

CHAPTER 257

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 95-1287

BY REPRESENTATIVES Clarke, Kreutz, Kerns, Dean, DeGette, Epps, Hagedorn, Hernandez, June, Keller, Lamborn, Linkhart, Lyle, Nichol, Owen, Paschall, Piffner, Prinster, Reeser, Snyder, and Sullivant;
also SENATORS Tanner, Blickensderfer, Feeley, Gallagher, Hopper, Johnson, Mares, Pascoe, Weissmann, and Wham.

AN ACT

CONCERNING THE REQUIRED REPAYMENT OF PUBLIC MONEYS EXPENDED FOR BIRTH-RELATED MEDICAL COSTS BY NONCUSTODIAL PARENTS, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Part 2 of article 1 of title 25.5, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

25.5-1-202. Birth-related cost recovery program - legislative declaration - waiver - duties of state department - repeal. (1) THE GENERAL ASSEMBLY FINDS THAT BIRTH-RELATED MEDICAL ASSISTANCE COSTS HAVE INCREASED SIGNIFICANTLY IN RECENT YEARS. THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT IT IS APPROPRIATE TO RECOVER SOME OF THESE COSTS FROM NONCUSTODIAL PARENTS.

(2) THERE IS HEREBY CREATED THE BIRTH-RELATED COST RECOVERY PROGRAM DESIGNED TO RECOVER PUBLIC MONEYS EXPENDED FOR BIRTH-RELATED COSTS FROM NONCUSTODIAL PARENTS. ON OR BEFORE JANUARY 1, 1996, THE STATE DEPARTMENT, IN COOPERATION WITH THE DEPARTMENT OF HUMAN SERVICES CREATED BY SECTION 26-1-105, C.R.S., SHALL SEEK ANY NECESSARY WAIVERS FROM THE FEDERAL GOVERNMENT THAT ARE REQUIRED TO IMPLEMENT THE PROGRAM. THE PROGRAM SHALL BE IMPLEMENTED AS FOLLOWS:

(a) (I) IF NO FEDERAL WAIVER IS REQUIRED TO IMPLEMENT THE PROGRAM, THE PROGRAM SHALL BE IMPLEMENTED ON OR BEFORE JANUARY 1, 1996. IF A FEDERAL WAIVER IS REQUIRED TO IMPLEMENT THE PROGRAM, THE PROGRAM SHALL BE IMPLEMENTED ON OR BEFORE SIX MONTHS AFTER THE EARLIEST DATE

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

ALLOWED UNDER THE WAIVER.

(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a), ON AND AFTER THE DATE THE PROGRAM IS IMPLEMENTED, EACH NONCUSTODIAL PARENT SHALL BE JOINTLY AND SEVERALLY LIABLE FOR REIMBURSEMENT TO THE STATE FOR ANY PUBLIC MONEYS EXPENDED FOR BIRTH-RELATED COSTS ATTRIBUTABLE TO THE BIRTH OF THE NONCUSTODIAL PARENT'S NATURAL CHILD IF SUCH MONEYS WERE EXPENDED UNDER THE FOLLOWING PROGRAMS AND SERVICES:

(A) MEDICAL ASSISTANCE PROGRAMS UNDER THE "COLORADO MEDICAL ASSISTANCE ACT" CREATED BY ARTICLE 4 OF TITLE 26, C.R.S.; OR

(B) MEDICAL ASSISTANCE PROGRAMS UNDER THE "REFORM ACT FOR THE PROVISION OF HEALTH CARE FOR THE MEDICALLY INDIGENT" CREATED BY ARTICLE 15 OF TITLE 26, C.R.S.

(III) THE STATE DEPARTMENT SHALL ADOPT AN APPEAL PROCEDURE FOR PERSONS WISHING TO CONTEST THE ASSESSMENT OF A DEBT PRESCRIBED BY SUBPARAGRAPH (II) OF THIS PARAGRAPH (a). SUCH PROCEDURE SHALL BE COMPATIBLE WITH THE REQUIREMENTS OF DUE PROCESS OF LAW.

(IV) REIMBURSEMENT TO THE STATE FOR PUBLIC MONEYS EXPENDED FOR BIRTH-RELATED COSTS ATTRIBUTABLE TO THE BIRTH OF THE NONCUSTODIAL PARENT'S NATURAL CHILD REQUIRED BY SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) SHALL NOT BE REQUIRED IF THE NONCUSTODIAL PARENT HAS VOLUNTARILY ACKNOWLEDGED PATERNITY AND IS CURRENT IN PAYING ALL CHILD SUPPORT OBLIGATIONS OWED FOR SUCH CHILD.

(b) (I) FOR THE FIRST FISCAL YEAR OF THE PROGRAM, THE BASE AMOUNT OF THE DEBT SHALL BE THREE THOUSAND EIGHT HUNDRED DOLLARS. BEGINNING WITH THE SECOND FISCAL YEAR OF THE PROGRAM AND EACH FISCAL YEAR THEREAFTER, THE BASE AMOUNT OF THREE THOUSAND EIGHT HUNDRED DOLLARS SHALL BE ADJUSTED ANNUALLY BASED ON THE PERCENTAGE CHANGE IN INFLATION, AS DEFINED IN SECTION 24-77-102 (8), C.R.S., FOR THE PRECEDING CALENDAR YEAR. SUCH ADJUSTMENT SHALL REFLECT CHANGES, IF ANY, FROM THE CALENDAR YEAR IN WHICH THE PROGRAM WAS IMPLEMENTED. SUCH ADJUSTMENT SHALL BE ROUNDED UPWARD OR DOWNWARD TO THE NEAREST ONE-HUNDRED-DOLLAR-INCREMENT.

(II) LIABILITY FOR SUCH DEBT SHALL INCLUDE THE COSTS OF COLLECTION. THE OBLIGATION TO PAY THE DEBT SHALL BE IN EFFECT WHENEVER THE NONCUSTODIAL PARENT'S INCOME, PROPERTY, AND RESOURCES ARE SUFFICIENT TO MEET THE COST OF COVERING THE DEBT, REGARDLESS OF ANY INTERVENING PERIOD WHEN SUCH INCOME, PROPERTY, AND RESOURCES ARE INSUFFICIENT. THE DEBT SHALL BE A CONTINUING DEBT UNTIL FULLY PAID. INTEREST SHALL ACCRUE AND COMPOUND ON THE DEBT IN ACCORDANCE WITH PROCEDURES ADOPTED BY THE DEPARTMENT OF REVENUE FOR THE UNDERPAYMENT OF STATE INCOME TAX.

(3) (a) ACTING IN COOPERATION WITH THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO THE PROVISIONS OF SECTION 26-1-112.5, C.R.S., THE STATE DEPARTMENT IS AUTHORIZED TO COLLECT DEBTS PRESCRIBED BY SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION BY UTILIZING ALL

COLLECTION METHODS ESTABLISHED IN TITLE 26, C.R.S., FOR THE COLLECTION OF CHILD SUPPORT AND PUBLIC ASSISTANCE DEBTS. THE STATE DEPARTMENT SHALL ADOPT RULES AND REGULATIONS THAT SHALL INCLUDE THE FOLLOWING:

(I) A METHOD FOR DETERMINING WHEN A DEBT HAS BEEN INCURRED BY A NONCUSTODIAL PARENT PURSUANT TO THIS SECTION;

(II) CRITERIA FOR DETERMINING WHEN IT IS COST-EFFECTIVE TO PURSUE THE COLLECTION OF A DEBT AND WHEN A DEBT SHOULD BE DEEMED UNCOLLECTIBLE;

(III) UPON DETERMINING THAT A DEBT HAS BEEN INCURRED AND THAT IT IS COST-EFFECTIVE TO PURSUE COLLECTION:

(A) A METHOD FOR DETERMINING THE TOTAL AMOUNT OF THE DEBT THAT IS REASONABLY COLLECTIBLE BASED ON THE NONCUSTODIAL PARENT'S FINANCIAL CIRCUMSTANCES;

(B) A REQUIREMENT THAT A LIABLE NONCUSTODIAL PARENT SHALL ENTER INTO AN AGREEMENT TO REPAY THE DEBT IN ACCORDANCE WITH A SPECIFIED PAYMENT SCHEDULE THAT AMORTIZES THE DEBT OVER A PERIOD NOT TO EXCEED SEVEN YEARS. ANY SUCH PAYMENT SCHEDULE SHALL TAKE INTO ACCOUNT THE NONCUSTODIAL PARENT'S AGE, EDUCATION, CURRENT AND PROJECTED EARNING CAPACITY, AND RESOURCES.

(b) (I) IF THE DEPARTMENT DETERMINES THAT THE FULL AMOUNT OF THE DEBT IS NOT REASONABLY COLLECTIBLE AT THE TIME AN AGREEMENT IS ENTERED INTO PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3) AND THE AGREEMENT ACCORDINGLY REFLECTS A REDUCED PAYBACK AMOUNT, THE STATE DEPARTMENT SHALL ANNUALLY REASSESS THE NONCUSTODIAL PARENT'S ABILITY TO PAY DURING THE SEVEN-YEAR AGREEMENT PERIOD. THE NONCUSTODIAL PARENT SHALL BE REQUIRED TO PROVIDE THE STATE DEPARTMENT WITH COPIES OF FEDERAL AND STATE INCOME TAX FORMS FILED BY THE PARENT AND SUCH OTHER DOCUMENTS AS MAY BE DESIGNATED BY THE STATE DEPARTMENT FOR THE PURPOSE OF ASSESSING THE FINANCIAL CIRCUMSTANCES OF SUCH PARENT.

(II) IF, AT ANY TIME DURING THE SEVEN-YEAR AGREEMENT PERIOD, THE DEPARTMENT DETERMINES THAT THE FINANCIAL CIRCUMSTANCES OF THE NONCUSTODIAL PARENT HAVE IMPROVED TO THE EXTENT THAT THE PARENT IS CAPABLE OF PAYING AN AMOUNT GREATER THAN THE REDUCED PAYBACK AMOUNT SPECIFIED IN AN AGREEMENT ENTERED INTO PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3), SUCH AGREEMENT SHALL BE AMENDED TO REFLECT AN INCREASED PAYBACK AMOUNT UP TO THE FULL AMOUNT OF THE DEBT.

(III) IN THE EVENT A LIABLE NONCUSTODIAL PARENT REFUSES TO PAY THE DEBT PRESCRIBED BY SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR IS IN DEFAULT OF A PAYMENT SCHEDULE ESTABLISHED IN AN AGREEMENT ENTERED INTO PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3), THE STATE DEPARTMENT, ACTING IN COOPERATION WITH THE DEPARTMENT OF HUMAN SERVICES, MAY INSTITUTE OR

INTERVENE IN LEGAL PROCEEDINGS AGAINST THE NONCUSTODIAL PARENT. IN ANY SUCH LEGAL PROCEEDING, COURT COSTS SHALL NOT BE ASSESSED AGAINST THE STATE BUT SHALL BE ASSESSED AGAINST A NONCUSTODIAL PARENT IF THE COURT FINDS IN FAVOR OF THE STATE. ANY COURT COSTS COLLECTED BY THE STATE SHALL BE PAID INTO THE REGISTRY OF THE COURT. ONCE THE DEBT PRESCRIBED BY SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION HAS BEEN REDUCED TO JUDGMENT, THE STATE DEPARTMENT, ACTING IN COOPERATION WITH THE DEPARTMENT OF HUMAN SERVICES, MAY PROCEED WITH ALL AVAILABLE POSTJUDGMENT REMEDIES.

(c) UPON A DETERMINATION THAT A LIABLE NONCUSTODIAL PARENT OR THE MINOR CHILD FOR WHOM THE PARENT IS LIABLE IS AN APPLICANT FOR, OR IS OTHERWISE ENTITLED TO, THIRD-PARTY OR INSURANCE PAYMENTS FOR BIRTH-RELATED COSTS, THE INTERESTS OF THE STATE SHALL BE SUBROGATED TO ANY RIGHTS THAT THE NONCUSTODIAL PARENT MAY HAVE TO OBTAIN REIMBURSEMENT FROM SUCH THIRD PARTY OR INSURANCE CARRIER FOR THE AMOUNT OF THE DEBT. WHEN WRITTEN NOTICE OF SUBROGATION IS PROVIDED BY THE STATE, ANY THIRD PARTY OR INSURANCE CARRIER LIABLE FOR REIMBURSEMENT SHALL ACCORD TO THE STATE ALL RIGHTS AND BENEFITS AVAILABLE TO THE NONCUSTODIAL PARENT FOR THE BENEFIT OF THE PARENT'S MINOR CHILD.

(d) THE FOLLOWING OBLIGATIONS OF THE NONCUSTODIAL PARENT SHALL HAVE PRIORITY OVER THE DEBT PRESCRIBED BY SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION: CURRENT MONTHLY CHILD SUPPORT OBLIGATIONS; CHILD SUPPORT DEBT; MAINTENANCE OBLIGATIONS; CHILD SUPPORT ARREARAGES; INSURANCE PREMIUMS TO PURCHASE INSURANCE COVERING THE HEALTH OF THE NONCUSTODIAL PARENT'S CHILDREN; PAYMENTS TO REIMBURSE THE STATE FOR AFDC BENEFITS RECEIVED; AND PAYMENTS TO REIMBURSE THE STATE FOR MEDICAL ASSISTANCE COSTS, OTHER THAN BIRTH-RELATED COSTS, EXPENDED PURSUANT TO ARTICLE 4 OF TITLE 26, C.R.S.

(e) THE STATE DEPARTMENT MAY ENTER INTO CONTRACTS WITH PUBLIC AND PRIVATE ENTITIES TO FACILITATE THE COLLECTION OF MONEYS DUE UNDER THE PROGRAM.

(f) ALL MONEYS COLLECTED UNDER THE PROGRAM SHALL BE DISTRIBUTED IN THE FOLLOWING ORDER OF PRIORITY: TO THE FEDERAL GOVERNMENT FOR REIMBURSEMENT IN ACCORDANCE WITH FEDERAL REGULATIONS; TO THE COLLECTING ENTITY IN SUCH AMOUNT AS THE STATE DEPARTMENT DEEMS NECESSARY TO ENCOURAGE THE COLLECTIONS OF SUCH DEBTS; AND THE REMAINDER TO THE GENERAL FUND.

(4) THE STATE DEPARTMENT SHALL WORK COOPERATIVELY WITH THE DEPARTMENT OF HUMAN SERVICES TO EFFECTUATE THE PURPOSES OF THE PROGRAM.

(5) THE STATE DEPARTMENT IS AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

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

(a) "BIRTH-RELATED COSTS" INCLUDE THE COST OF DELIVERY AND THE MEDICAL COSTS RELATED TO THE FIRST SIX WEEKS OF POSTPARTUM CARE.

(b) "COSTS OF COLLECTION" MEANS THE COST INCURRED IN EACH INDIVIDUAL CASE FOR: ESTABLISHING PATERNITY; CONTINGENCY FEES AND COMMISSIONS RETAINED BY A PUBLIC OR PRIVATE COLLECTION AGENCY FOR DEBT COLLECTION; ATTORNEY FEES; SERVICE OF PROCESS FEES; COURT COSTS; AND COSTS FOR CERTIFIED MAIL. THE REIMBURSEMENT OF ALL SUCH COSTS SHALL BE CONTINGENT UPON THE COLLECTION OF THE UNDERLYING DEBT BY A PUBLIC OR PRIVATE COLLECTION AGENCY.

(c) "CUSTODIAL PARENT" MEANS A NATURAL PARENT WHO, BASED ON THE COMBINED INCOME OF BOTH SUCH PARENTS, WAS QUALIFIED FOR AND RECEIVED BIRTH-RELATED MEDICAL ASSISTANCE FOR A CHILD BORN ON OR AFTER THE IMPLEMENTATION DATE OF THE PROGRAM UNDER ONE OF THE PROGRAMS SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION AND WHO:

(I) HAS PHYSICAL CUSTODY OF SUCH CHILD AND IS RESIDING ALONE OR IN THE SAME HOUSEHOLD AS A PERSON WHO IS NOT A NATURAL PARENT OF SUCH CHILD; OR

(II) HAS PHYSICAL CUSTODY OF SUCH CHILD AND IS MARRIED TO OR RESIDING IN THE SAME HOUSEHOLD AS THE OTHER NATURAL PARENT OF SUCH CHILD WHEN THE NATURAL FATHER VOLUNTARILY ACKNOWLEDGES PATERNITY.

(d) "NONCUSTODIAL PARENT" MEANS A NATURAL PARENT WHO IS NOT A CUSTODIAL PARENT.

(7) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 1999.

SECTION 2. 19-4-116 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-4-116. Judgment or order - birth-related costs - repeal. (3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the recovery of child support debt pursuant to section 14-14-104, C.R.S., the custody and guardianship of the child, parenting time privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(b) (I) IN ADDITION TO THE PROVISIONS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3), A JUDGMENT OR ORDER MAY ALSO CONTAIN PROVISIONS CONCERNING THE RECOVERY OF BIRTH-RELATED COSTS INCURRED PURSUANT TO SECTION 25.5-1-202, C.R.S.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JUNE 30, 1999.

SECTION 3. 19-6-101 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-6-101. Initiation of proceedings - support - repayment of birth-related debt - repeal. (1) (a) Proceedings to compel parents, or other legally responsible persons, to support a child or children may be commenced by any person filing a verified petition in the court of the county where the child resides or is physically present, or in the county where the obligor parent resides, or in any county where public assistance is or was being paid on behalf of the child.

(b) (I) PROCEEDINGS TO COMPEL A NONCUSTODIAL PARENT, OR OTHER LEGALLY RESPONSIBLE PERSONS, TO REPAY BIRTH-RELATED COSTS INCURRED PURSUANT TO SECTION 25.5-1-202, C.R.S., MAY BE COMMENCED BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING OR THE DEPARTMENT'S AGENT FILING A VERIFIED PETITION IN THE COURT OF THE COUNTY WHERE THE CHILD RESIDES OR IS PHYSICALLY PRESENT, OR IN THE COUNTY WHERE THE OBLIGOR PARENT RESIDES, OR IN ANY COUNTY WHERE PUBLIC ASSISTANCE IS OR WAS BEING PAID ON BEHALF OF THE CHILD.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JUNE 30, 1999.

SECTION 4. Part 1 of article 1 of title 26, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

26-1-112.5. Birth-related cost recovery program - cooperation with the department of health care policy and financing - duties of state department - repeal. (1) THE STATE DEPARTMENT SHALL BE REQUIRED TO PERFORM THE FOLLOWING DUTIES CONCERNING THE BIRTH-RELATED COST RECOVERY PROGRAM CREATED BY SECTION 25.5-1-202, C.R.S.:

(a) COOPERATE WITH THE STATE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO OBTAIN ANY NECESSARY FEDERAL WAIVERS REQUIRED TO IMPLEMENT THE PROGRAM;

(b) ASSIST THE STATE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO COLLECT BIRTH-RELATED DEBTS INCURRED PURSUANT TO SECTION 25.5-1-202, C.R.S., IN THE MANNER PRESCRIBED BY THAT SECTION;

(c) COOPERATE WITH THE STATE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO EFFECTUATE THE PURPOSES OF THE PROGRAM.

(2) THE STATE DEPARTMENT IS AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

(3) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 1999.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, for the fiscal year beginning July 1, 1995, the sum of one hundred sixty-four thousand eighty-six dollars (\$164,086) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act. Of such sum, sixty-six thousand one hundred six dollars (\$66,106) shall be from the general fund and ninety-seven thousand nine hundred eighty dollars (\$97,980) shall be from federal funds.

(2) In addition to any other appropriation, there is hereby appropriated, to the

department of law, for the fiscal year beginning July 1, 1995, the sum of fifteen thousand five hundred ninety-four dollars (\$15,594) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act. Such sum shall be out of moneys received from the department of health care policy and financing pursuant to subsection (1) of this section.

SECTION 6. Effective date. This act shall take effect July 1, 1995.

SECTION 7. 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: June 5, 1995