

**Second Regular Session**

**Sixty-second General Assembly**

LLS NO. 00-0424.01 Chris Forsyth

HOUSE BILL 00-1146

**STATE OF COLORADO**

BY REPRESENTATIVES Tochtrop, Coleman, Leyba, Mace

A BILL FOR AN ACT

101 CONCERNING THE EXPANSION OF PERSONAL NEEDS BENEFITS FOR  
102 MEDICAID RECIPIENTS, AND MAKING AN APPROPRIATION THEREFOR.

---

**Bill Summary**

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

Increases the categories of medicaid recipients eligible for personal needs benefits by including recipients receiving home- and community-based services. The recipients to be included are the elderly, blind, or disabled and persons with major mental illnesses. Provides that recipients will receive a basic minimum of \$50 monthly to spend on personal needs.

Increases and codifies the amount of personal needs benefits for recipients receiving home- and community-based services for persons with developmental disabilities. Provides that recipients will receive a basic minimum of \$50 monthly to spend on personal needs.

Consolidates the personal needs benefits for medicaid recipients into one statutory section.

Makes conforming amendments.

Makes an appropriation.

---

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

2 **SECTION 1.** 26-4-504 (1), (2) (a), (3), (4), (5), (6), (7), (8) (a),

3 (8) (b), and (8) (c), and the introductory portion to 26-4-504 (8) (d),

4 Colorado Revised Statutes, are amended to read:

1           **26-4-504. Personal needs benefits - amount - personal needs**  
2           **trust fund - funeral and burial expenses - penalty for illegal retention**  
3           **and use.** (1) (a) The state department, pursuant to its rules, ~~and~~

4           ~~regulations~~, shall have the authority to include in medical care benefits  
5           provided under this article reasonable amounts, IF A RECIPIENT IS NOT  
6           OTHERWISE ELIGIBLE FOR SUCH AMOUNTS FROM OTHER CATEGORIES OF  
7           PUBLIC ASSISTANCE, for the personal needs of any recipient receiving THE  
8           FOLLOWING:

- 9           (I) Nursing facility services; ~~or~~  
10          (II) SERVICES OF AN intermediate care ~~facilities~~ FACILITY for the  
11          mentally retarded;  
12          (III) HOME- AND COMMUNITY-BASED SERVICES FOR THE ELDERLY,  
13          BLIND, OR DISABLED;  
14          (IV) HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH  
15          DEVELOPMENTAL DISABILITIES; OR  
16          (V) HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH  
17          MAJOR MENTAL ILLNESSES.

18          ~~if the recipient is not otherwise eligible for such amounts from other~~  
19          ~~categories of public assistance, but~~

20          (b) Such amounts for personal needs PROVIDED IN PARAGRAPH (a)  
21          OF THIS SUBSECTION (1) shall not be less than the minimum amount  
22          provided for in subsection (2) of this section. Payments for funeral and  
23          burial expenses upon the death of a recipient may be provided under rules  
24          ~~and regulations~~ of the state department in the same manner as provided  
25          to recipients of public assistance as defined by section 26-2-103 (8).

26          (2) (a) The basic minimum amount payable TO OR RETAINED BY

1 AN INDIVIDUAL pursuant to PARAGRAPH (a) OF subsection (1) of this  
2 section for personal needs ~~to any recipient admitted to a nursing facility~~  
3 ~~or intermediate care facility for the mentally retarded~~ shall be fifty dollars  
4 monthly.

5 (3) (a) PERSONAL NEEDS FUNDS FOR RECIPIENTS OF HOME- AND  
6 COMMUNITY-BASED SERVICES, WHENEVER POSSIBLE, SHALL BE GIVEN  
7 DIRECTLY TO THE RECIPIENT FOR THE RECIPIENT TO MANAGE. IF A  
8 RECIPIENT OF HOME- AND COMMUNITY-BASED SERVICES IS NOT FULLY  
9 CAPABLE OF MANAGING HIS OR HER FUNDS, OR CHOOSES TO NOT MANAGE  
10 HIS OR HER FUNDS, AN ARRANGEMENT FOR THE MANAGEMENT OF THE  
11 FUNDS SHALL BE SET UP PURSUANT TO DEPARTMENT RULES OR THE FUNDS  
12 SHALL BE DEPOSITED IN A PERSONAL NEEDS TRUST FUND. All personal  
13 needs funds FOR RECIPIENTS OF NURSING FACILITY SERVICES OR THE  
14 SERVICES OF AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY  
15 RETARDED shall be held in trust by the nursing facility or intermediate  
16 care facility for the mentally retarded, or its designated trustee, separate  
17 and apart from any other funds of the facility or its designated trustee.  
18 The facility, the home- and community-based service provider, ANY  
19 TRUSTEE, OR ANY REPRESENTATIVE PAYEE shall deposit any personal  
20 needs funds of a resident in an amount of fifty or more dollars in an  
21 interest-bearing checking account or accounts or savings account or any  
22 combination thereof established to protect and separate the personal  
23 needs funds of the ~~patients~~ RECIPIENTS. Any interest earned on a  
24 resident's personal needs funds shall be credited to such account or  
25 accounts. In the event residents' personal needs funds are maintained in  
26 a pooled account, separate accountings shall be made for each resident's

1 share of the pooled account. Any personal needs funds of a resident in  
2 an amount less than fifty dollars shall be maintained in a  
3 non-interest-bearing account, an interest-bearing account, or a petty cash  
4 fund.

5 (b) At all times, the principal and all income derived from said  
6 principal in the ~~patient~~ personal needs trust fund shall remain the property  
7 of the participating ~~patients~~ RECIPIENTS, and the facility, THE HOME- AND  
8 COMMUNITY-BASED SERVICES PROVIDER, ~~or its designated~~ ANY trustee, OR  
9 ANY REPRESENTATIVE PAYEE is bound by all of the duties imposed by law  
10 upon fiduciaries in the handling of such fund. Those duties include but  
11 are not limited to providing notice to a resident when the resident's  
12 personal needs account accumulates two hundred dollars less than the  
13 federal supplemental security income resource limit for one person.

14 (c) The facility, THE HOME- AND COMMUNITY-BASED SERVICES  
15 PROVIDER, ~~or its designated~~ ANY trustee, OR ANY REPRESENTATIVE PAYEE  
16 shall post a surety bond in an amount to assure the security of all personal  
17 needs funds deposited in the patient personal needs trust fund or shall  
18 otherwise demonstrate to the satisfaction of the state department that the  
19 security of residents' personal needs funds is assured.

20 (d) Within sixty days after a resident's death, the facility, THE  
21 HOME- AND COMMUNITY-BASED SERVICES PROVIDER, ANY TRUSTEE, OR  
22 ANY REPRESENTATIVE PAYEE shall transfer the resident's personal needs  
23 funds and a final accounting of the funds to the person responsible for  
24 settling the resident's estate or, if there is none, to the resident's heirs in  
25 accordance with the provisions of title 15, C.R.S. Within fifteen days  
26 after receiving the funds, the executor, administrator, or other appropriate

1 representative of the resident's estate shall provide written notice to the  
2 state department regarding the receipt of the funds. Upon receipt of the  
3 notice, the state department may bring an action to recover the funds  
4 pursuant to the provisions of this article.

5 (4) The state department shall establish rules ~~and regulations~~  
6 concerning the establishment of a ~~patient~~ personal needs trust fund and  
7 procedures for the maintenance of a system of accounting for  
8 expenditures of each ~~patient's~~ RECIPIENT'S personal needs funds. The  
9 facility, THE HOME- AND COMMUNITY-BASED SERVICES PROVIDER, ANY  
10 TRUSTEE, OR ANY REPRESENTATIVE PAYEE shall use an accounting system  
11 that assures a complete and separate accounting of residents' personal  
12 needs funds based on generally accepted accounting principles and that  
13 precludes the commingling of a resident's personal needs funds with the  
14 facility's funds or the funds of any other person other than the personal  
15 needs funds of another resident. These rules ~~and regulations~~ shall  
16 provide that the ~~nursing facility, or intermediate care facility for the~~  
17 ~~mentally retarded;~~ THE HOME- AND COMMUNITY-BASED SERVICES  
18 PROVIDER, ANY TRUSTEE, OR ANY REPRESENTATIVE PAYEE shall maintain  
19 complete records of all receipts and expenditures involving the ~~patient~~  
20 personal needs trust fund, that all expenditures shall be approved by the  
21 ~~patient~~ RECIPIENT, legal custodian, guardian, or conservator prior to an  
22 expenditure, and that each ~~patient~~ RECIPIENT or such ~~patient's~~ RECIPIENT'S  
23 legal custodian, guardian, or conservator shall be given at least a quarterly  
24 accounting of the receipts and expenditures of such funds. In addition,  
25 the rules shall require that the person who maintains the ~~patient~~ personal  
26 needs trust fund ~~for the facility~~ and who is responsible for the deposit of

1 moneys into such trust fund shall deposit any personal needs funds  
2 received from a ~~patient~~ RECIPIENT or from the state department no later  
3 than sixty days after the receipt of such moneys.

4 (5) All ~~patient~~ personal needs trust funds shall be subject to audit  
5 by the state department. A record of a ~~patient's~~ RECIPIENT'S personal  
6 needs trust fund shall be kept by the facility, THE HOME- OR  
7 COMMUNITY-BASED SERVICE PROVIDER, OR ANY TRUSTEE for a period of  
8 three years from the date of the ~~patient's~~ RECIPIENT'S discharge from the  
9 facility or until such records have been audited by the state department,  
10 whichever occurs later.

11 (6) Any overpayment of personal needs funds to a ~~nursing~~ facility,  
12 ~~or an intermediate care facility for the mentally retarded,~~ A HOME- AND  
13 COMMUNITY-BASED SERVICES PROVIDER, ANY TRUSTEE, OR ANY  
14 REPRESENTATIVE PAYEE by the state department due to the omission,  
15 error, fraud, or defalcation of the ~~nursing~~ facility, ~~or intermediate care~~  
16 ~~facility for the mentally retarded,~~ THE HOME- AND COMMUNITY-BASED  
17 SERVICES PROVIDER, ANY TRUSTEE, OR ANY REPRESENTATIVE PAYEE or  
18 any shortage in an audited ~~patient~~ personal needs trust fund shall be  
19 recoverable by the state on behalf of the recipient in the same manner and  
20 following the same procedures as specified in section 26-4-403 (2) for an  
21 overpayment to a provider.

22 (7) Nothing in this section shall prevent a nursing facility  
23 SERVICES, ~~or~~ SERVICES OF AN intermediate care facility for the mentally  
24 retarded, OR HOME- AND COMMUNITY-BASED SERVICES ~~patient~~ RECIPIENT  
25 from excluding himself OR HERSELF from participation in the ~~patient~~  
26 personal needs trust fund.

1           (8) (a) It is unlawful for any person to knowingly fail to deposit  
2 personal needs funds received from a ~~patient~~ RECIPIENT or from the state  
3 department for a ~~patient's~~ RECIPIENT'S personal needs into the ~~patients'~~  
4 RECIPIENT'S personal needs trust fund OR THE RECIPIENT'S DESIGNATED  
5 ACCOUNT within sixty days after the receipt of such moneys or to  
6 knowingly apply, spend, commit, pledge, or otherwise use a ~~patient~~  
7 personal needs trust fund, or any other moneys paid by a ~~patient~~  
8 RECIPIENT or the state department for ~~patient~~ personal needs, for any  
9 purpose other than the personal needs of the ~~patient~~ RECIPIENT to  
10 purchase necessary clothing, incidentals, or other items of personal needs  
11 which are not reimbursed by any federal or state program. Deposit or use  
12 of personal needs funds, including the use of a petty cash fund for  
13 personal needs purposes, is not a violation of this section if such deposit  
14 or use is in substantial compliance with applicable regulations of the state  
15 department, nor shall sums later ordered repaid to the ~~patients'~~  
16 RECIPIENT'S personal needs trust fund as a result of an audit adjustment  
17 or a dispute related to a proration of ~~patient~~ RECIPIENT payment be  
18 determined to constitute a violation of this section.

19           (b) Any person who knowingly violates any of the provisions of  
20 this subsection (8) by failing to deposit personal needs funds within sixty  
21 days of the receipt of such moneys commits the crime of unlawful  
22 retention of ~~patient~~ personal needs funds. Any person who violates any  
23 of the provisions of this subsection (8) by applying, spending,  
24 committing, pledging, or otherwise using a ~~patient~~ personal needs trust  
25 fund for any purpose other than the purposes permitted by this subsection  
26 (8) commits the crime of unlawful use of a ~~patient~~ personal needs trust

1 fund.

2 (c) Unlawful retention of ~~patient~~ personal needs funds is a class  
3 misdemeanor. When a person commits unlawful retention of ~~patient~~  
4 personal needs funds twice or more within a period of six months without  
5 having been placed in jeopardy for the prior offense or offenses, unlawful  
6 retention of ~~patient~~ personal needs funds is a class 1 misdemeanor.

7 (d) Unlawful use of a ~~patient~~ personal needs trust fund is:

8 **SECTION 2. Repeal.** 26-4-631, Colorado Revised Statutes, is  
9 repealed as follows:

10 **26-4-631. Personal needs trust fund required.** ~~All personal~~  
11 ~~needs funds shall be held in trust by a residential facility authorized to~~  
12 ~~provide services pursuant to this subpart 2, or its designated trustee,~~  
13 ~~separate and apart from any other funds of the facility, in a checking~~  
14 ~~account or savings account or any combination thereof established to~~  
15 ~~protect and separate the personal needs funds of the clients. At all times,~~  
16 ~~the principal and all income derived from said principal in the personal~~  
17 ~~needs trust fund shall remain the property of the participating clients, and~~  
18 ~~the facility or its designated trustee is bound by all of the duties imposed~~  
19 ~~by law upon fiduciaries in the handling of such fund including accounting~~  
20 ~~for all expenditures from the fund.~~

21 **SECTION 3.** 26-4-103 (12) and (13), Colorado Revised Statutes,  
22 are amended to read:

23 **26-4-103. Definitions.** As used in this article, unless the context  
24 otherwise requires:

25 (12) ~~"Patient personal needs trust fund" means any fund or~~  
26 ~~account established by the nursing care facility or intermediate care~~

1 ~~facility or its agents, employees, or designees to manage the personal~~  
2 ~~needs funds of the facility's patients. "PERSONAL NEEDS FUNDS" MEANS~~  
3 ~~MONEYS RECEIVED BY ANY PERSON PURSUANT TO SECTION 26-4-504,~~  
4 ~~WHICH MONEYS ARE RECEIVED BY SAID PERSON TO PURCHASE NECESSARY~~  
5 ~~CLOTHING, INCIDENTALS, OR OTHER PERSONAL NEEDS ITEMS WHICH ARE~~  
6 ~~NOT REIMBURSED BY ANY FEDERAL OR STATE PROGRAM, OR ITEMS OF~~  
7 ~~VALUE, WHICH MONEYS OR ITEMS OF VALUE ARE IN ANY WAY~~  
8 ~~SURRENDERED TO THE MANAGEMENT OR CONTROL OF SAID FACILITY, ITS~~  
9 ~~AGENTS, EMPLOYEES, OR DESIGNEES.~~

10 (13) ~~"Personal needs funds" means moneys received by any~~  
11 ~~person admitted to a nursing care facility or intermediate care facility,~~  
12 ~~which moneys are received by said person to purchase necessary~~  
13 ~~clothing, incidentals, or other personal needs items which are not~~  
14 ~~reimbursed by any federal or state program, or items of value, which~~  
15 ~~moneys or items of value are in any way surrendered to the management~~  
16 ~~or control of said facility, its agents, employees, or designees.~~  
17 "PERSONAL NEEDS TRUST FUND" MEANS ANY FUND OR ACCOUNT  
18 ESTABLISHED TO MANAGE PERSONAL NEEDS FUNDS.

19 **SECTION 4.** 18-1-202 (7) (b) (II) (N), Colorado Revised  
20 Statutes, is amended to read:

21 **18-1-202. Place of trial.** (7) (b) (II) The provisions of  
22 subparagraph (I) of this paragraph (b) shall apply to the following  
23 offenses:

24 (N) Unlawful use of a ~~patient~~ personal needs trust fund, as  
25 defined in section 26-4-504, C.R.S.;

26 **SECTION 5. Appropriation.** In addition to any other

1 appropriation, there is hereby appropriated, out of any moneys in the  
2 general fund not otherwise appropriated, to the department of health care  
3 policy and financing, for the fiscal year beginning July 1, 2000, the sum  
4 of \_\_\_ dollars (\$ ) and \_\_\_ FTE, or so much thereof as may be  
5 necessary, for the implementation of this act.

6 **SECTION 6. Effective date.** This act shall take effect at 12:01  
7 a.m. on the day following the expiration of the ninety-day period after  
8 final adjournment of the general assembly that is allowed for submitting  
9 a referendum petition pursuant to article V, section 1 (3) of the state  
10 constitution; except that, if a referendum petition is filed against this act  
11 or an item, section, or part of this act within such period, then the act,  
12 item, section, or part, if approved by the people, shall take effect on the  
13 date of the official declaration of the vote thereon by proclamation of the  
14 governor.