

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
FROM JBC Staff
DATE March 25, 2021
SUBJECT Potential Legislation

This packet includes bill drafts and related memos for the Committee’s consideration. Each individual item has page numbers but also a packet page number to help navigate the whole document. The page numbers below refer to the packet page number.

POTENTIAL LEGISLATION

State Payment Hospice Providers Residential Care LLS 21-0917 (Smart)..... 1
Transfer Part C Early Intervention Evaluations Areas LLS 21-0858 (Dermody)..... 6

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
3.23.21

DRAFT

LLS NO. 21-0917.01 Brita Darling x2241

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "State Payment Hospice Providers Residential Care"

A BILL FOR AN ACT

101 **CONCERNING STATE PAYMENTS TO LICENSED HOSPICE FACILITIES FOR**
102 **RESIDENTIAL CARE PROVIDED TO CERTAIN PERSONS ENROLLED**
103 **IN THE MEDICAL ASSISTANCE PROGRAM, AND, IN CONNECTION**
104 **THEREWITH, MAKING AN APPROPRIATION.**

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://leg.colorado.gov/>.)

Joint Budget Committee. The bill authorizes a state payment to qualified hospice providers, as defined in the bill, that provide hospice services in a licensed hospice facility to persons enrolled in the medical

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Dashes through the words indicate deletions from existing statute.*

assistance program who are eligible for care in a nursing facility but who are unable to secure a bed in a nursing facility due to the presence of COVID-19 in the state or for other reasons described in the bill. The eligible patient, as defined in the bill, must have a hospice diagnosis. The state payment to a qualified hospice provider is limited to not more than 28 days for each eligible patient.

The qualified hospice provider must provide residential services to an eligible patient during the fourth quarter of the 2020-21 fiscal year or during the 2021-22 fiscal year.

The state payment is an amount equal to one-half of the statewide average per diem rate for nursing facilities. State payments are limited to appropriations for this purpose.

The department of health care policy and financing shall administer the state payment and shall seek input from qualified hospice providers concerning the administration of the payment and the allocation of available appropriations.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25.5-4-424 as
3 follows:

4 **25.5-4-424. State payments to qualified hospice providers -**
5 **dually eligible persons - no federal financial participation - rules -**
6 **legislative declaration - definitions - repeal.** (1) THE GENERAL
7 ASSEMBLY FINDS AND DECLARES THAT AS A RESULT OF THE PRESENCE OF
8 THE COVID-19 VIRUS IN THE STATE AND OTHER CIRCUMSTANCES,
9 ELIGIBLE PATIENTS IN NEED OF A NURSING-FACILITY LEVEL OF CARE WHO
10 ARE IN THEIR FINAL WEEKS OF LIFE MAY NOT BE ABLE TO FIND AN
11 APPROPRIATE PLACEMENT IN A NURSING FACILITY WHERE THEY CAN
12 RECEIVE HOSPICE CARE. WITHOUT AN AVAILABLE OR APPROPRIATE
13 NURSING FACILITY BED, HOSPICE PROVIDERS HAVE MADE RESIDENTIAL
14 HOSPICE BEDS AVAILABLE TO THESE ELIGIBLE PATIENTS DESPITE
15 RECEIVING ONLY REIMBURSEMENT UNDER THE FEDERAL MEDICARE
16 PROGRAM FOR HOSPICE SERVICES, BUT NOT FOR EXPENSES RELATED TO

1 ROOM AND BOARD. THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT
2 IT IS APPROPRIATE TO MAKE AVAILABLE TO THESE QUALIFIED HOSPICE
3 PROVIDERS FOR A LIMITED PERIOD OF TIME A STATE PAYMENT THAT IS
4 EQUAL TO THE STATE SHARE OF FUNDING UNDER THE MEDICAL
5 ASSISTANCE PROGRAM THAT WOULD OTHERWISE BE PAID TO A NURSING
6 FACILITY IF THE NURSING FACILITY WERE ABLE TO PROVIDE A RESIDENTIAL
7 BED FOR AN ELIGIBLE PATIENT.

8 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
9 REQUIRES:

10 (a) "ELIGIBLE PATIENT" MEANS A PERSON WHO IS ENROLLED IN THE
11 MEDICAL ASSISTANCE PROGRAM AT THE TIME THE SERVICE IS PROVIDED
12 AND WHO:

13 (I) IS ELIGIBLE UNDER THE MEDICAL ASSISTANCE PROGRAM FOR
14 CARE IN A NURSING FACILITY AT THE TIME THE SERVICE IS PROVIDED;

15 (II) HAS A HOSPICE DIAGNOSIS; AND

16 (III) DESPITE ATTEMPTS TO SECURE A BED, IS UNABLE TO SECURE
17 A MEDICAID BED IN A NURSING FACILITY DUE TO COVID-19 IMPACTS,
18 COMPLEXITY OF MEDICAL CARE, BEHAVIORAL HEALTH ISSUES, OR OTHER
19 ISSUES AS DETERMINED BY THE STATE DEPARTMENT.

20 (b) "QUALIFIED HOSPICE PROVIDER" MEANS A HOSPICE PROVIDER
21 THAT:

22 (I) HAS BEEN CONTINUOUSLY ENROLLED WITH THE STATE
23 DEPARTMENT SINCE AT LEAST JANUARY 1, 2021;

24 (II) PROVIDED HOSPICE SERVICES TO THE ELIGIBLE PATIENT IN A
25 LICENSED HOSPICE FACILITY DURING THE PERIOD BEGINNING IN THE LAST
26 QUARTER OF THE 2020-21 STATE FISCAL YEAR THROUGH THE 2021-22
27 STATE FISCAL YEAR; AND

1 (III) COMPLIES WITH ANY BILLING OR ADMINISTRATIVE REQUESTS
2 OF THE STATE DEPARTMENT FOR PURPOSES OF DETERMINING ELIGIBILITY
3 FOR AND ADMINISTERING THE STATE PAYMENT.

4 (3) (a) WITHIN EXISTING APPROPRIATIONS FOR PURPOSES OF THIS
5 SECTION, THE STATE DEPARTMENT SHALL DISTRIBUTE A STATE PAYMENT
6 EQUAL TO ONE-HALF OF THE STATEWIDE AVERAGE PER DIEM RATE, AS
7 DEFINED IN SECTION 25.5-6-201, TO QUALIFIED HOSPICE PROVIDERS WHO
8 PROVIDE HOSPICE CARE IN A LICENSED HOSPICE FACILITY TO AN ELIGIBLE
9 PATIENT. THE STATE PAYMENT TO A QUALIFIED HOSPICE PROVIDER
10 PURSUANT TO THIS SECTION IS LIMITED TO NOT MORE THAN TWENTY-EIGHT
11 DAYS PER ELIGIBLE PATIENT. A QUALIFIED HOSPICE PROVIDER IS NOT
12 ENTITLED TO A STATE PAYMENT FOR AN ELIGIBLE PATIENT AND THE STATE
13 DEPARTMENT SHALL NOT MAKE ANY STATE PAYMENTS AFTER
14 APPROPRIATIONS ARE EXHAUSTED.

15 (b) THE STATE DEPARTMENT SHALL SEEK INPUT FROM QUALIFIED
16 HOSPICE PROVIDERS CONCERNING THE IMPLEMENTATION OF THIS SECTION,
17 INCLUDING HOW TO CONFIRM ELIGIBILITY FOR THE STATE PAYMENT, HOW
18 TO BILL FOR AND DISTRIBUTE THE STATE PAYMENT, HOW TO NOTIFY
19 QUALIFIED HOSPICE PROVIDERS WHEN STATE APPROPRIATIONS ARE
20 EXHAUSTED, AND WHETHER TO ALLOCATE OR APPORTION STATE
21 APPROPRIATIONS OVER A GEOGRAPHIC AREA OR OVER THE DURATION OF
22 THE STATE PAYMENT PERIOD TO ENSURE THAT RESIDENTIAL BEDS ARE
23 AVAILABLE FOR ELIGIBLE PATIENTS WHERE NEEDED OR FOR THE DURATION
24 OF THE STATE PAYMENT PERIOD.

25 (4) THE STATE BOARD MAY ADOPT ANY RULES NECESSARY TO
26 IMPLEMENT THIS SECTION.

27 (5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2022.

1 **SECTION 2. Appropriation.** For the 2020-21 state fiscal year,
2 \$684,000 is appropriated to the department of health care policy and
3 financing. This appropriation is from the general fund. To implement this
4 act, the department may use this appropriation for payments to qualified
5 providers pursuant to section 25.5-4-424 (3), C.R.S. Any money
6 appropriated in this section that is not expended prior to July 1, 2021, is
7 further appropriated to the department for the 2021-22 state fiscal year for
8 the same purpose.

9 **SECTION 3. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, or safety.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
3.23.21

DRAFT

LLS NO. 21-0858.01 Jacob Baus x2173

COMMITTEE BILL

Joint Budget Committee

BILL TOPIC: "Transfer Part C Early Intervention Evaluations"

A BILL FOR AN ACT

101 CONCERNING TRANSFERRING EARLY INTERVENTION EVALUATIONS
102 RESPONSIBILITIES BETWEEN STATE AGENCIES.

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://leg.colorado.gov/>.)

Joint Budget Committee. Part C of child find, part of the federal "Individuals with Disabilities Education Act", requires states to find, identify, locate, evaluate, and serve children with disabilities from birth through 2 years of age.

The bill transfers the responsibility of performing early intervention evaluations pursuant to part C of child find from the

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Dashes through the words indicate deletions from existing statute.*

department of education to the department of human services.

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

2 **SECTION 1.** In Colorado Revised Statutes, 22-20-103, **amend**
3 (4) introductory portion and (11) as follows:

4 **22-20-103. Definitions.** As used in this part 1, unless the context
5 otherwise requires:

6 (4) "Child find" means the program component of the IDEA that
7 requires states to find, identify, locate, evaluate, and serve all children
8 with disabilities, from birth to twenty-one years of age. ~~Specific~~
9 ~~responsibilities for child find are described in section 22-20-118.~~ Child
10 find includes:

11 (11) "Evaluation" means,

12 ~~(a) For purposes of part C child find, procedures used to~~
13 ~~determine a child's initial and continuing eligibility for part C child find,~~
14 ~~including but not limited to:~~

15 ~~(I) Determining the status of the child in each of the~~
16 ~~developmental areas;~~

17 ~~(II) Identifying the child's unique strengths and needs;~~

18 ~~(III) Identifying any early intervention services that might serve~~
19 ~~the child's needs; and~~

20 ~~(IV) Identifying priorities and concerns of the family and~~
21 ~~resources to which the family has access;~~

22 (b) for the purposes of part B child find, procedures used under
23 IDEA for children with disabilities to determine whether a child has a
24 disability and the nature and extent of special education and related
25 services that the child will need.

1 **SECTION 2.** In Colorado Revised Statutes, 22-20-104, **amend**
2 (1)(a) introductory portion and (1)(a)(III) as follows:

3 **22-20-104. Administration - advisory committee - rules.**

4 (1) (a) THE DEPARTMENT SHALL ADMINISTER this part 1. ~~shall be~~
5 ~~administered by the department.~~ Administration of this part 1 ~~shall~~
6 ~~include~~ INCLUDES the recommendation to the state board of reasonable
7 rules necessary to implement this part 1, including but not limited to:

8 (III) Procedures regarding the identification of children with
9 disabilities, including but not limited to ~~part C child find and part B child~~
10 ~~find activities. described in section 22-20-118;~~ ON OR AFTER JULY 1,
11 2021, PART C CHILD FIND IS ADMINISTERED BY THE DEPARTMENT OF
12 HUMAN SERVICES PURSUANT TO PART 7 OF ARTICLE 10.5 OF TITLE 27.

13 **SECTION 3.** In Colorado Revised Statutes, 22-20-114, **repeal**
14 (1)(a.5)(II) as follows:

15 **22-20-114. Funding of programs - legislative declaration.**

16 (1) Subject to the provisions of subsection (3) of this section, for the
17 2005-06 budget year and each budget year thereafter, the total amount
18 appropriated to the department for the payment of costs incurred by
19 administrative units for the provision of special education programs shall
20 be distributed to each administrative unit that provides educational
21 services for children with disabilities as follows:

22 (a.5) (II) ~~(A) For the 2008-09 budget year and for each budget~~
23 ~~year thereafter, a portion calculated pursuant to sub-subparagraph (B) or~~
24 ~~(C) of this subparagraph (II) of the total amount of state funds~~
25 ~~appropriated for the payment of costs incurred by administrative units for~~
26 ~~the provision of special education programs, to offset the costs incurred~~
27 ~~by administrative units in conducting child find activities under part C of~~

1 ~~IDEA pursuant to section 22-20-118 for children who are less than three~~
2 ~~years of age. For the 2008-09 budget year, the department shall allocate~~
3 ~~said moneys among administrative units based on the number of children~~
4 ~~less than three years of age who were evaluated in each administrative~~
5 ~~unit during the 2005-06 budget year and who are or may be eligible for~~
6 ~~early intervention services under part C of IDEA. For the 2009-10 budget~~
7 ~~year and for each budget year thereafter, the department shall allocate~~
8 ~~said moneys among administrative units based on the number of children~~
9 ~~less than three years of age who were evaluated in each administrative~~
10 ~~unit during the preceding budget year and who are or may be eligible for~~
11 ~~early intervention services under part C of IDEA.~~

12 ~~(B) For the 2008-09 budget year, the portion of the appropriation~~
13 ~~allocated pursuant to sub-subparagraph (A) of this subparagraph (H) shall~~
14 ~~be calculated as follows:~~

15 ~~(The dollar amount allocated per child less than three years~~
16 ~~of age who was evaluated in the 2005-06 budget year) x~~
17 ~~(the lesser of the rate of inflation, as defined in section~~
18 ~~22-55-102 (7), or the percentage change in the total state~~
19 ~~funds appropriated for the provision of special education~~
20 ~~services over the preceding budget year) x (the total~~
21 ~~number of children less than three years of age who were~~
22 ~~evaluated under part C of IDEA by administrative units in~~
23 ~~the 2005-06 budget year).~~

24 ~~(C) For the 2009-10 budget year and for each budget year~~
25 ~~thereafter, the portion of the appropriation allocated pursuant to~~
26 ~~sub-subparagraph (A) of this subparagraph (H) shall be calculated as~~
27 ~~follows:~~

1 ~~(The dollar amount allocated per child less than three years~~
 2 ~~of age who was evaluated under part C of IDEA in the~~
 3 ~~preceding budget year) x (the lesser of the rate of inflation,~~
 4 ~~as defined in section 22-55-102 (7), or the percentage~~
 5 ~~change in the total state funds appropriated for the~~
 6 ~~provision of special education services over the preceding~~
 7 ~~budget year) x (the total number of children less than three~~
 8 ~~years of age who were evaluated under part C of IDEA by~~
 9 ~~administrative units in the preceding budget year).~~

10 **SECTION 4.** In Colorado Revised Statutes, 27-10.5-103, **amend**
 11 (1) introductory portion and (1)(b) as follows:

12 **27-10.5-103. Duties of the executive director - rules -**
 13 **definition.** (1) In order to implement the provisions of this article
 14 ARTICLE 10.5, the executive director shall carry out the following duties,
 15 subject to available appropriations:

16 (b) Conduct appropriate part C child find activities as described
 17 in section 27-10.5-704. Part C child find activities conducted by the
 18 department shall include, but need not be limited to, EARLY
 19 INTERVENTION EVALUATIONS, case management, referral, transitions, and
 20 public education outreach and awareness of early intervention services.

21 **SECTION 5.** In Colorado Revised Statutes, 27-10.5-702, **amend**
 22 (17) and (18) as follows:

23 **27-10.5-702. Definitions.** As used in this part 7, unless the
 24 context otherwise requires:

25 (17) "Qualified early intervention service provider" or "qualified
 26 provider" means a person or agency, as defined by the department by rule
 27 in accordance with part C, who provides early intervention services OR

1 EARLY INTERVENTION EVALUATIONS and is listed on the registry of early
2 intervention service providers pursuant to section 27-10.5-708 (1)(a).

3 (18) "Service coordination" means the activities carried out by a
4 service coordinator to COORDINATE EVALUATION AND INTAKE ACTIVITIES,
5 assist, and enable an eligible child and the eligible child's family to
6 receive the rights, procedural safeguards, and services that are authorized
7 to be provided under the early intervention program.

8 **SECTION 6.** In Colorado Revised Statutes, 27-10.5-703, **amend**
9 (3)(c) and (3)(d) as follows:

10 **27-10.5-703. Early intervention services - administration -**
11 **duties of department - rules.** (3) In administering early intervention
12 services, the department shall have and perform the following duties:

13 (c) To ensure eligibility determination for a child with disabilities
14 from birth through two years of age, based in part on information
15 received concerning the screening and evaluation; ~~performed by an entity~~
16 ~~that conducts early intervention evaluations;~~

17 (d) To ensure that an individualized family service plan is
18 developed for infants and toddlers from birth through two years of age
19 who are eligible for early intervention services. The IFSP ~~shall~~ MUST be
20 developed in compliance with part C requirements, ~~and in coordination~~
21 ~~with part C child find evaluations or early intervention evaluations where~~
22 ~~applicable~~, including the mandatory IFSP meeting at which the family
23 receives information concerning the results of the INITIAL EARLY
24 INTERVENTION evaluation. The initial IFSP ~~shall~~ MUST be developed in
25 collaboration with a representative from the entity that participated in the
26 child's evaluation. The representative shall participate in the initial
27 meeting for the development of the child's IFSP.

1 **SECTION 7.** In Colorado Revised Statutes, **amend** 27-10.5-704
2 as follows:

3 **27-10.5-704. Child find - responsibilities - interagency**
4 **operating agreements - rules.** (1) The department shall have the
5 following responsibilities and duties for children from birth through two
6 years of age who are referred for early intervention services:

7 (a) To develop and implement, in coordination with community
8 centered boards, service agencies, governmental units, and the
9 departments of education, public health and environment, and health care
10 policy and financing, a statewide plan for public education, outreach, and
11 awareness efforts related to child find and the availability of early
12 intervention services;

13 (b) To ensure that referrals from the community are accepted and
14 families are assisted in connecting with the appropriate agency for intake
15 and case management services;

16 (c) To ensure that intake and case management services are
17 provided after a referral has been made by working with community
18 centered boards as the single entry point for a family into the
19 developmental disabilities system, as described in section 27-10.5-102
20 (3); ~~and~~

21 (d) To work with community centered boards, administrative
22 units, and the department of education to assist a child with disabilities as
23 he or she transitions from the developmental disabilities system into the
24 public education system at no later than three years of age as required by
25 IDEA;

26 ~~(2)~~ (e) To facilitate the implementation of early intervention
27 evaluations that are the responsibility of the department pursuant to this

1 part 7 and to implement an effective and collaborative system of early
2 intervention services, the department shall enter into any necessary
3 interagency operating agreements at the state level and the local level;
4 AND

5 ~~(3)~~ (f) To facilitate the implementation of part C child find and
6 early intervention evaluations, and the use of medicaid funds, the
7 department and entities that conduct early intervention evaluations may,
8 when appropriate, share information with the department of education,
9 the department of health care policy and financing, or other entities that
10 conduct early intervention evaluations, ~~or that offer child find services~~
11 ~~pursuant to section 22-20-118~~, so long as each department or local agency
12 acts in compliance with the federal "Health Insurance Portability and
13 Accountability Act of 1996", 42 U.S.C. sec. 1320d.

14 **SECTION 8.** In Colorado Revised Statutes, 27-10.5-707, **repeal**
15 (1)(a) as follows:

16 **27-10.5-707. Cooperation among state agencies - implementing**
17 **coordinated payment system - revisions to rules.** (1) The departments
18 of education, health care policy and financing, and public health and
19 environment shall cooperate with the department to implement the
20 provisions of this part 7 and each department shall:

21 (a) ~~Assign a representative in accordance with part C child find~~
22 ~~to advise and assist the department in the development and~~
23 ~~implementation of the early intervention services system;~~

24 **SECTION 9.** In Colorado Revised Statutes, **repeal** 22-20-118
25 and 27-10.5-703.5.

26 **SECTION 10. Effective date.** This act takes effect July 1, 2021.

27 **SECTION 11. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.