SENATE BILL 23-298

BY SENATOR(S) Gardner and Roberts, Exum, Ginal, Kirkmeyer, Lundeen, Mullica, Pelton R., Priola, Will;
also REPRESENTATIVE(S) McCormick and Bockenfeld, Bird, Boesenecker, Bradley, Catlin, English, Epps, Hamrick, Jodeh, Joseph, Lindsay, Lukens, Michaelson Jenet, Ricks, Soper, Taggart, McCluskie.

CONCERNING ALLOWING CERTAIN PUBLIC HOSPITALS TO IMPROVE ACCESS TO HEALTH CARE THROUGH COLLABORATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** part 10 to article 1 of title 25.5 as follows:

PART 10
HOSPITAL COLLABORATION AGREEMENTS

25.5-1-1001. Hospital collaborative agreements - review of proposed collaborative agreements - immunity - legislative declaration - definitions - rules. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) (I) FRONTIER AND RURAL HOSPITALS CONTINUE TO STRUGGLE TO DELIVER HIGH-QUALITY, ACCESSIBLE, LOW-COST CARE DUE TO THE RISING COSTS OF MEDICATIONS, SUPPLIES, MEDICAL EQUIPMENT, AND CONTRACT LABOR;

(II) FRONTIER AND RURAL HOSPITALS ARE LARGELY INDEPENDENT, GOVERNMENTAL FACILITIES THAT ARE GOVERNED BY LOCAL COMMUNITY BOARDS;

(III) FRONTIER AND RURAL HOSPITALS ARE GENERALLY SEPARATED BY LARGE DISTANCES AND ARE CHALLENGED BY THE NEED TO PROVIDE ESSENTIAL SERVICES TO LOCAL COMMUNITIES DUE TO THE SPARSE POPULATION IN RURAL AREAS;

(IV) FRONTIER AND RURAL HOSPITALS ARE INCREASINGLY CHALLENGED BY COMPLEX REQUIREMENTS IMPOSED BY GOVERNMENT AND PRIVATE PAYERS THAT DISPROPORTIONATELY NEGATIVELY IMPACT THESE PROVIDERS AND UNNECESSARILY DRIVE-UP ADMINISTRATIVE COSTS; AND

(V) IN CASES WHERE THE STATE DEPARTMENT, THE DIVISION OF INSURANCE, IF APPLICABLE, AND THE ATTORNEY GENERAL APPROVE COLLABORATIVE ARRANGEMENTS, IT IS THE GENERAL ASSEMBLY'S INTENT TO PROVIDE PROTECTION TO FRONTIER AND RURAL HOSPITALS FROM CERTAIN ANTITRUST SCRUTINY THAT IMPEDES FRONTIER AND RURAL HOSPITALS FROM WORKING COLLABORATIVELY TO IMPROVE QUALITY, INCREASE ACCESS, AND REDUCE COSTS OF CARE TO THE COMMUNITIES THEY SERVE;

(b) (I) FORTY-SEVEN OF COLORADO'S SIXTY-FOUR COUNTIES INCLUDE RURAL AND FRONTIER COMMUNITIES YET CONTAIN ONLY TWELVE PERCENT OF COLORADO'S POPULATION;

(II) THIRTY-TWO COUNTIES ARE SERVED BY CRITICAL ACCESS HOSPITALS THAT HAVE TWENTY-FIVE OR FEWER BEDS AND ARE GENERALLY LOCATED MORE THAN THIRTY-FIVE MILES FROM THE NEXT CLOSEST HOSPITAL; ELEVEN COUNTIES LACK ANY HOSPITAL;

(III) THE SCARCITY OF NEARBY HOSPITALS CAUSES MANY RESIDENTS TO STRUGGLE TO FIND QUALITY, AFFORDABLE HEALTH CARE NEAR THEIR

HOMES;

(IV) FURTHER, MANY RESIDENTS IN COLORADO'S RURAL AND FRONTIER COMMUNITIES FOREGO PREVENTIVE AND BEHAVIORAL HEALTH CARE AND LACK COMPREHENSIVE OR SPECIALIZED CARE OR CHOICE IN HEALTH-CARE SERVICES, AND TWENTY-FOUR COUNTIES IN COLORADO ARE CONSIDERED MATERNAL CARE "DESERTS";

(V) WHERE HOSPITALS DO EXIST IN RURAL AND FRONTIER AREAS, THOSE HOSPITALS RECEIVE LOW REIMBURSEMENT RATES DUE TO A PREPONDERANCE OF GOVERNMENT PAYERS AND DECLINING LOCAL TAX DOLLARS, WHICH RESULTS IN A REDUCED AMOUNT OF MONEY AVAILABLE TO INVEST IN EXPANDING OR UPGRADING FACILITIES OR TO PURCHASE NECESSARY, NEW, OR INNOVATIVE MEDICAL SUPPLIES, EQUIPMENT, OR TECHNOLOGY;

(VI) MANY HOSPITALS IN RURAL AND FRONTIER COMMUNITIES HAVE DIFFICULTY RECRUITING AND RETAINING QUALIFIED HEALTH-CARE PROFESSIONALS AND MAKING AVAILABLE NEEDED SERVICES; AND

(VII) COUNTY PUBLIC HOSPITALS, HEALTH SERVICE DISTRICTS, AND HOSPITAL AFFILIATES PERFORM ESSENTIAL PUBLIC FUNCTIONS ON BEHALF OF THE STATE;

(c) AS PART OF THE GOVERNMENT'S INTEREST IN PROVIDING NEEDED HEALTH-CARE SERVICES IN COLORADO'S RURAL AND FRONTIER COMMUNITIES, IT IS IMPORTANT FOR THE GOVERNMENT TO SUPPORT EFFORTS TO FIND COLLABORATIVE, INNOVATIVE SOLUTIONS TO THE MANY PROBLEMS CONFRONTING RURAL HEALTH CARE, INCLUDING COLLABORATIVE OR COORDINATED ACTIVITIES THAT OFFER THE OPPORTUNITY TO EXPAND HEALTH-CARE OPTIONS THROUGH JOINT PURCHASING AND STAFFING, SHARED SERVICES, AND JOINT ACQUISITION OF NEW AND EXPENSIVE DIAGNOSTIC AND TREATMENT SOLUTIONS;

(d) IT IS THE GENERAL ASSEMBLY'S INTENT TO EXEMPT FROM STATE ANTITRUST LAWS, AND TO PROVIDE STATE ACTION IMMUNITY FROM FEDERAL ANTITRUST LAWS FOR CERTAIN ACTIVITIES THAT MIGHT BE CHARACTERIZED AS ANTICOMPETITIVE OR THAT MIGHT RESULT IN THE DISPLACEMENT OF COMPETITION IN THE PROVISION OF HOSPITAL, PHYSICIAN, OR OTHER HEALTH-CARE-RELATED SERVICES OR ADMINISTRATIVE OR GENERAL

BUSINESS SERVICES; AND

(e) IN ORDER TO PROMOTE IMPROVED QUALITY OF, INCREASE ACCESS TO, AND REDUCE COSTS OF HEALTH-CARE SERVICES IN RURAL AND FRONTIER COMMUNITIES THROUGH COLLABORATIVE AGREEMENTS AUTHORIZED BY THIS SECTION, THE GENERAL ASSEMBLY FURTHER INTENDS TO PROVIDE A SYSTEM OF REVIEW OF RELEVANT COLLABORATIVE AGREEMENTS BY THE STATE DEPARTMENT, THE DIVISION OF INSURANCE, IF APPLICABLE, AND THE ATTORNEY GENERAL TO ENSURE THAT ANY POTENTIAL BENEFITS OF SUCH COLLABORATIVE AGREEMENTS ARE NOT OUTWEIGHED BY THE HARM TO COMPETITION IN RURAL AND FRONTIER COMMUNITIES.

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

(a) "COLLABORATIVE AGREEMENT" MEANS AN AGREEMENT OR SIMILAR ARRANGEMENT BETWEEN TWO OR MORE HOSPITALS OR HOSPITAL AFFILIATES THAT COMPLIES WITH THE REQUIREMENTS SET FORTH IN THIS SECTION.

(b) "COUNTY PUBLIC HOSPITAL" MEANS A PUBLIC HOSPITAL ESTABLISHED PURSUANT TO SECTION 25-3-301.

(c) "DIVISION OF INSURANCE" MEANS THE DIVISION OF INSURANCE IN THE DEPARTMENT OF REGULATORY AGENCIES.

(d) "HEALTH SERVICE DISTRICT" HAS THE SAME MEANING AS SET FORTH IN SECTION 32-1-103 (9).

(e) "HOSPITAL" MEANS A FACILITY WITH FEWER THAN FIFTY BEDS THAT IS:

(I) A COUNTY PUBLIC HOSPITAL;

(II) A HOSPITAL ESTABLISHED, MAINTAINED, OR OPERATED DIRECTLY OR INDIRECTLY BY A HEALTH SERVICE DISTRICT; OR

(III) A HOSPITAL AFFILIATE.

(f) "HOSPITAL AFFILIATE" MEANS AN AFFILIATE OF A COUNTY PUBLIC

HOSPITAL OR HEALTH SERVICE DISTRICT THAT IS UNDER THE SOLE CONTROL OF THE COUNTY PUBLIC HOSPITAL OR HEALTH SERVICE DISTRICT.

(3) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, AND SUBJECT TO THE REQUIREMENTS IN SUBSECTIONS (5), (6), AND (7) OF THIS SECTION, A HOSPITAL IS AUTHORIZED TO ENTER INTO COLLABORATIVE AGREEMENTS WITH ONE OR MORE HOSPITALS OR HOSPITAL AFFILIATES TO ENGAGE IN THE FOLLOWING ACTIVITIES:

(a) ANCILLARY CLINICAL SERVICES, ACQUISITION OF EQUIPMENT, CLINIC MANAGEMENT, OR HEALTH-CARE PROVIDER RECRUITMENT;

(b) JOINT PURCHASING OR LEASING ARRANGEMENTS, INCLUDING THE JOINT PURCHASING OR LEASING OF:

(I) MEDICAL AND GENERAL SUPPLIES;

(II) MEDICAL AND GENERAL EQUIPMENT;

(III) PHARMACEUTICALS; OR

(IV) TEMPORARY STAFFING THROUGH A STAFFING AGENCY;

(c) CONSULTING SERVICES WITH A FOCUS ON PUBLIC HEALTH IN RURAL OR FRONTIER COMMUNITIES AND NON-HOSPITAL-SPECIFIC INNOVATIONS IN HEALTH-CARE DELIVERY IN THOSE COMMUNITIES;

(d) PURCHASING JOINT PROFESSIONAL, GENERAL LIABILITY, OR PROPERTY INSURANCE;

(e) SHARING BACK-OFFICE SERVICES, SUCH AS SHARING A BUSINESS OFFICE, ACCOUNTING AND FINANCE SERVICES, HUMAN RESOURCES, AND RISK MANAGEMENT AND COMPLIANCE SERVICES, BUT NOT INCLUDING SHARING SERVICE CHARGING EXPENSES OR RATES AMONG HOSPITALS;

(f) SHARING DATA SERVICES, INCLUDING SHARED SERVICES FOR ELECTRONIC HEALTH RECORDS AND DATA EXTRACTION AND ANALYSIS SERVICES, CHARGE MANAGEMENT, AND POPULATION HEALTH ANALYSIS; AND

(g) NEGOTIATING WITH HEALTH INSURANCE OR GOVERNMENT

PAYERS, WHICH NEGOTIATIONS ARE LIMITED TO:

(I) SHARED CARE PROTOCOLS INTENDED TO IMPROVE PATIENT MANAGEMENT AND OUTCOMES, INCLUDING IMPLEMENTATION OF EVIDENCE-BASED PROTOCOLS, CLINICAL PATHWAYS, AND RECOGNIZED BEST PRACTICES IN THE CARE AND TREATMENT OF PATIENTS, INCLUDING CLINICAL THERAPIES, NUTRITION, EXERCISE, DIAGNOSTIC TESTING, AND MEDICATION MANAGEMENT;

(II) COLLABORATIVE EFFORTS WITH PAYERS TO PROMOTE APPROPRIATE AND ESSENTIAL SERVICES TO BE PROVIDED IN THE LOCAL COMMUNITY;

(III) MANAGEMENT OF PRIOR AUTHORIZATION REQUESTS; AND

(IV) ANALYSIS OF AGGREGATE DATA TO COMPARE COSTS OF PROCEDURES AND TO ANALYZE PATIENT OUTCOMES.

(4) NOTWITHSTANDING ANY COLLABORATIVE AGREEMENTS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, THE IMMUNITY AND PROTECTIONS GRANTED TO HOSPITALS AND HOSPITAL AFFILIATES ENTERING INTO COLLABORATIVE AGREEMENTS PURSUANT TO THIS SECTION DOES NOT EXTEND TO COLLABORATIVE AGREEMENTS WITH ANOTHER HOSPITAL OR HOSPITAL AFFILIATE THAT HAVE THE EFFECT OF:

(a) SETTING REIMBURSEMENT RATES OR OTHER COMPENSATION FROM ANY COMMERCIAL SELF-INSURED OR COMMERCIAL HEALTH INSURANCE OR GOVERNMENT PAYER;

(b) DIVIDING OR ALLOCATING AMONG HOSPITALS OR HOSPITAL AFFILIATES SPECIFIC MARKETS FOR THE DELIVERY OF ANY GENERAL ACUTE CARE OR SPECIALTY LINES OF HEALTH-CARE SERVICES; OR

(c) NEGOTIATING OR AGREEING TO COMPENSATION UNDER HEALTH-CARE STAFFING ARRANGEMENTS FOR HOSPITAL EMPLOYEES THAT RESULTS IN A REDUCTION OF WAGES OF HOSPITAL STAFF, WHETHER EMPLOYED BY THE HOSPITAL, A STAFFING AGENCY, OR OTHER EMPLOYER.

(5) PRIOR TO ENGAGING IN ANY JOINT ACTIVITY DESCRIBED BY A PROPOSED COLLABORATIVE AGREEMENT EXECUTED PURSUANT TO

SUBSECTION (3) OF THIS SECTION, THE HOSPITALS OR HOSPITAL AFFILIATES SHALL JOINTLY SUBMIT THE PROPOSED COLLABORATIVE AGREEMENT TO THE STATE DEPARTMENT AND TO THE DIVISION OF INSURANCE, IF THE PROPOSED COLLABORATIVE AGREEMENT INCLUDES NEGOTIATING WITH HEALTH INSURANCE PAYERS AS DESCRIBED IN SUBSECTION (3)(g) OF THIS SECTION, PURSUANT TO RULES THAT MAY BE PROMULGATED FOR THE SUBMISSION AND REVIEW OF PROPOSALS BY THE STATE DEPARTMENT AND BY THE DIVISION OF INSURANCE, IF APPLICABLE. THE STATE DEPARTMENT AND THE DIVISION OF INSURANCE, IF APPLICABLE, MAY REQUEST ADDITIONAL INFORMATION NECESSARY TO REVIEW THE PROPOSAL.

(6) WITHIN FIFTEEN DAYS AFTER RECEIPT OF A PROPOSED COLLABORATIVE AGREEMENT AND THE RECEIPT OF ADDITIONAL INFORMATION REQUESTED BY THE STATE DEPARTMENT AND BY THE DIVISION OF INSURANCE, IF APPLICABLE, IF THE STATE DEPARTMENT AND THE DIVISION OF INSURANCE, IF APPLICABLE, CONCLUDE THAT A PROPOSED COLLABORATIVE ACTIVITY WILL RESULT IN COST SAVINGS OR OTHER EFFICIENCIES THAT WILL IMPROVE OR EXPAND THE DELIVERY OF HEALTH-CARE SERVICES IN RURAL AND FRONTIER COMMUNITIES IN COLORADO, THE STATE DEPARTMENT AND THE DIVISION OF INSURANCE, IF APPLICABLE, SHALL REFER THE PROPOSAL TO THE ATTORNEY GENERAL TO DETERMINE, PURSUANT TO RULES WHICH MAY BE PROMULGATED FOR SUCH PURPOSE, THAT THE BENEFITS OF THE COLLABORATIVE ACTIVITY ARE NOT OUTWEIGHED BY ANY ANTICOMPETITIVE HARM THAT MAY ARISE FROM THE COLLABORATIVE ACTIVITY.

(7) WITHIN FORTY-FIVE DAYS AFTER RECEIVING A REFERRAL AND REVIEW FROM THE STATE DEPARTMENT AND THE DIVISION OF INSURANCE, IF APPLICABLE, THE ATTORNEY GENERAL SHALL REVIEW THE PROPOSED COLLABORATIVE AGREEMENT AND EITHER APPROVE OR DENY THE PROPOSED COLLABORATIVE AGREEMENT OR REQUEST ADDITIONAL INFORMATION RELATED TO THE PROPOSAL. IF A REQUEST FOR ADDITIONAL INFORMATION IS MADE, THE ATTORNEY GENERAL HAS AN ADDITIONAL FORTY-FIVE DAYS TO COMPLETE THE REVIEW FOLLOWING RECEIPT OF THE REQUESTED INFORMATION.

(8) (a) A COLLABORATIVE AGREEMENT IS APPROVED IF:

(I) THE STATE DEPARTMENT AND THE DIVISION OF INSURANCE, IF APPLICABLE, CONCLUDE THAT THE PROPOSED COLLABORATIVE AGREEMENT

WILL RESULT IN IMPROVED QUALITY, INCREASED ACCESS OR COST SAVINGS, OR OTHER EFFICIENCIES THAT WILL IMPROVE OR EXPAND THE DELIVERY OF HEALTH-CARE SERVICES IN RURAL AND FRONTIER COMMUNITIES IN COLORADO; AND

(II) THE ATTORNEY GENERAL CONCLUDES THAT THE BENEFITS IDENTIFIED BY THE STATE DEPARTMENT AND BY THE DIVISION OF INSURANCE, IF APPLICABLE, ARE OUTWEIGHED BY ANY COMPETITIVE CONCERNS IDENTIFIED BY THE ATTORNEY GENERAL, OR THE ATTORNEY GENERAL DOES NOT RESPOND WITHIN THE TIME FRAMES SPECIFIED IN SUBSECTION (7) OF THIS SECTION.

(b) (I) EXCEPT AS PROVIDED IN SUBSECTION (8)(b)(III) OF THIS SECTION, IF A PROPOSED COLLABORATIVE AGREEMENT IS DENIED, THE HOSPITALS OR HOSPITAL AFFILIATES MAY REQUEST RECONSIDERATION BY RESUBMITTING THE PROPOSED AGREEMENT TO THE ATTORNEY GENERAL WITHIN THIRTY DAYS AFTER THE DENIAL ALONG WITH ADDITIONAL MATERIALS, INFORMATION, OR OTHER EVIDENCE THAT WAS NOT PREVIOUSLY SUBMITTED RELATING TO THE DETERMINATION OF THE BENEFITS OR ANTICOMPETITIVE HARM ASSOCIATED WITH THE PROPOSED COLLABORATIVE AGREEMENT.

(II) THE ATTORNEY GENERAL HAS FORTY-FIVE DAYS FROM THE DATE OF THE REQUEST TO RECONSIDER THE DENIAL AND MAY CONSULT WITH THE STATE DEPARTMENT AND THE DIVISION OF INSURANCE AS PART OF THE RECONSIDERATION. THE PROPOSED COLLABORATIVE AGREEMENT IS NOT DEEMED APPROVED IF THE ATTORNEY GENERAL FAILS TO RESPOND WITHIN THE FORTY-FIVE-DAY RECONSIDERATION PERIOD.

(III) A REQUEST FOR RECONSIDERATION OF A PROPOSED COLLABORATIVE AGREEMENT MAY BE MADE ONLY ONCE WITHIN THE THIRTY-DAY PERIOD FOLLOWING THE DENIAL OF THE PROPOSED COLLABORATIVE AGREEMENT. THE ATTORNEY GENERAL'S DECISION ON A PROPOSED COLLABORATIVE AGREEMENT THAT IS NOT SUBMITTED FOR RECONSIDERATION WITHIN THIRTY DAYS OR THAT IS DENIED UPON RECONSIDERATION IS FINAL AND NON-APPEALABLE.

(c) THE STATE DEPARTMENT, THE DIVISION OF INSURANCE, IF APPLICABLE, OR THE ATTORNEY GENERAL MAY REVIEW A COLLABORATIVE AGREEMENT ANNUALLY TO ENSURE THE OUTCOMES RELATED TO THE

COLLABORATIVE AGREEMENT ARE CONSISTENT WITH THIS SECTION.

SECTION 2. In Colorado Revised Statutes, **add** 25-3-304.5 as follows:

25-3-304.5. Hospital collaborative agreements - additional powers. IN ADDITION TO THE POWERS SPECIFIED IN SECTION 25-3-304, THE BOARD OF TRUSTEES OF A COUNTY PUBLIC HOSPITAL MAY ENTER INTO A COLLABORATIVE AGREEMENT WITH ANOTHER COUNTY PUBLIC HOSPITAL, HEALTH SERVICE DISTRICT, OR HOSPITAL AFFILIATE IN ACCORDANCE WITH SECTION 25.5-1-1001.

SECTION 3. In Colorado Revised Statutes, 32-1-1003, **add** (1)(c.5) as follows:

32-1-1003. Health service districts - additional powers. (1) In addition to the powers specified in section 32-1-1001, the board of any health service district has any or all of the following powers for and on behalf of such district:

(c.5) TO ENTER INTO A COLLABORATIVE AGREEMENT WITH ANOTHER HEALTH SERVICE DISTRICT, COUNTY PUBLIC HOSPITAL, OR HOSPITAL AFFILIATE IN ACCORDANCE WITH SECTION 25.5-1-1001.

SECTION 4. Appropriation. (1) For the 2023-24 state fiscal year, $30,260 is appropriated to the department of health care policy and financing for use by the executive director's office. This appropriation is from the healthcare affordability and sustainability fee cash fund created in section 25.5-4-402.4 (5)(a), C.R.S. To implement this act, the office may use this appropriation as follows:

(a) $26,385 for personal services, which amount is based on an assumption that the office will require an additional 0.8 FTE; and

(b) $3,875 for operating expenses.

(2) For the 2023-24 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive $30,259 in federal funds to implement this act, which amount is subject to the "(I)" notation as defined in the annual general appropriation

act for the same fiscal year. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) $26,384 for personal services; and

(b) $3,875 for operating expenses.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED Saturday June 3rd 2023 at 2:45 pm
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO