

## CHAPTER 176

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**HEALTH CARE POLICY AND FINANCING**


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**HOUSE BILL 02-1155**

BY REPRESENTATIVE(S) Clapp, Fairbank, Fritz, Hefley, Hoppe, Kester, Lawrence, Mace, Mitchell, Scott, Snook, Spence, Stafford, Swenson, Webster, White, Witwer, Alexander, Boyd, Chavez, Cloer, Coleman, Groff, Grossman, Harvey, Jahn, King, Madden, Marshall, Miller, Plant, Ragsdale, Rhodes, Romanoff, Saliman, Sanchez, Schultheis, Tapia, Tochtrop, Vigil, Williams S., Bacon, and Weddig;  
also SENATOR(S) Owen, Hagedorn, Hanna, Hernandez, Musgrave, Nichol, Pascoe, Perlmutter, Phillips, and Tupa.

**AN ACT**

**CONCERNING THE COVERAGE OF PREGNANT WOMEN UNDER THE CHILDREN'S BASIC HEALTH PLAN,  
AND MAKING AN APPROPRIATION THEREFOR.**

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

**SECTION 1.** 26-19-103 (4) and (5), Colorado Revised Statutes, are amended to read:

**26-19-103. Definitions.** As used in this article, unless the context otherwise requires:

(4) "Eligible person" means:

(a) A person who is less than nineteen years of age, whose family income does not exceed one hundred eighty-five percent of the federal poverty level, adjusted for family size; OR

(b) A PREGNANT WOMAN WHOSE FAMILY INCOME DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE PERCENT OF THE FEDERAL POVERTY LEVEL, ADJUSTED FOR FAMILY SIZE, AND WHO IS NOT ELIGIBLE FOR MEDICAID.

(5) "Enrollee" means any ~~child~~ ELIGIBLE PERSON that has enrolled in the plan.

**SECTION 2.** 26-19-104, Colorado Revised Statutes, is amended to read:

**26-19-104. Children's basic health plan - rules.** The medical services board is

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

authorized to adopt rules to implement the children's basic health plan to provide health insurance coverage to ~~children~~ ELIGIBLE PERSONS on a statewide basis pursuant to the provisions of this article. Any rules adopted by the children's basic health plan policy board in accordance with the requirements of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall be enforceable and shall be valid until amended or repealed by the medical services board.

**SECTION 3.** 26-19-105 (2.5), Colorado Revised Statutes, is amended to read:

**26-19-105. Trust - created.** (2.5) For fiscal year 2000-01, the general assembly shall appropriate to the trust ten million dollars from the moneys received by the state for said fiscal year pursuant to the master settlement agreement. ~~Beginning in~~ FOR fiscal year 2001-02, ~~and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement,~~ the general assembly shall appropriate to the trust nine million eight hundred thousand dollars from the moneys annually received by the state pursuant to the master settlement agreement. BEGINNING IN FISCAL YEAR 2002-03, AND FOR EACH FISCAL YEAR THEREAFTER SO LONG AS THE STATE RECEIVES MONEYS PURSUANT TO THE MASTER SETTLEMENT AGREEMENT, THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE TRUST SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS FROM THE MONEYS ANNUALLY RECEIVED BY THE STATE PURSUANT TO THE MASTER SETTLEMENT AGREEMENT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 24-22-115.5, C.R.S., the general assembly shall appropriate the amount specified in this subsection (2.5) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S. The amount appropriated pursuant to this subsection (2.5) shall be in addition to and not in replacement of any general fund moneys appropriated to the trust.

**SECTION 4.** 26-19-107 (1) (a) (I) and (1) (b), Colorado Revised Statutes, are amended to read:

**26-19-107. Duties of the department - schedule of services - premiums - copayments - subsidies.** (1) In addition to any other duties pursuant to this article, the department shall have the following duties:

(a) (I) To design, on or after April 21, 1998, and from time to time revise, a schedule of health care services included in the plan and to propose said schedule to the medical services board for approval or modification. The schedule of health care services as proposed by the department and approved by the medical services board shall include, but shall not be limited to, preventive care, physician services, PRENATAL CARE AND POSTPARTUM CARE, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be medically necessary for the health of enrollees. The department shall design and revise this schedule of health care services included in the plan to be based upon the basic and standard health benefit plans defined in section 10-16-102 (4) and (42), C.R.S.; except that the department may modify the basic and the standard health benefit plans to meet specific federal requirements or to accommodate those changes necessary for a program designed specifically for children.

(b) To design and implement a system of cost-sharing with enrollees using an annual enrollment fee that is based on a sliding fee scale. The sliding fee scale shall be developed based on the enrollee's family income; except that no enrollment fee

shall be assessed ~~to~~ AGAINST an enrollee whose family income is at or below one hundred fifty percent of the federal poverty level AND NO ENROLLMENT FEE SHALL BE ASSESSED AGAINST AN ENROLLEE WHO IS A PREGNANT WOMAN. As permitted by federal and state law, enrollees in the plan may use funds from a medical savings account to pay the annual enrollment fee. On or before November 1 of each year, the department shall submit for approval to the joint budget committee its annual proposal for cost sharing for the plan based upon a family's income.

**SECTION 5.** 26-19-109, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**26-19-109. Eligibility - children - pregnant women.** (5) (a) A PREGNANT WOMAN WHOSE FAMILY INCOME EXCEEDS ONE HUNDRED THIRTY-THREE PERCENT OF THE FEDERAL POVERTY LEVEL BUT DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE PERCENT OF THE FEDERAL POVERTY LEVEL SHALL BE PRESUMPTIVELY ELIGIBLE FOR THE PLAN. ONCE DETERMINED ELIGIBLE FOR THE PLAN, A PREGNANT WOMAN SHALL BE CONSIDERED TO BE CONTINUOUSLY ELIGIBLE THROUGHOUT THE PREGNANCY AND FOR THE SIXTY DAYS FOLLOWING THE PREGNANCY, EVEN IF THE WOMAN'S ELIGIBILITY WOULD OTHERWISE TERMINATE DURING SUCH PERIOD DUE TO AN INCREASE IN INCOME. UPON BIRTH, A CHILD BORN TO A WOMAN ELIGIBLE FOR THE PLAN SHALL BE ELIGIBLE FOR THE PLAN AND SHALL BE AUTOMATICALLY ENROLLED IN THE PLAN IN ACCORDANCE WITH THE ELIGIBILITY REQUIREMENTS FOR CHILDREN SPECIFIED IN SUBSECTION (4) OF THIS SECTION.

(b) (I) UNDER THE PLAN, PRENATAL AND POSTPARTUM PRIMARY HEALTH CARE PROVIDERS SHALL IMPLEMENT POLICIES REGARDING THE INTEGRATION OF EVIDENCE-BASED TOBACCO USE TREATMENTS INTO THE REGULAR HEALTH CARE DELIVERY SYSTEM, INCLUDING, BUT NOT LIMITED TO:

(A) ASSESSMENT OF TOBACCO USE AND EXPOSURE TO SECOND-HAND SMOKE;

(B) EDUCATION ON THE DANGERS OF TOBACCO USE DURING PREGNANCY AND POSTPARTUM;

(C) REFERRALS TO APPROPRIATE CESSATION SERVICES.

(II) HEALTH CARE PROVIDERS MAY COORDINATE THE IMPLEMENTATION OF SUCH POLICIES WITH THE TOBACCO EDUCATION, PREVENTION, AND CESSATION PROGRAMS ESTABLISHED IN SECTION 25-3.5-804, C.R.S.

(c) THE ADDITION OF COVERAGE UNDER THE PLAN FOR PREGNANT WOMEN SHALL ONLY BE IMPLEMENTED IF THE DEPARTMENT OBTAINS A WAIVER FROM THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES.

**SECTION 6.** 26-19-110 (8), Colorado Revised Statutes, is amended to read:

**26-19-110. Participation by managed care plans.** (8) All managed care plans participating in the plan shall meet standards regarding the quality of services to be provided, financial integrity, and responsiveness to the unmet health care needs of ~~children~~ ELIGIBLE PERSONS that may be served.

**SECTION 7.** 24-22-115.5 (2), Colorado Revised Statutes, is amended to read:

**24-22-115.5. Legislative declaration - tobacco litigation settlement trust fund - creation.** (2) There is hereby created in the state treasury the tobacco litigation settlement trust fund. The principal of the trust fund shall consist of the first thirty-three million dollars of all moneys, other than attorney fees and costs, paid 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.; Phillip 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, not less than twenty-one percent of all additional moneys, other than attorney fees and costs, paid to the state treasurer in accordance with the settlement agreements and the consent decree, and any moneys transferred to the trust fund from the tobacco litigation settlement cash fund at the end of any fiscal year pursuant to section 24-22-115. The principal of the trust fund shall not be expended or appropriated for any purpose; EXCEPT THAT MONEYS IN THE TRUST FUND MAY BE ALLOCATED TO THE CHILDREN'S BASIC HEALTH PLAN TRUST AS PROVIDED IN SECTION 24-75-1104 (2). All interest derived from the deposit and investment of moneys in the trust fund shall be credited to the trust fund. Such interest shall become subject to appropriation by the general assembly for the funding of any programs or funds authorized by law to be funded by tobacco litigation settlement moneys at such time as the state auditor certifies that actuarially sound projections of future interest earnings indicate that such interest will be sufficient to fully fund such programs and funds. No part of such trust fund, principal or interest, shall be transferred to the general fund or any other fund or used or appropriated except as provided in this section.

**SECTION 8.** 24-75-1103 (4), Colorado Revised Statutes, is amended to read:

**24-75-1103. Policy on use of tobacco settlement funds.** (4) Since the amount of moneys to be received by the state is uncertain, a portion of the settlement moneys shall be placed in an endowment trust fund created in section 24-22-115.5, with the principal and interest reinvested in the trust fund until the state auditor certifies that actuarially sound projections of future interest earnings indicate that the interest earned will be sufficient to fully fund the tobacco settlement programs. HOWEVER, NOTWITHSTANDING THE POLICY PROHIBITING THE APPROPRIATION OF THE PRINCIPAL IN THE TRUST FUND, THE PRINCIPAL MAY BE EXPENDED AS PROVIDED IN SECTION 24-22-115.5 (2).

**SECTION 9.** 24-75-1104 (1) (b) and (2), Colorado Revised Statutes, are amended to read:

**24-75-1104. Use of settlement moneys - programs.** (1) For the 2000-01 fiscal year and for each fiscal year thereafter, the following programs shall receive appropriations in the specified amounts from the settlement moneys annually received by the state:

(b) (I) FOR THE FISCAL YEAR 2001-02, the children's basic health plan trust created in section 26-19-105, C.R.S., shall receive nine million eight hundred thousand dollars;

(II) FOR THE FISCAL YEAR 2002-03 AND EACH FISCAL YEAR THEREAFTER, THE CHILDREN'S BASIC HEALTH PLAN TRUST CREATED IN SECTION 26-19-105, C.R.S., SHALL RECEIVE SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS;

(2) The general assembly shall appropriate the amounts specified in subsection (1) of this section from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115. THE STATE CONTROLLER SHALL FIRST ALLOCATE THE AMOUNTS SPECIFIED IN PARAGRAPHS (a), (c), (d), (e), (f), AND (g) OF SUBSECTION (1) OF THIS SECTION AND THEN ALLOCATE THE AMOUNT FOR THE CHILDREN'S BASIC HEALTH PLAN TRUST AS SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION. IF THE MONEYS IN THE TOBACCO LITIGATION SETTLEMENT CASH FUND ARE INSUFFICIENT TO FUND THE FULL AMOUNT SPECIFIED IN SUBPARAGRAPH (II) OF SAID PARAGRAPH (b) FOR THE CHILDREN'S BASIC HEALTH PLAN TRUST, THE AMOUNT OF THE SHORTFALL SHALL BE ALLOCATED OUT OF THE TOBACCO LITIGATION SETTLEMENT TRUST FUND. Any amount of unencumbered settlement moneys remaining in the fund of any program specified in subsection (1) of this section at the end of any fiscal year shall be transferred to the tobacco litigation settlement trust fund created in section 24-22-115.5; except that unencumbered settlement moneys shall not be transferred from the following funds:

- (a) The children's basic health plan trust created in section 26-19-105, C.R.S.;
- (b) The read-to-achieve cash fund created pursuant to section 22-7-506, C.R.S.;
- (c) The Colorado state veterans trust fund created in section 26-10-111, C.R.S.;
- (d) The state dental loan repayment fund created in section 25-23-104, C.R.S.

**SECTION 10.** 24-75-1105 (1), Colorado Revised Statutes, is amended to read:

**24-75-1105. Use of settlement moneys - review.** (1) On or before January 30, 2006, the joint budget committee and the health, environment, welfare, and institutions committees of the general assembly, referred to in this section as the "joint committees", shall meet jointly to review the use of settlement moneys. Specifically, the joint committees shall review:

(a) The effectiveness of each program that receives settlement moneys, including but not limited to reviewing the annual reports of each program prepared by the department of public health and environment pursuant to section 25-1-108.5, C.R.S., and the program reviews of each program prepared by the state auditor pursuant to section 2-3-113, C.R.S.;

(a.5) FOR THE CHILDREN'S BASIC HEALTH PLAN, ALL OF THE ITEMS LISTED IN THIS SUBSECTION (1) FOR REVIEW SHALL BE SEPARATELY REPORTED AND REVIEWED WITH RESPECT TO THE CHILDREN'S BASIC HEALTH PLAN AND THE PRENATAL AND POSTPARTUM CARE PROGRAM ADDED TO THE CHILDREN'S BASIC HEALTH PLAN IN FISCAL YEAR 2002-03. THE JOINT COMMITTEE SHALL ALSO CONSIDER WHETHER THE

PRENATAL AND POSTPARTUM CARE PORTION OF THE CHILDREN'S BASIC HEALTH PLAN SHOULD CONTINUE TO BE PAID FOR OUT OF SETTLEMENT MONEYS OR SHOULD BE PAID FOR OUT OF GENERAL FUND REVENUES.

(b) The costs incurred by each program that receives settlement moneys, including but not limited to the amount and justification of administrative costs incurred by the agencies that implement the program;

(c) The percentage allocated to each program receiving settlement moneys and the actual amount appropriated to each program each fiscal year; and

(d) The amount of settlement moneys annually credited to the tobacco litigation settlement trust fund created in section 24-22-115.5, C.R.S., the investment of and return on such moneys, and the projections of future interest earnings on the moneys in the fund.

**SECTION 11. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, indigent care program, children's basic health plan trust, for the fiscal year beginning July 1, 2002, the sum of seven million seven hundred thousand dollars (\$7,700,000), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from the tobacco litigation settlement cash fund created in section 24-22-115.5, Colorado Revised Statutes, pursuant to section 24-75-1104 (1) (b) (II), Colorado Revised Statutes.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, indigent care program, the sum of six million three hundred twenty-one thousand five hundred sixty-one dollars (\$6,321,561). Said sum shall be from cash funds exempt from the children's basic health plan trust created in section 26-19-105, Colorado Revised Statutes. The moneys hereby appropriated shall be for the costs under section 26-19-109, Colorado Revised Statutes. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2002, the department of health care policy and financing, indigent care program, will receive the sum of eleven million seven hundred forty thousand forty-four dollars (\$11,740,044) in federal funds for the implementation of this act. 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.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of health care policy and financing, department of human services medicaid-funded programs, office of information technology services - medicaid funding, the sum of twenty-six thousand one hundred sixty-three dollars (\$26,163). Said sum shall be from cash funds exempt from the children's basic health plan trust created in section 26-19-105, Colorado Revised Statutes. In addition to said appropriation, the general assembly anticipates that, for the fiscal year beginning July 1, 2002, the department of health care policy and financing, department of human services medicaid - funded programs, office of information technology services - medicaid funding, will receive the sum of forty-eight thousand five hundred eighty-seven dollars (\$48,587) in federal funds for the implementation of this act. 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.

(4) In addition to any other appropriation, there is hereby appropriated, to the department of human services, office of information technology services, the sum of seventy-four thousand seven hundred fifty dollars (\$74,750). Said sum shall be from cash funds exempt received from the department of health care policy and financing out of the appropriation made in subsection (3).

**SECTION 12. 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 24, 2002