

CHAPTER 88

HEALTH CARE POLICY AND FINANCING

SENATE BILL 21-213

BY SENATOR(S) Moreno, Hansen, Rankin, Donovan, Pettersen;
also REPRESENTATIVE(S) McCluskie, Herod, Bennett, Bird, Duran, Esgar, Exum, Gonzales-Gutierrez, Hooton, Jackson, Jodeh,
Kipp, Lontine, Michaelson Jenet, Mullica, Ricks, Snyder, Titone, Young, Garnett.

AN ACT

CONCERNING THE INCREASED MONEY RECEIVED DUE TO THE FEDERAL "FAMILIES FIRST CORONAVIRUS RESPONSE ACT", AND, IN CONNECTION THEREWITH, MAKING AND REDUCING APPROPRIATIONS.

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

SECTION 1. In Colorado Revised Statutes, 25.5-3-108, **add** (20) as follows:

25.5-3-108. Responsibility of the department of health care policy and financing - provider reimbursement - repeal. (20) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FOR THE STATE FISCAL YEAR STARTING JULY 1, 2021, AND ANY SUBSEQUENT FISCAL YEARS, IF A PROVIDER SUBMITS A CERTIFICATION OF PUBLIC EXPENDITURES PURSUANT TO 42 CFR 433.51 (b), THE STATE DEPARTMENT SHALL RETAIN ANY FEDERAL MONEY PAYABLE AS REIMBURSEMENT FOR THE EXPENDITURE IN EXCESS OF FIFTY PERCENT OF THE EXPENDITURE AMOUNT; EXCEPT THAT THE STATE DEPARTMENT SHALL ONLY RETAIN THE FEDERAL MONEY BASED ON THE DATE OF SERVICE AS LONG AS THE INCREASED REIMBURSEMENTS AND PAYMENTS PURSUANT TO THE FEDERAL "FAMILIES FIRST CORONAVIRUS RESPONSE ACT", PUB.L. 116-127, ARE STILL AVAILABLE. THE STATE TREASURER SHALL TRANSFER SUCH MONEY TO THE GENERAL FUND CREATED IN SECTION 24-75-201 FOR APPROPRIATION TO THE STATE MEDICAL ASSISTANCE PROGRAM.

(b) THIS SUBSECTION (20) IS REPEALED, EFFECTIVE DECEMBER 31, 2024.

SECTION 2. In Colorado Revised Statutes, 25.5-4-402.4, **amend** (4)(a)(II.3), (5)(b)(VIII.3), and (6)(b)(I.5)(B) as follows:

25.5-4-402.4. Hospitals - healthcare affordability and sustainability fee -

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.

legislative declaration - Colorado healthcare affordability and sustainability enterprise - federal waiver - fund created - rules - reports - repeal.

(4) **Healthcare affordability and sustainability fee.** (a) For the fiscal year commencing July 1, 2017, and for each fiscal year thereafter, the enterprise is authorized to charge and collect a healthcare affordability and sustainability fee, as described in 42 CFR 433.68 (b), on outpatient and inpatient services provided by all licensed or certified hospitals, referred to in this section as "hospitals", for the purpose of obtaining federal financial participation under the state medical assistance program as described in this article 4 and articles 5 and 6 of this title 25.5, referred to in this section as the "state medical assistance program", and the Colorado indigent care program described in part 1 of article 3 of this title 25.5, referred to in this section as the "Colorado indigent care program". If the amount of healthcare affordability and sustainability fee revenue collected exceeds the federal net patient revenue-based limit on the amount of such fee revenue that may be collected, requiring repayment to the federal government of excess federal matching money received, hospitals that received such excess federal matching money shall be responsible for repaying the excess federal money and any associated federal penalties to the federal government. The enterprise shall use the healthcare affordability and sustainability fee revenue to:

(II.3) (A) For state fiscal years 2019-20, ~~and~~ 2020-21, AND ANY SUBSEQUENT FISCAL YEARS, AS LONG AS THE INCREASED REIMBURSEMENTS AND PAYMENTS PURSUANT TO THE FEDERAL "FAMILIES FIRST CORONAVIRUS RESPONSE ACT", PUB.L. 116-127, AND THE "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 116-260, ARE STILL AVAILABLE only, offset general fund expenditures for the state medical assistance program.

(B) This subsection (4)(a)(II.3) is repealed, effective December 31, ~~2021~~ 2024.

(5) **Healthcare affordability and sustainability fee cash fund.** (b) All money in the fund is subject to federal matching as authorized under federal law and, subject to annual appropriation by the general assembly, shall be expended by the enterprise for the following purposes:

(VIII.3) (A) For state fiscal years 2019-20, ~~and~~ 2020-21, AND ANY SUBSEQUENT FISCAL YEARS, AS LONG AS THE INCREASED REIMBURSEMENTS AND PAYMENTS PURSUANT TO THE FEDERAL "FAMILIES FIRST CORONAVIRUS RESPONSE ACT", PUB.L. 116-127, AND THE "AMERICAN RESCUE PLAN ACT OF 2021", PUB.L. 116-260, ARE STILL AVAILABLE only, and regardless of when this federal money is made available, the amount in excess of the fifty percent federal financial participation generated by increased reimbursements and payments appropriated for use in subsections (5)(b)(I) to (5)(b)(III) of this section pursuant to the federal "Families First Coronavirus Response Act", Pub.L. 116-127, or any amendment thereto, to offset general fund expenditures for the state medical assistance program.

(B) This subsection (5)(b)(VIII.3) is repealed, effective December 31, ~~2021~~ 2024.

(6) **Appropriations.** (b) If the revenue from the healthcare affordability and sustainability fee is insufficient to fully fund all of the purposes described in subsection (5)(b) of this section:

(1.5) (B) This subsection (6)(b)(I.5) is repealed, effective December 31, ~~2021~~ 2024.

SECTION 3. In Colorado Revised Statutes, 25.5-6-203, **amend** (2)(b)(VII) as follows:

25.5-6-203. Nursing facilities - provider fees - federal waiver - fund created - rules - repeal. (2) (b) (VII) (A) Notwithstanding any other provision of this subsection (2)(b), for state medicaid expenditures for state fiscal years 2019-20, ~~and~~ 2020-21, AND ANY SUBSEQUENT FISCAL YEARS, AS LONG AS THE INCREASED REIMBURSEMENTS AND PAYMENTS PURSUANT TO THE FEDERAL "FAMILIES FIRST CORONAVIRUS RESPONSE ACT", PUB.L. 116-127, ARE STILL AVAILABLE only, and regardless of when this federal money is made available, money in the fund may be used to offset general fund expenditures in the medicaid program in an equivalent amount that would have been in excess of the fifty percent federal financial participation generated by increased reimbursements and payments appropriated for use in subsections (2)(b)(I) to (2)(b)(V) of this section pursuant to the federal "Families First Coronavirus Response Act", Pub.L. 116-127, or any amendment thereto, or any other federal law that increases federal financial participation above the federal financial participation percentage in effect prior to the increase in federal financial participation provided through the federal "Families First Coronavirus Response Act". The state treasurer shall transfer such amount to the general fund for the state medicaid program.

(B) This subsection (2)(b)(VII) is repealed, effective December 31, ~~2021~~ 2024.

SECTION 4. In Colorado Revised Statutes, 23-18-304, **amend** (1)(c)(II) as follows:

23-18-304. Funding for specialty education programs - area technical colleges - local district colleges - repeal. (1) (c) (II) (A) Notwithstanding the provisions of subsection (1)(a)(I) of this section for the 2019-20, ~~and~~ 2020-21, AND ANY SUBSEQUENT state fiscal years, AS LONG AS THE INCREASED REIMBURSEMENTS AND PAYMENTS PURSUANT TO THE FEDERAL "FAMILIES FIRST CORONAVIRUS RESPONSE ACT", PUB.L. 116-127, ARE STILL AVAILABLE, the appropriations to the university of Colorado for fee-for-service contracts for the services provided pursuant to subsection (1)(c)(I) of this section are reduced by the amount of the federal participation received that exceeds fifty percent pursuant to the federal "Families First Coronavirus Response Act", Pub.L. 116-127, or any amendment thereto.

(B) This subsection (1)(c)(II) is repealed, effective December 31, ~~2021~~ 2024.

SECTION 5. Appropriation - adjustments to 2021 long bill. (1) To implement this act, appropriations made in the annual general appropriation act for the 2021-22 state fiscal year to the department of health care and policy and financing are adjusted as follows:

(a) The general fund appropriation, which is subject to the "(M)" notation as defined in the annual general appropriation act for the same fiscal year, for medical services premiums is decreased by \$57,330,334;

(b) The appropriation for medical services premiums is reduced by \$10,231,185. This appropriation is from reappropriated funds received from the department of higher education under subsection (2)(b) of this section;

(c) The appropriation for medical services premiums is increased by \$57,330,334, which consists of \$53,694,293 from the healthcare affordability and sustainability fee cash fund created in section 25.5-4-402.4 (5)(a), C.R.S., and \$3,636,041 from the Medicaid nursing facility cash fund created in section 25.5-6-203 (2)(a), C.R.S.; and

(d) The decrease of the appropriation in subsection (1)(b) of this section is based on the assumption that the anticipated amount of federal funds received for the 2021-22 state fiscal year by the department of health care policy and financing for medical services premiums will decrease by \$13,127,686.

(2) To implement this act, appropriations made in the annual general appropriation act for the 2021-22 state fiscal year to the department of higher education are adjusted as follows:

(a) The general fund appropriation for fee-for-service contracts with state institutions for specialty education programs is decreased by \$10,231,185; and

(b) The appropriation for the regents of the university of Colorado is reduced by \$10,231,185. This appropriation is from reappropriated funds received from the department of higher education under subsection (2)(a) of this section.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: May 4, 2021