

SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Ball and Daugherty

1 Amend reengrossed bill, page 3, after line 16 insert:

2 "SECTION 3. In Colorado Revised Statutes, 25.5-4-402.4,
3 **amend** (2)(f), (3)(d)(I), (3)(d)(V), (4)(b) introductory portion, (4)(b)(II),
4 (5)(a), (5)(b)(VI)(B), (6)(a)(I), (6)(b)(II), and (6)(c); **amend as they will**
5 **become effective July 1, 2025**, (4)(a) introductory portion and
6 (5)(b)(VI)(D); and **add** (2)(f.5), (5)(b)(I.5), and (9) as follows:

7 **25.5-4-402.4. Hospitals - healthcare affordability and**
8 **sustainability fee - receipt of public funds - Colorado healthcare**
9 **affordability and sustainability enterprise - federal waiver - fund**
10 **created - reports - rules - legislative declaration - repeal.**

11 (2) **Legislative declaration.** The general assembly hereby finds and
12 declares that:

13 (f) Consistent with the determination of the Colorado supreme
14 court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo.
15 1995), that the power to impose taxes is inconsistent with enterprise status
16 under section 20 of article X of the state constitution, it is the conclusion
17 of the general assembly that the healthcare affordability and sustainability
18 fee charged and collected by the Colorado healthcare affordability and
19 sustainability enterprise is a fee, not a tax, because the fee is imposed for
20 the specific purposes of allowing the enterprise to defray the costs of
21 providing the business services specified in subsections (2)(d)(I) and
22 (2)(d)(II) of this section to hospitals that pay the fee and is collected at
23 rates that are reasonably calculated based on the benefits received by
24 those hospitals; **and**

25 (f.5) TRANSFERS FROM GOVERNMENTAL HEALTH-CARE PROVIDERS
26 TO THE ENTERPRISE THROUGH A MUTUALLY EXECUTED AGREEMENT, AND
27 AS AUTHORIZED BY 42 CFR 433.51, ARE NOT "GRANTS" UNDER SECTION
28 20 OF ARTICLE X OF THE STATE CONSTITUTION BECAUSE:

29 (I) PARTICIPATING PROVIDERS RECEIVE FEDERAL FUNDS AND
30 OTHER BUSINESS SERVICES AS DESCRIBED IN THIS SECTION; AND

31 (II) SUCH TRANSFERS MUST BE REPAID IF THEY ARE NOT UTILIZED
32 OR APPROVED, AND THUS DO NOT MEET THE DEFINITION OF "GRANT" SET
33 FORTH IN SECTION 24-77-102; AND

34 (3) **Colorado healthcare affordability and sustainability**
35 **enterprise.** (d) The enterprise's primary powers and duties are:

36 (I) To charge and collect the healthcare affordability and
37 sustainability fee ~~as specified~~ AND RECEIVE PUBLIC FUNDS AS DESCRIBED
38 in subsection (4) of this section;

39 (V) To enter into agreements with the state department to the

1 extent necessary to ~~collect and~~ expend MONEY FROM THE healthcare
2 affordability and sustainability fee ~~revenue~~ CASH FUND;

3 (4) **Healthcare affordability and sustainability fee.** (a) For the
4 fiscal year commencing July 1, 2017, and for each fiscal year thereafter,
5 the enterprise is authorized to charge and collect a healthcare affordability
6 and sustainability fee, as described in 42 CFR 433.68 (b), OR AS
7 OTHERWISE IN COMPLIANCE WITH 42 CFR 433, on outpatient and inpatient
8 services provided by all licensed or certified hospitals, referred to in this
9 section as "hospitals", AND RECEIVE PUBLIC FUNDS AS DESCRIBED IN 42
10 CFR 433.51, for the purpose of obtaining federal financial participation
11 under the state medical assistance program as described in this article 4
12 and articles 5 and 6 of this title 25.5, referred to in this section as the
13 "state medical assistance program", including disproportionate share
14 hospital payments pursuant to 42 U.S.C. sec. 1396r-4. If the amount of
15 healthcare affordability and sustainability fee revenue collected exceeds
16 the federal net patient revenue-based limit on the amount of such fee
17 revenue that may be collected, requiring repayment to the federal
18 government of excess federal matching money received, hospitals that
19 received such excess federal matching money are responsible for repaying
20 the excess federal money and any associated federal penalties to the
21 federal government. The enterprise shall use the healthcare affordability
22 and sustainability fee revenue to:

23 (b) The enterprise shall recommend for approval and
24 establishment by the state board the amount of the healthcare affordability
25 and sustainability fee that it intends to charge and collect AND THE
26 AMOUNT OF PUBLIC FUNDS THAT IT INTENDS TO RECEIVE. The state board
27 must establish the final amount of the fee by rules promulgated in
28 accordance with article 4 of title 24. The state board shall not establish
29 any amount that exceeds the federal limit for such fees or public funds.
30 The state board may deviate from the recommendations of the enterprise,
31 but shall express in writing the reasons for any deviations. In establishing
32 the amount of the fee and in promulgating the rules governing the fee, the
33 state board shall:

34 (II) Establish the amount of the healthcare affordability and
35 sustainability fee AND PUBLIC FUNDS so that the amount collected from the
36 fee, THE AMOUNT RECEIVED FROM PUBLIC FUNDS, and federal matching
37 funds associated with the fee AND PUBLIC FUNDS are sufficient to pay for
38 the items described in subsection (4)(a) of this section, but nothing in this
39 subsection (4)(b)(II) requires the state board to increase the HEALTHCARE
40 AFFORDABILITY AND SUSTAINABILITY fee OR THE AMOUNT OF PUBLIC
41 FUNDS TO BE RECEIVED above the ~~amount~~ AMOUNTS recommended by the
42 enterprise; and

43 (5) **Healthcare affordability and sustainability fee cash fund.**
44 (a) Any healthcare affordability and sustainability fee collected OR
45 PUBLIC FUNDS RECEIVED pursuant to this section by the enterprise must be

1 transmitted to the state treasurer, who shall credit the fee OR PUBLIC
2 FUNDS to the healthcare affordability and sustainability fee cash fund,
3 which fund is hereby created and referred to in this section as the "fund".
4 The state treasurer shall credit all interest and income derived from the
5 deposit and investment of money in the fund to the fund. The state
6 treasurer shall invest any money in the fund not expended for the
7 purposes specified in subsection (5)(b) of this section as provided by law.
8 Money in the fund shall not be transferred to any other fund and shall not
9 be used for any purpose other than the purposes specified in this
10 subsection (5) and in subsection (4) of this section.

11 (b) All money in the fund is subject to federal matching as
12 authorized under federal law and, subject to annual appropriation by the
13 general assembly, shall be expended by the enterprise for the following
14 purposes:

15 (I.5) TO MAXIMIZE THE INPATIENT AND OUTPATIENT HOSPITAL
16 REIMBURSEMENTS, AS PERMITTED IN 42 CFR 438.6(c);

17 (VI) To pay the enterprise's actual administrative costs of
18 implementing and administering this section, including but not limited to
19 the following costs:

20 (B) The enterprise's actual costs related to implementing and
21 maintaining the healthcare affordability and sustainability fee AND
22 RECEIPT OF PUBLIC FUNDS, including personal services, operating, and
23 consulting expenses;

24 (D) The enterprise's personal services and operating costs related
25 to personnel, consulting services, and for review of hospital costs
26 necessary to implement and administer the increases in inpatient and
27 outpatient hospital payments made pursuant to ~~subsection (5)(b)(I)~~
28 SUBSECTIONS (5)(b)(I) AND (5)(b)(I.5) of this section, disproportionate
29 share hospital payments made pursuant to subsection (5)(b)(II) of this
30 section, and quality incentive payments made pursuant to subsection
31 (5)(b)(III) of this section;

32 (6) **Appropriations.** (a) (I) Except as otherwise provided in
33 subsection (6)(b)(I.5) or (6)(b)(I.7) of this section, the healthcare
34 affordability and sustainability fee ~~is~~ AND PUBLIC FUNDS ARE to
35 supplement, not supplant, general fund appropriations to support hospital
36 reimbursements. General fund appropriations for hospital reimbursements
37 shall be maintained at the level of appropriations in the medical services
38 premium line item made for the fiscal year commencing July 1, 2008;
39 except that general fund appropriations for hospital reimbursements may
40 be reduced if an index of appropriations to other providers shows that
41 general fund appropriations are reduced for other providers. If the index
42 shows that general fund appropriations are reduced for other providers,
43 the general fund appropriations for hospital reimbursements shall not be
44 reduced by a greater percentage than the reductions of appropriations for
45 the other providers as shown by the index.

1 (b) If the revenue from the healthcare affordability and
2 sustainability fee is insufficient to fully fund all of the purposes described
3 in subsection (5)(b) of this section:
4 (II) The hospital provider reimbursement and quality incentive
5 payment increases described in ~~subsections (5)(b)(I) to (5)(b)(III)~~
6 SUBSECTIONS (5)(b)(I), (5)(b)(II), AND (5)(b)(III) of this section and the
7 costs described in subsection (5)(b)(VI) of this section shall be fully
8 funded using revenue from the healthcare affordability and sustainability
9 fee and federal matching funds before any eligibility expansion is funded;
10 and
11 (c) Notwithstanding any other provision of this section, if, after
12 receipt of authorization to receive federal matching funds for money in
13 the fund, the authorization is withdrawn or changed so that federal
14 matching funds are no longer available, the enterprise shall cease
15 collecting the healthcare affordability and sustainability fee AND
16 RECEIVING PUBLIC FUNDS and shall repay to the hospitals any money
17 received by the fund that is not subject to federal matching funds.
18 (9) **State-directed payments program - funding and**
19 **implementation.** THE ENTERPRISE, ACTING IN CONCERT WITH, OR
20 THROUGH AN AGREEMENT WITH, THE STATE DEPARTMENT, IF REQUIRED BY
21 FEDERAL LAW, SHALL SEEK A STATE PLAN AMENDMENT OR ANY FEDERAL
22 AUTHORIZATION NECESSARY TO FUND AND, IN COOPERATION WITH THE
23 STATE DEPARTMENT AND HOSPITALS, SUPPORT THE IMPLEMENTATION OF
24 A STATE-DIRECTED PAYMENT PROGRAM IN COMPLIANCE WITH 42 CFR
25 438.6(c) THAT COMPLIES WITH ALL FEDERAL REQUIREMENTS FOR
26 FINANCING OF THE NON-FEDERAL SHARE AND SHALL SUPPORT A TOTAL
27 PAYMENT RATE FOR EACH STATE-DIRECTED PAYMENT THAT DOES NOT
28 EXCEED THE AVERAGE COMMERCIAL RATE AND IS DISTRIBUTED PURSUANT
29 TO THE REQUIREMENTS OF SUBSECTION (5) OF THIS SECTION."

30 Renumber succeeding sections accordingly.

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