTICIPANT NEEDS. IF THE PARTICIPANT'S HEALTH CONDITION
14 SUBSTANTIALLY CHANGES, THE STATE DEPARTMENT MAY CONDUCT THE
15 REDETERMINATION PRIOR TO THE REGULARLY SCHEDULED
16 REDETERMINATION. THE STATE DEPARTMENT SHALL ONLY PROVIDE CASE
17 MANAGEMENT SERVICES FOR DETERMINATIONS AND REDETERMINATIONS
18 OF ELIGIBILITY AND FOR ASSESSMENT AND REASSESSMENT OF THE LEVEL
19 OF CARE THAT A PARTICIPANT NEEDS.

20 (5) ANY PROVIDER IN THE STATE MAY PROVIDE A PARTICULAR
21 SERVICE TO AN ELIGIBLE PARTICIPANT AT A RATE TO BE DETERMINED BY
22 THE PROVIDER.

23 (6) THE STATE DEPARTMENT IS AUTHORIZED TO APPLY TO THE
24 APPLICABLE FEDERAL AGENCY FOR AUTHORIZATION TO OPERATE THE
25 ALTERNATIVE PROGRAM AS DESCRIBED IN THIS SECTION. UPON THE STATE
26 DEPARTMENT'S RECEIPT OF THE NECESSARY FEDERAL AUTHORIZATION,
27 THE STATE BOARD SHALL ADOPT AND REVISE RULES NECESSARY FOR THE

1 IMPLEMENTATION OF THE ALTERNATIVE PROGRAM.

2 **25.5-6-1503. Conditional repeal of part - repeal.** (1) THIS PART
3 15 IS REPEALED, EFFECTIVE JULY 1, 2015, IF:

4 (a) THE FEDERAL GOVERNMENT DENIES THE STATE DEPARTMENT'S
5 REQUEST FOR AUTHORIZATION TO IMPLEMENT THE ALTERNATIVE
6 PROGRAM; AND

7 (b) THE EXECUTIVE DIRECTOR FILES WRITTEN NOTICE WITH THE
8 REVISOR OF STATUTES STATING THAT THE FEDERAL GOVERNMENT DENIED
9 THE STATE'S REQUEST FOR A WAIVER.

10 (2) (a) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015, IF THE
11 FEDERAL GOVERNMENT APPROVES THE STATE DEPARTMENT'S REQUEST
12 FOR AUTHORIZATION TO IMPLEMENT THE ALTERNATIVE PROGRAM.

13 (b) THE EXECUTIVE DIRECTOR SHALL FILE WRITTEN NOTICE WITH
14 THE REVISOR OF STATUTES STATING THAT THE FEDERAL GOVERNMENT
15 APPROVED THE STATE'S REQUEST FOR A WAIVER PRIOR TO JULY 1, 2015, IF
16 APPROVAL IS GRANTED.

17 **SECTION 2.** 25.5-4-301 (1) (a) (I), Colorado Revised Statutes,
18 is amended to read:

19 **25.5-4-301. Recoveries - overpayments - penalties - interest -**
20 **adjustments - liens - review or audit procedures - repeal.**

21 (1) (a) (I) Except as provided in ~~section 25.5-4-302~~ SECTIONS 25.5-4-302
22 AND 25.5-6-1502 and subparagraph (III) of this paragraph (a), no
23 recipient or estate of the recipient shall be liable for the cost or the cost
24 remaining after payment by medicaid, medicare, or a private insurer of
25 medical benefits authorized by Title XIX of the social security act, by this
26 title, or by rules promulgated by the state board, which benefits are
27 rendered to the recipient by a provider of medical services authorized to

1 render such service in the state of Colorado, except those contributions
2 required pursuant to section 25.5-4-209 (1). However, a recipient may
3 enter into a documented agreement with a provider under which the
4 recipient agrees to pay for items or services that are nonreimbursable
5 under the medical assistance program. Under these circumstances, a
6 recipient is liable for the cost of such services and items.

7 **SECTION 3. Act subject to petition - effective date.** This act
8 shall take effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part shall not take effect
14 unless approved by the people at the general election to be held in
15 November 2012 and shall take effect on the date of the official
16 declaration of the vote thereon by the governor.