

CHAPTER 293

HUMAN SERVICES - MENTAL HEALTH

SENATE BILL 04-065

BY SENATOR(S) Keller, Arnold, Fitz-Gerald, Gordon, Groff, Hanna, Isgar, Phillips, Sandoval, Tapia, Taylor, Teck, Tupa, and Windels;
also REPRESENTATIVE(S) Larson, Coleman, Berry, Boyd, Carroll, Frangas, Jahn, Johnson R., Madden, McGihon, Merrifield, Mitchell, Paccione, Romanoff, Stafford, Tochtrop, and Williams S.

AN ACT

CONCERNING THE "CHILD MENTAL HEALTH TREATMENT ACT", AND MAKING AN APPROPRIATION THEREWITH.

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

SECTION 1. 27-10.3-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

27-10.3-103. Definitions. As used in this article, unless the context otherwise requires:

(3.5) "MASTER SETTLEMENT AGREEMENT" MEANS THE MASTER SETTLEMENT AGREEMENT, THE SMOKELESS TOBACCO MASTER SETTLEMENT AGREEMENT, AND THE CONSENT DECREE APPROVED AND ENTERED BY THE COURT IN THE CASE DENOMINATED *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, CASE NO. 97 CV 3432, IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER.

SECTION 2. The introductory portion to 27-10.3-105 (1) and 27-10.3-105 (2), Colorado Revised Statutes, are amended to read:

27-10.3-105. Monitoring - report. (1) On or before September 1, ~~2002~~ 2004, AND BY SEPTEMBER 1 OF EACH YEAR THEREAFTER, each mental health agency shall report to the state department the following information:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) On or before December 1, ~~2002~~ 2004, AND BY DECEMBER 1 OF EACH YEAR THEREAFTER, the state department shall report the aggregate, statewide information received pursuant to subsection (1) of this section to the members of the general assembly.

SECTION 3. 27-10.3-106, Colorado Revised Statutes, is amended to read:

27-10.3-106. Funding - rules - child mental health treatment act fund. (1) In order to make mental health treatment available, it is the intent of the general assembly that mental health treatment provided pursuant to this article to each child described in section 27-10.3-103 (1) who is eligible for medicaid based on the child's placement in a residential child care facility pursuant to section 26-4-527, C.R.S., and who is determined to be eligible for supplemental security income by the federal social security administration, be provided by mental health agencies.

(2) If neither the family's private insurance nor federal medicaid funding cover all of the costs associated with the services provided to a child at risk of out-of-home placement pursuant to this article, then the family shall be responsible for paying that portion that is not covered by private insurance or federal medicaid funding on a sliding scale basis as set forth in subsection (3) of this section. Any remaining portion of the services not covered by private insurance, federal medicaid funding, or the family's share, shall be paid for from ~~general fund moneys, subject to available appropriations~~ MONEYS APPROPRIATED TO THE CHILD MENTAL HEALTH TREATMENT FUND, CREATED IN SUBSECTION (4) OF THIS SECTION.

(3) The state board of human services, in consultation with the department of health care policy and financing, shall promulgate rules implementing a sliding scale for the payment of services, including mental health treatment and room and board, that are not covered by private insurance or federal medicaid funding. It is the intent of the general assembly that the portion of such expenses paid from ~~general fund moneys shall not exceed the general fund~~ THE CHILD MENTAL HEALTH TREATMENT FUND SHALL NOT EXCEED appropriations made for such purpose in any given fiscal year. It is the further intent of the general assembly that subsidies provided by the state through ~~general fund moneys~~ THE CHILD MENTAL HEALTH TREATMENT FUND shall be used to assist the lowest income families.

(4) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE CHILD MENTAL HEALTH TREATMENT FUND, REFERRED TO IN THIS SUBSECTION (4) AS THE "FUND". ALL MONEYS COLLECTED PURSUANT TO THIS SUBSECTION (4) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND. THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THIS ARTICLE.

(b) (I) IF AN AMOUNT IS APPROPRIATED FROM THE MONEYS RECEIVED BY THE STATE PURSUANT TO THE MASTER SETTLEMENT AGREEMENT TO THE FITZSIMONS TRUST FUND AS OF JUNE 30, 2004, FOR FISCAL YEAR 2004-05 PURSUANT TO SECTION 23-20-136 (3.5) (a), C.R.S., THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE FUND THE DIFFERENCE BETWEEN THE LESSER OF EIGHT MILLION DOLLARS OR EIGHT PERCENT OF THE TOTAL AMOUNT RECEIVED BY THE STATE PURSUANT TO THE MASTER

SETTLEMENT AGREEMENT, OTHER THAN ATTORNEY FEES AND COSTS, DURING THE PRECEDING FISCAL YEAR AND THE AMOUNT ACTUALLY APPROPRIATED FROM THE TOBACCO LITIGATION SETTLEMENT CASH FUND TO THE FITZSIMONS TRUST FUND PURSUANT TO SECTION 23-20-136 (3.5) (a), C.R.S.; EXCEPT THAT THE AMOUNT APPROPRIATED TO THE FUND SHALL NOT EXCEED ONE MILLION SIX HUNDRED THOUSAND DOLLARS.

(II) IF THE STATE RECEIVES MONEYS PURSUANT TO THE MASTER SETTLEMENT AGREEMENT BUT AN AMOUNT IS NOT APPROPRIATED FROM SAID MONEYS TO THE FITZSIMONS TRUST FUND PURSUANT TO SECTION 23-20-136 (3.5) (a), C.R.S., AS OF JUNE 30, 2004, FOR FISCAL YEAR 2004-05, THEN AT THE END OF THE 2003-04 FISCAL YEAR, BUT PRIOR TO ANY TRANSFER OF MONEYS FROM THE TOBACCO LITIGATION SETTLEMENT CASH FUND TO THE TOBACCO LITIGATION SETTLEMENT TRUST FUND AT THE END OF THE FISCAL YEAR AS REQUIRED BY SECTION 24-22-115 (1) (f), C.R.S., THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE FUND ONE MILLION SIX HUNDRED THOUSAND DOLLARS, OR SO MUCH THEREOF AS MAY BE AVAILABLE, FROM ALL UNEXPENDED AND UNENCUMBERED MONEYS AND ALL MONEYS NOT APPROPRIATED FOR THE 2004-05 FISCAL YEAR THAT REMAIN IN THE TOBACCO LITIGATION SETTLEMENT CASH FUND AFTER THE TRANSFER OF MONEYS TO THE GENERAL FUND FOR APPROPRIATION TO THE TONY GRAMPSAS YOUTH SERVICES PROGRAM CREATED AND EXISTING PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 20.5 OF TITLE 25, C.R.S., AS REQUIRED IN SECTION 24-22-115 (1) (e), C.R.S.

(c) ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSES OF THIS ARTICLE MAY BE INVESTED BY THE STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND.

(d) ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

SECTION 4. 27-10.3-108, Colorado Revised Statutes, is amended to read:

27-10.3-108. Repeal of article. This article is repealed, effective July 1, ~~2004~~ 2009.

SECTION 5. 24-22-115 (1), Colorado Revised Statutes, is amended to read:

24-22-115. Tobacco litigation settlement cash fund - creation. (1) (a) There is hereby created in the state treasury the tobacco litigation settlement cash fund. The cash fund shall consist of all moneys transmitted to the state treasurer in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett & Myers, Inc.; Lorillard Tobacco Co., Inc.; Philip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research--U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver other than moneys credited to the tobacco litigation settlement trust fund pursuant to section 24-22-115.5.

(b) Except as provided in subsection (2) of this section, at the end of the 2003-04 fiscal year and at the end of each succeeding fiscal year, but prior to the making of any transfer of moneys from the cash fund to the tobacco litigation settlement trust fund at the end of the fiscal year as required by PARAGRAPH (f) OF this subsection (1), the general assembly may transfer unexpended and unencumbered moneys and moneys not appropriated for the following year to the state general fund, and such moneys that are transferred may be appropriated by the general assembly to make lease payments pursuant to section 24-82-1102.

(c) Except as provided in subsection (2) of this section, all interest derived from the deposit and investment of moneys in the cash fund shall be credited to the cash fund; except that, beginning with the fiscal year 2001-02, and each fiscal year thereafter, all interest derived from the deposit and investment of moneys in the cash fund shall be credited to the breast and cervical cancer prevention and treatment fund created pursuant to section 26-4-532, C.R.S.

(d) Except as provided in subsection (2) of this section, all moneys in the cash fund shall be subject to appropriation by the general assembly for such purposes as may be authorized by law in accordance with the terms of the settlement agreements and the consent decree.

(e) (I) (A) Except as provided in subsection (2) of this section, at the end of the 2003-04 fiscal year, but prior to the making of any transfer of moneys from the cash fund to the tobacco litigation settlement trust fund at the end of the fiscal year as required by PARAGRAPH (f) OF this subsection (1), the lesser of fifty percent of all unexpended and unencumbered moneys and all moneys not appropriated for the 2004-05 fiscal year in the cash fund or seven million five hundred ninety-four thousand eight hundred sixteen dollars shall be transferred from the cash fund to the general fund and continuously appropriated for the implementation of the Tony Grampsas youth services program created and existing pursuant to part 2 of article 20.5 of title 25, C.R.S.

(B) AT THE END OF THE 2003-04 FISCAL YEAR, IF THE GENERAL ASSEMBLY APPROPRIATES MONEYS TO THE CHILD MENTAL HEALTH TREATMENT FUND FOR THE 2004-05 FISCAL YEAR PURSUANT TO SECTION 27-10.3-106 (4) (b) (I), C.R.S., THE AMOUNT TRANSFERRED TO THE GENERAL FUND AND CONTINUOUSLY APPROPRIATED FOR THE IMPLEMENTATION OF THE TONY GRAMPSAS YOUTH SERVICES PROGRAM PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) SHALL BE INCREASED BY AN AMOUNT EQUAL TO FIFTY PERCENT OF THE AMOUNT APPROPRIATED TO THE CHILD MENTAL HEALTH TREATMENT FUND PURSUANT TO SECTION 27-10.3-106 (4) (b) (I), C.R.S.; EXCEPT THAT THE TOTAL AMOUNT TRANSFERRED TO THE GENERAL FUND AND CONTINUOUSLY APPROPRIATED FOR THE IMPLEMENTATION OF THE TONY GRAMPSAS YOUTH SERVICES PROGRAM PURSUANT TO THE PROVISIONS OF THIS SUBPARAGRAPH (I) SHALL NOT EXCEED SEVEN MILLION FIVE HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED SIXTEEN DOLLARS.

(II) Except as provided in subsection (2) of this section, at the end of the 2004-05 fiscal year and at the end of each succeeding fiscal year, but prior to the making of any transfer of moneys from the cash fund to the tobacco litigation settlement trust fund at the end of the fiscal year as required by PARAGRAPH (f) OF this subsection (1), the lesser of fifty percent of all unexpended and unencumbered moneys and all

moneys not appropriated for the following fiscal year in the cash fund or seven million five hundred ninety-four thousand eight hundred sixteen dollars shall be transferred from the cash fund to the general fund and continuously appropriated for the implementation of the Tony Grampsas youth services program created and existing pursuant to part 2 of article 20.5 of title 25, C.R.S.

(f) Except as provided in subsection (2) of this section AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 27-10.3-106 (4) (b) (II), C.R.S., FOR THE CHILD MENTAL HEALTH TREATMENT FUND, at the end of any fiscal year, all unexpended and unencumbered moneys and all moneys not appropriated for the following fiscal year in the cash fund shall be transferred to the tobacco litigation settlement trust fund.

SECTION 6. Appropriations - adjustments to the 2004 long bill. (1) In addition to any other appropriation, there is hereby appropriated, to the department of human services, mental health and alcohol and drug abuse services, child mental health treatment fund, for the fiscal year beginning July 1, 2004, the sum of one million six hundred thousand dollars (\$1,600,000), pursuant to section 27-10.3-106 (4) (b) (I), Colorado Revised Statutes. Said sum shall be from the tobacco litigation settlement cash fund created pursuant to section 24-22-155 (1), Colorado Revised Statutes.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of public health and environment, prevention services division, Tony Grampsas youth services program, prevention services programs, for the fiscal year beginning July 1, 2004, the sum of eight hundred thousand dollars (\$800,000), pursuant to section 24-22-115 (1) (e) (I) (B), Colorado Revised Statutes. Said sum shall be from the tobacco litigation settlement cash fund created pursuant to section 24-22-155 (1), Colorado Revised Statutes.

(3) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing, for the fiscal year beginning July 1, 2004, shall be adjusted as follows:

(a) The appropriation for department of human services medicaid-funded programs, mental health and alcohol and drug abuse services - medicaid funding, mental health community programs, residential treatment for youth, is increased by two hundred twenty-four thousand seven hundred forty-five dollars (\$224,745). Said sum shall be cash funds exempt from the child mental health treatment fund created pursuant to section 27-10.3-106 (4) (a), Colorado Revised Statutes. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2004, the department of health care policy and financing will receive the sum of two hundred twenty-four thousand seven hundred forty-six dollars (\$224,746) in federal funds. Although the federal funds are not appropriated in this act, they are noted for the purpose of indicating the assumptions used relative to these funds in developing the state appropriation amounts.

(4) For the implementation of this act, appropriations made in the annual general appropriation act to the department of human services, for the fiscal year beginning July 1, 2004, shall be adjusted as follows:

(a) The appropriation for mental health and alcohol and drug abuse services,

mental health community programs, residential treatment for youth, is increased by five hundred fifty-nine thousand seven hundred thirty-nine dollars (\$559,739). Of said sum, one hundred ten thousand two hundred forty-eight dollars (\$110,248) shall be cash funds exempt from the child mental health treatment fund created pursuant to section 27-10.3-106(4)(a), Colorado Revised Statutes and four hundred forty-nine thousand four hundred ninety-one dollars (\$449,491) shall be cash funds exempt received from the department of health care policy and financing out of the appropriation made in subsection (3) of this section.

SECTION 7. Effective date. This act shall take effect upon passage; except that sections 3, 5, and 6 of this act shall not take effect if House Bill 04-1421 is enacted during the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 27, 2004