

/\* Colorado has passed laws dealing with insurance regulations, life insurance benefits; sex offender and prostitute testing; reporting and disease control; and home and community-based services. \*/

#### INSURANCE PART 11 UNFAIR COMPETITION - DECEPTIVE PRACTICES

10-3-1104. Unfair methods of competition and unfair or deceptive acts or practices. (1) (f) (V!) Inquiring about or making an investigation concerning, directly or indirectly, an applicant's, an insured's, or a beneficiary's sexual orientation in:

(A) An application for coverage; or

(B) Any investigation conducted in connection with an application for coverage;

(VII) Using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation;

(VIII) Using sexual orientation in the underwriting process or in the determination of insurability;

(IX) Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS by seeking counseling from health care professionals;

(X) Making adverse underwriting decisions on the basis of the existence of nonspecific blood code information received from the medical information bureau, but this prohibition shall not bar investigation in response to the existence of such nonspecific blood code as long as the investigation is conducted in accordance with the provisions of section 10-3-1104.5;

(XI) Reducing benefits under a health insurance policy by the addition of an exclusionary rider, unless such rider only excludes conditions which have been documented in the original underwriting application, original underwriting medical examination, or medical history of the insured, or which can be shown with clear and convincing evidence to have been caused by the medically documented excluded condition.

(m) Failure to make promptly a full refund or credit of all unearned premiums to the person entitled thereto upon termination of insurance coverage;

(n) Requiring or attempting to require or otherwise induce a health care provider, as defined in section 13-64-403 (12) (a), C.R.S., to utilize arbitration agreements with patients as a condition of providing medical malpractice insurance to such health care provider;

(o) Failure to comply with all the provisions of section 10-3-1104.5 regarding HIV testing;

(p) Violation of or noncompliance with any provision of part 13 of this article;

(q) Increasing the premiums unilaterally or decreasing the coverage benefits on renewal of a policy of insurance, increasing the premium on new policies, or failing to issue an insurance policy to barbers, cosmetologists, cosmeticians, manicurists, barbershops, or beauty salons, as regulated in

article 8 of title 12, C.R.S., regardless of the type of risk insured against, based solely on the decision of the general assembly to stop mandatory inspections of the places of business of such insureds.

(r) Advising an employer to arrange for or arranging for an employee or an employee's dependent to apply to a plan developed pursuant to the "Colorado Uninsurable Health Insurance Plan Act", under part 5 of article 8 of this title, for the purpose of separating such employee or employee's dependent from any group health coverage provided in connection with such employee's employment.

(s) /\*(Thru 1994)\*/ Certifying pursuant to section 10-16-107.2 or issuing, soliciting, or using a policy form, endorsement, or rider that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-2-212, 10-2-213, 10-3-1107, 10-3-1108, and 10-3-1109.

(s) /\*(1995+)\*/ Certifying pursuant to section 1016-107.2 or issuing, soliciting, or using a policy form, endorsement, or rider that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-2-704, 10-2-801, 10-2-804, 10-3-1107, 10-3-1108, and 10-3-1109.

(t) Certifying pursuant to section 104-419 or issuing, soliciting, or using a claims-made policy form, endorsement, or disclosure form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(u) Certifying pursuant to section 10-4-725 or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections 10-3-1107, 10-3-1108, and 10-3-1109.

(2) (d) Requests by a person that an applicant or insured take an HIV related test when such request has been prompted by either the health history or current condition of the applicant or insured or by threshold coverage amounts which are applied to all persons within the risk class, as long as such test is conducted in accordance with the provisions of section 10-3-1104.5.

10-3-1104.5. HIV testing - declaration - definitions - requirements for testing and limitations on disclosure of test results. (1) The general assembly declares that a balance must be maintained between the need for information by those conducting the business of insurance and the public's need for fairness in practices for testing for the human immunodeficiency virus, including the need to minimize intrusion into an individual's privacy and the need to limit disclosure of the results of such testing.

(2) As used in this section, unless the context otherwise requires:

(a) "AIDS" means acquired immunodeficiency syndrome.

(b) "Applicant" means the individual proposed for coverage.

(c) "HIV" means human immunodeficiency virus.

(d) "HIV infection" means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

(e) "HIV related test" means any laboratory test or series of tests for any virus, antibody, antigen, or etiologic agent whatsoever thought to cause or to indicate the presence of AIDS.

(f) "Person" means any individual, corporation, association, partnership, fraternal benefit society, or any other entity engaged in the insurance business, except insurance agents and brokers. Such term shall also include medical service plans and hospital service plans regulated under parts 1 and 3 of article 16 of this title and health maintenance organizations regulated under parts 1 and 4 of article 16 of this title. Such plans and health maintenance organizations shall be deemed to be engaged in the business of insurance for purposes of this section.

(3) No person shall request or require that an applicant submit to an HIV related test unless that person:

(a) Obtains the applicant's prior written informed consent; and

(b) Reveals, in the written consent form, and explains the use of the HIV related test result to the applicant and entities to whom test results may be disclosed pursuant to paragraphs (a) and (b) of subsection (4) of this section; and

(c) Provides the applicant with:

(I) Printed material prior to testing which contains factual information describing AIDS; its causes, symptoms, and transmission; and the tests used to detect HIV infection and what a person should do if the result of the HIV related test is positive; or

(II) Information on how to obtain relevant counseling from a qualified practitioner having extensive training and experience in addressing the fears, questions, and concerns of persons tested for HIV infection; and

(d) Administers the HIV related test based upon the following test protocol, as a minimum:

(I) Two positive ELISA tests and a western blot test with bands present at p24, p3 1, and either gp 4 1 or gp 160; or

(II) An equally reliable screening or confirmatory test protocol designated by the commissioner, with the approval of the department of health; and

(e) Discloses the results of testing in the manner prescribed by subsection (4) of this section.

(4) (a) On the basis of the applicant's written informed consent as specified in subsection (3) of this section, a person may disclose an individual applicant's HIV related test results to its reinsurers or to those contractually retained medical personnel, laboratories, and insurance affiliates, excluding agents and brokers, which are involved in underwriting decisions regarding the individual's application if disclosure is necessary to make underwriting decisions regarding such application.

(b) Other than the disclosures permitted by paragraph (a) of this subsection (4), no person shall disclose HIV related test results which identify the individual applicant with the test results obtained to anyone without first

obtaining separate written informed consent for such disclosure from the applicant; except that, if the result of the HIV related test of an applicant is positive or indeterminate, such person may report the test finding to the medical information bureau but only if a nonspecific blood test result code is used which does not indicate that the applicant was tested for HIV infection.

(c) Nothing in this subsection (4) shall be construed to prohibit reporting as required by the provisions of sections 25-4-1402, 25-4-1403, and 25-4-1405(8), C.R.S.

(5) A person shall notify the applicant in writing of an adverse underwriting decision based upon the results of such applicant's blood test but shall not disclose the specific results of such blood test to such applicant. The person shall also inform the applicant that the results of the blood test will be sent to the physician designated by the applicant at the time of application and that such physician should be contacted for information regarding the HIV related test. If a physician was not designated at the time of application, the person shall request that the applicant name a physician to whom a copy of the blood test can be sent.

(6) Notwithstanding any other provisions to the contrary, any person who fails to comply with all the provisions of this section regarding the disclosure of HIV related test results is guilty of a misdemeanor and, upon conviction thereon, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not less than six months nor more than twenty-four months, or both such fine and imprisonment.

10-7-113. Acceleration of benefits. (1) Any policy of life or endowment insurance or annuity contract or contract supplemental thereto may contain benefits providing for the acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable for an insured:

(a) Who is diagnosed with a terminal case of AIDS, as defined in section 10-3-1104.5 (2) (a), or with any other terminal illness, for health care expenses or for long-term care which is certified or ordered by a physician; or

(b) Upon the occurrence of a qualifying event, as defined by the policy or contract.

(2) For the purposes of this section, "long-term care" shall include but need not be limited to hospice care, adult day care, professional nursing care, medical care expenses, custodial nursing care, and nonnursing custodial care provided in a nursing home or at a residence of the insured.

(3) The commissioner may request filing, for information purposes, the premium rates or discount rates applied to an acceleration of life insurance or endowment or annuity benefits in advance of the time they would otherwise be payable for an insured.

CRIMINAL CODE

18-3-415. Acquired immune deficiency syndrome testing for persons charged with any sexual offense. Any adult or juvenile who is bound over for trial for any sexual offense involving sexual penetration as defined in section 18-3-401 (6), subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, or any person who is indicted for or is convicted of any such offense, shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome. The results of such test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If the person who is bound over for trial or who is indicted for or convicted of any such offense voluntarily submits to a blood test for the human immunodeficiency virus (HIV), the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

Theft of medical records or medical information - penalty.

## Offenses Relating to Morals

### PART 2

#### PROSTITUTION

18-7-201.5. Acquired immune deficiency syndrome testing for persons convicted of prostitution. Any person who is convicted of prostitution pursuant to section 18-7-201 shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome. The court shall order that such person shall pay the cost of such test as a part of the costs of the action. The results of such test shall be reported to the person tested and the district attorney. The district attorney shall keep the results of such test confidential unless the person is charged with a violation of section 18-7-201.7 or 18-7-205.7 and the results of such test indicate the presence of the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome.

18-7-201.7. Prostitution with knowledge of being infected with acquired immune deficiency syndrome. (1) Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse, as such terms are defined in section 18-7-201 (2), with any person not his spouse, in exchange for money or any other thing of value, and if such person has been tested for acquired immune deficiency syndrome pursuant to section 18-7-201.5 or 18-7-205.5 or otherwise, and the results of such test indicate the presence of the human immunodeficiency virus (HIV) which causes acquired immune deficiency

syndrome, such person commits prostitution with knowledge of being infected with acquired immune deficiency syndrome.

(2) Prostitution with knowledge of being infected with acquired immune deficiency syndrome is a class 5 felony.

18-7-205.5. Acquired immune deficiency syndrome testing for persons convicted of patronizing a prostitute. Any person who is convicted of patronizing a prostitute pursuant to section 18-7-205 shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome. The court shall order that such person shall pay the cost of such test as a part of the costs of the action. The results of such test shall be reported to the person tested and the district attorney. The district attorney shall keep the results of such test confidential unless the person is charged with a violation of section 18-7-201.7 or section 18-7-205.7 and the results of such test indicate the presence of the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome.

18-7-205.7. Patronizing a prostitute with knowledge of being infected with acquired immune deficiency syndrome. (1) Any person who performs any of the acts described in section 18-7-205 (1), with any person not his spouse, and if such person has been tested for acquired immune deficiency syndrome pursuant to section 18-7-201.5 or 18-7-205.5 or otherwise, and the results of such test indicate the presence of the human immunodeficiency virus (HIV) which causes acquired immune deficiency syndrome, such person commits patronizing a prostitute with knowledge of being infected with acquired immune deficiency syndrome.

(2) Patronizing a prostitute with knowledge of being infected with acquired immune deficiency syndrome is a class 6 felony.

Disease Control

PART 14

HIV INFECTION AND ACQUIRED IMMUNE DEFICIENCY SYNDROME

25-4-1401. Legislative declaration. The general assembly hereby declares that infection with human immunodeficiency virus, the virus which causes acquired immune deficiency syndrome (AIDS), referred to in this part 14 as "HIV", is an infectious and communicable disease that endangers the population of this state. The general assembly further declares that reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control; that efforts to control the disease should include public education, counseling, and voluntary testing; that restrictive enforcement measures should be used only when necessary to protect the public health; and that having AIDS or the HIV infection, being

presumed to have the HIV infection, or seeking testing for the presence of such infection should not serve as the basis for discriminatory actions or the prevention of access to services. The general assembly further declares that the purpose of this part 14 is to protect the public health and prevent the spread of said disease.

25-4-1402. Reports of HIV infection. (1) Every attending physician in this state shall make a report to the state or local department of health, in a form and within a time period designated by the state department of health, on every individual known by said physician to have a diagnosis of AIDS, HIV-related illness, or HIV infection, including death from HIV infection.

(2) All other persons treating a case of HIV infection in hospitals, clinics, sanitariums, penal institutions, and other private or public institutions shall make a report to the state or local department of health, in a form and within a time period designated by the state department of health, on every individual having a diagnosis of AIDS, HIV-related illness, or HIV infection, including death from HIV infection.

(3) Repealed, L. 90, p. 1314, 10. effective May 24, 1990.

25-4-1402.5. Exemption from reporting. (1) The reporting of the name, address, date of birth, or sex of research subjects with AIDS, HIV-related illness, or HIV infection to the state or local department of health pursuant to the provisions of sections 25-4-1402 and 25-4-1403 shall not be required of any researcher conducting a medical research study of HIV treatment or vaccine effectiveness or conducting basic biomedical research into the cellular mechanisms causing HIV infection or HIV-related disease pursuant to an approved research protocol. For the purposes of the research exemption authorized in this section, "approved research protocol" means any activity which has been reviewed and approved by the state board of health. The research exemption authorized in this section does not alter the reporting requirements of persons and researchers otherwise required to make reports when engaged in any treatment or testing outside the scope of or prior to enrollment in an approved research protocol. The research exemption authorized in this section does not alter the reporting requirement of persons otherwise required to make reports when engaged in any treatment or testing outside the scope of a research protocol and such exemption does not exempt the researcher from reporting other reportable diseases. The research exemption authorized in this section does not exempt medical researchers from meeting the requirements of section 25-4-1405 (5) to provide post-test counseling to infected enrolled research subjects and referral of such subjects to state or local departments of health for partner notification services.

(2) The state board of health shall approve research activities for the research reporting exemption specified in subsection (1) of this section based on evidence that the research activity for which an exemption is requested meets the eligibility requirements specified in subsection (3) of

this section.

(3) The state board of health shall grant the exemption specified in subsection (1) of this section, if the research activity meets all of the following criteria:

- (a) Is fully described by a research protocol;
  - (b) Is subject to review by and is governed by the federal department of health and human services;
  - (c) Has as the protocol objectives either: The investigation of the effectiveness of a medical therapy or vaccine in preventing infection or the progression of HIV-related disease; or basic medical research into the cellular mechanisms causing HIV infection or HIV-related disease;
  - (d) Is reviewed and approved by a duly constituted institutional review board in accordance with the regulations established by the secretary of the federal department of health and human services;
  - (e) The researcher has provided information that the research activity will be facilitated by an exemption specified in subsection (1) of this section; and
  - (f) Has been determined to have potential health benefits.
- (4) This section is repealed, effective July 1, 1994.

25-4-1403. Reports of positive HIV tests. All laboratories or persons performing laboratory tests for HIV shall report to the state department of health appropriate local department of health, in a form and within a time period designated by the state department of health, the name, date of birth, sex, and address of any individual whose specimen submitted for examination tests positive for HIV as defined by the state board of health. Such report all include the test results and the name and address of the attending physician and any other person or agency referring such positive specimen for testing.

25-4-1404. Use of reports. (1) The public health reports required to be submitted by sections 25-4-1402 and 25-4-1403 and records resulting from compliance with section 25-4-1405 (1) and held by the state or local department of health or any health care provider or facility, third-party payor, physician, clinic, laboratory, blood bank, or other agency shall be strictly confidential information. Such information shall not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except under any of the following circumstances:

- (a) Release may be made of such information for statistical purposes in a manner such that no individual person can be identified.
- (b) Release may be made of such information to the extent necessary to enforce the provisions of this part 14 and related rules and regulations concerning the treatment, control, and investigation of HIV infection by public health officials.
- (c) Release may be made of such information to medical personnel in a medical emergency to the extent necessary to protect the health or life of



the named party.

(d) An officer or employee of the local or state department of health may make a report of child abuse to agencies responsible for receiving or investigating reports of child abuse or neglect in accordance with the applicable provisions of the "Child Protection Act of 1987" set forth in part 3 of article 3 of title 19, C.R.S. However, in the event a report is made, only the following information shall be included in the report:

- (I) The name, address, and sex of the child;
- (II) The name and address of the person responsible for the child;
- (III) The name and address of the person who is alleged to be responsible for the suspected abuse or neglect, if known; and
- (IV) The general nature of the child's injury.

(3) Information regarding AIDS and HIV infection in medical records held by a facility that provides ongoing health care is considered medical information, not public health reports, and is protected from unauthorized disclosure as provided in section 18-4-412, C.R.S.

25-4-1405. Disease control by state and local health departments. (3) The state department of health shall develop and implement programs under which state and local health departments may perform the following tasks:

(5) It is the duty of every physician who, during the course of an examination, discovers the existence of HIV infection or who treats a patient for HIV infection to inform the patient of the interpretation of laboratory results and counsel the patient on measures for preventing the infection of others, prophylaxis and treatment of opportunistic infections, treatment to prevent progression of HIV infection, and the necessity of regular medical evaluation.

(7) (a), When investigating HIV infection, state and local health departments, within their respective jurisdictions, may inspect and have access to medical and laboratory records relevant to the investigation of HIV infection.

(b) (I) Notwithstanding the provisions of paragraph (a) of this subsection (7), any medical or laboratory records on enrolled research subjects of an approved research protocol and held by the researcher, as defined in section 25-4-1402.5, shall not be subject to review and inspection by state or local health departments. This paragraph (b) does not restrict review and inspection by state or local health departments of medical or laboratory records of enrolled research subjects held by the researcher when investigating conditions or diseases that are not exempt under section 25-4-1402.5 (1).

(11) This paragraph (b) is repealed, effective July 1, 1994.

(7.5) (a) When a public safety worker, emergency medical service provider, or staff member of a detention facility has been exposed to blood or other bodily fluid which there is a reason to believe may be infectious with HIV, state and local health departments within their respective jurisdictions may assist in evaluation and treatment of any involved persons by:

(I) Accessing information on the incident and any persons involved to determine whether a potential exposure to HIV occurred;

(11) Examining and testing such involved persons to determine HIV infec-

tion when the fact of an exposure has been established by the state or local health department;

(III) Communicating relevant information and laboratory test results on the involved persons to such persons attending physicians or directly to the involved persons if the confidentiality of such information and test results is acknowledged by the recipients and adequately protected, as determined by the state or local health department; and

(IV) Providing counseling to the involved persons on the potential health risks and treatment resulting from exposure.

(b) The employer of an exposed person shall ensure that relevant information and laboratory test results on the involved person are kept confidential. Such information and laboratory results are considered medical information and protected from unauthorized disclosure.

(8) (a) (I) Where a health care provider or a custodial employee of the department of corrections or the department of institutions is exposed to blood or other bodily fluids that may be infectious with HIV;

(IV) When the patient to be tested is sentenced to and in the custody of the department of corrections or is committed to the Colorado mental health institute at Pueblo and confined to the forensic ward or the minimum or maximum security ward of such institute;

(V) When a person is bound over for trial of a sexual offense as set forth in section 18-3-415, C.R.S., and is tested by a health care provider or facility other than one which exclusively provides HIV testing and counseling.

25-4-1405.5. Extraordinary circumstances - procedures. (I) The general assembly hereby finds, determines, and declares that the continued risk to the public health of the citizens of this state resulting from the presence and transmission of HIV infection warrants the implementation of controlled extraordinary measures to further the containment of HIV.

(2) (a) (I) The provision of confidential counseling and testing services for HIV is the preferred screening service for detection of HIV infection. However, the department shall, consistent with generally accepted practices for the protection of the public health and safety, conduct an anonymous counseling and testing program for persons considered to be at high risk for infection with HIV. Such program shall be conducted at selected HIV testing sites. The department may operate sites or contract through local boards of health to conduct such testing in conjunction with counseling and testing sites, subject to maintaining standards for performance set by the state board of health.

(II) The state board of health shall adopt rules specifying the performance standards for anonymous and confidential counseling and testing sites. Standards shall include, but are not limited to, performance standards for notifying and counseling HIV-infected persons and for partner notification.

(b) (I) The disclosure of an individual's name, address, phone number, or birth date shall not be required under the program as a condition of being tested to determine whether such person is infected with HIV. Any provision of this part 14 that requires or can be construed to require a person seeking

to be tested for HIV to disclose such information shall not apply to persons seeking to be tested at said test sites.

(11) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), the age and sex of a person seeking to be tested at the said test sites may be required. A person may provide personal identifying information after counseling, if the person volunteers to do so.

25-4-1406. Public health procedures for persons with HIV infection. (2) (c) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others, but only if the executive director or local director has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling or has received counseling by a qualified physician or health worker and continues to demonstrate behavior which endangers the health of others.

(3) If a person violates a cease and desist order issued pursuant to paragraph (c) of subsection (2) of this section and it is shown that the person is a danger to others, the executive director of the state department of health or the director of the local department of health may enforce the cease and desist order by imposing such restrictions upon the person as are necessary to prevent the specific conduct which endangers the health of others. Restrictions may include required participation in evaluative, therapeutic, and counseling programs. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least restrictive manner necessary to protect the public health. The executive director or the director issuing an order pursuant to this subsection (3) shall review petitions for reconsideration from the person affected by the order. Restriction orders issued by directors of local departments of health shall be submitted for review and approval of the executive director of the state department of health.

25-4-1409. Penalties. (1) Any attending physician or other health care provider required to make a report pursuant to section 25-4-1402 or any laboratory or person required to make a report pursuant to section 25-4-1403 who fails to make such a report commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

(2) Any physician or other health care provider, any officer or employee of the state department or a local department of health, or any person, firm, or corporation which violates section 25-4-1404 by releasing or making public confidential public health reports or by otherwise breaching the confidentiality requirements of said section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the

county jail for not less than six months nor more than twenty-four months, or by both such fine and imprisonment.

Colorado Medical Assistance Act  
SUBPART 3

HOME AND COMMUNITY-BASED SERVICES FOR PERSONS WITH HEALTH COMPLEXES RELATED TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

26-4-641. Short title - citation. This subpart 3 shall be comprised of sections 26-4-641 to 26-4-648 and may be cited as subpart 3. The title of this subpart 3 shall be known and may be cited as the "Home and Community-based Services for Persons with Health Complexes Related to Acquired Immune Deficiency Syndrome Act"

Source: Entire article R & RE, L. 91, p. 1850, 1, effective April 11.

26-4-642. Definitions. In addition to the definitions in section 26-4-603, used in this subpart 3, unless the context otherwise requires:

- (1) "AIDS" means acquired immune deficiency syndrome.
- (2) "ARC" means an AIDS-related complex which is defined by the centers for disease control of the United States public health service.
- (3) "Continuum of long-term care" shall include all the services listed ' section 26-4-645 and may include brief inpatient stays in a hospital or nursing facility.
- (4) "Hospice services" means a comprehensive program of palliative and supportive medical services for persons who are terminally ill. Hospice services may be provided in the individual's home on a routine or continuous basis. Such services are provided within a continuum of inpatient care and home care.
- (5) "Intensive supervision for foster care children with AIDS or ARC" means services provided by specially trained providers of care who provide twenty-four-hour care and supervision to foster care children with AIDS or ARC, as defined in this section, in a child-centered, family-like setting.
- (6) "Long-term-care eligible person" means a person who is determined to be:
  - (a) Eligible to receive services under sections 26-4-202, 26-4-203, 26-4-302, and 26-4-303; and
  - (b) In need of the level of care available in a nursing facility or in need of the level of care available in a hospital.

26-4-643. Administration. The provisions of this subpart 3 shall be administered by the state department.

26-4-644. Program established - financial eligibility. (1) In recognition of the social and economic benefits accruing from the maintenance of persons

with AIDS or ARC in their own homes, the general assembly hereby finds and declares that a program shall be implemented by the state department to provide the services set forth in section 26-4-645 to those persons with AIDS or ARC whose gross income does not exceed three hundred percent of the current federal supplemental security income benefit level, whose resources do not exceed the limit established by the state department for individuals receiving a mandatory minimum state supplementation of SSI benefits pursuant to section 26-2-204, and for whom a licensed physician certifies that such program provides an appropriate alternative to institutionalized care.

(2) Any person who accepts and receives services authorized under this subpart 3 shall pay to the state department, or to an agent or vendor designated by the state department, an amount which shall be the lesser of the person's gross income, minus the current standard of assistance for the old age pension program and cost of dependents and minus any amounts paid for private health or medical insurance, or the projected cost of services to be rendered to the person under the case plan. Such amount shall be reviewed and revised as necessary each time the case plan is reviewed.

26-4-645. Services for long-term-care eligible persons. (1) Subject to the provisions of this subpart 3, the home and community-based services program for persons with AIDS or ARC shall include the following continuum of long-term care services:

(a) (Deleted by amendment, L. 93, p. 1067, 14, effective June 3, 1993.)

(b) Personal care and homemaker services;

(c) (Deleted by amendment, L. 93, p. 1067, 14, effective June 3, 1993.)

(d) Adult day care services;

(e) (Deleted by amendment, L. 93, p. 1067, 14, effective June 3, 1993.)

(f) Private duty nursing services;

(g) Intensive supervision for foster care children with AIDS or ARC, which shall include the provision of medical supplies.

(2) A long-term-care eligible person receiving home and community-based services shall remain eligible for the services specified in sections 26-4-202, 26-4-203, 26-4-302, and 26-4-303, as applicable.

(3) 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. Case management services shall be reimbursed as an administrative -cost.

(4) 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 either the average individual Medicaid payment for like services for hospital care for clients needing a

hospital level of care or the average individual Medicaid payment for like services for nursing facility care for clients needing a nursing facility level of care, such client shall not be considered eligible for home and community based services.

(5) The location for the provision of home and community-based services shall be agreed upon by the AIDS or ARC client and the case management agency.

(6) The state department shall implement the provisions of subsection 1) of this section on a case-by-case basis as each service becomes available through approved providers.

(7) No service listed in subsection (1) of this section, except case management services, may be provided to an eligible person unless authorized pursuant to a case plan.

26-4-646. Duties of state department. (1) In addition to the duties set forth in section 26-4-610, the state department shall:

(a) Seek and utilize any available federal, state, or private funds which are available for carrying out the purposes of this subpart 3, including but not limited to Medicaid funds, pursuant to Title XIX of the federal "Social Security Act", as amended;

(b) Provide a system for reimbursement for services provided pursuant to this subpart 3, which system shall encourage cost containment;

(c) Conduct feasibility studies and pilot programs as the general assembly may from time to time direct to lessen medical costs, including Medicaid moneys, associated with persons with AIDS or ARC;

(d) Provide to the general assembly annually, on or before January 1, a complete cost comparison of the total state medical costs associated with persons with AIDS or ARC both under the waiver program and without the waiver program, and this comparison shall include not only the cost of home and community-based services but all other Medicaid costs, including but not limited to institutionalization, doctor's fees, medications, medical equipment and supplies, and other necessary related services.

(2) Prior to the submittal of the home and community-based services Medicaid waiver application for this subpart 3, the state department shall consult with the joint budget committee of the general assembly concerning the proposed number of clients to be served, the savings anticipated, and the costs associated with the implementation of this program.

26-4-647. Feasibility study - pilot program - payment of employee health insurance premiums for certain individuals with AIDS - repeal. (Repealed) Repealed, effective July 1, 1992.

26-4-648. Rules and regulations. The state board shall promulgate such rules and regulations, pursuant to article 4 of title 24, C.R.S., as are necessary to implement this subpart 3.