

## CHAPTER 211

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**HEALTH CARE POLICY AND FINANCING**


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**SENATE BILL 03-266**

BY SENATOR(S) Reeves, Owen, Teck, Fitz-Gerald, Gordon, Groff, Grossman, Hanna, Phillips, Tapia, and Windels;  
also REPRESENTATIVE(S) Young, Plant, Witwer, Boyd, Cloer, Frangas, Jahn, Stafford, and Williams S.

**AN ACT**

**CONCERNING THE AUTHORITY OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING TO CHARGE A NURSING FACILITY PROVIDER FEE TO CERTAIN MEDICAID PROVIDERS IN ORDER TO ESTABLISH NURSING FACILITY-RELATED PROGRAMS, AND, IN CONNECTION THEREWITH, ESTABLISHING THE NURSING FACILITY QUALITY OF CARE GRANT PROGRAM AND THE STATE NURSING FACILITY SERVICE PROGRAM FOR SPECIFIED LEGAL IMMIGRANTS, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.**

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

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

**26-4-410.2. Nursing facilities - provider fee - waiver authority - grant program - cash fund - conditional repeal.** (1) (a) BEGINNING JULY 1, 2003, THE STATE DEPARTMENT SHALL COLLECT A FEE FROM NURSING FACILITY PROVIDERS, WHICH FEE SHALL BE CHARGED TO A NURSING FACILITY PROVIDER ON A PER PATIENT PER DAY BASIS. THE FEE SHALL BE NO GREATER THAN SIX DOLLARS AND FIFTY CENTS PER PATIENT PER DAY FOR EACH NURSING FACILITY PROVIDER. IN NO EVENT SHALL THE FEE BE CHARGED TO: A NURSING CARE FACILITY LICENSED PURSUANT TO SECTION 25-1-107 (1) (I) (I), C.R.S., THAT DOES NOT ACCEPT STATE OR FEDERAL ASSISTANCE MONEYS FOR THE SERVICES IT PROVIDES TO THE FACILITY'S RESIDENTS; A NURSING FACILITY PROVIDER THAT DOES NOT RECEIVE PAYMENT FOR SERVICES PURSUANT TO TITLE XIX OF THE SOCIAL SECURITY ACT; OR TO A NURSING FACILITY THAT IS OWNED BY A GOVERNMENTAL ENTITY. IN ADDITION, THE FEE SHALL NOT BE CHARGED FOR PATIENT DAYS OF RESIDENTS FOR WHOM A NURSING FACILITY PROVIDER RECEIVES PAYMENT FOR SERVICES PURSUANT TO PART A OF TITLE XVIII OF THE SOCIAL SECURITY ACT. THE STATE DEPARTMENT SHALL SET THE NURSING FACILITY PROVIDER FEE IN ACCORDANCE WITH THE FEDERAL WAIVER AUTHORITY AND THE APPROPRIATION MADE BY THE GENERAL ASSEMBLY.

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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.*

(b) THE STATE DEPARTMENT SHALL SEEK THE APPROPRIATE FEDERAL WAIVER FROM THE FEDERAL REQUIREMENTS FOR THE IMPOSITION OF A NURSING FACILITY PROVIDER FEE. THE STATE DEPARTMENT SHALL EXCLUDE THE FEWEST NUMBER OF NURSING FACILITY PROVIDERS FROM THE FEE TO BE CHARGED PURSUANT TO THIS SUBSECTION (1) AS IS NECESSARY TO OBTAIN THE WAIVER UNDER THIS PARAGRAPH (b).

(c) THE STATE DEPARTMENT SHALL NOT COLLECT A FEE PURSUANT TO THIS SUBSECTION (1) FOR PURPOSES OF THE STATE NURSING FACILITY SERVICE PROGRAM, ESTABLISHED IN PART 2 OF ARTICLE 15 OF THIS TITLE, UNLESS PART 2 OF ARTICLE 15 OF THIS TITLE IS IMPLEMENTED.

(2) ALL FEES COLLECTED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE NURSING FACILITY CASH FUND, WHICH FUND IS HEREBY CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND". THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSES OF THE NURSING FACILITY QUALITY OF CARE GRANT PROGRAM AUTHORIZED IN SUBSECTION (3) OF THIS SECTION AND THE STATE NURSING FACILITY SERVICE PROGRAM AUTHORIZED IN PART 2 OF ARTICLE 15 OF THIS TITLE. ANY MONEYS IN THE FUND NOT EXPENDED FOR THESE PURPOSES 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. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(3) THE STATE DEPARTMENT SHALL ESTABLISH A NURSING FACILITY QUALITY OF CARE GRANT PROGRAM FOR THE PURPOSE OF MAINTAINING THE CONTINUITY AND QUALITY OF CARE FOR MEDICAID NURSING FACILITY PATIENTS. THE STATE DEPARTMENT SHALL DISTRIBUTE GRANTS TO NURSING FACILITY PROVIDERS, WHO PAID THE FEE CHARGED PURSUANT TO SUBSECTION (1) OF THIS SECTION, UNDER THE NURSING FACILITY QUALITY OF CARE GRANT PROGRAM ON THE BASIS OF THAT NURSING FACILITY'S MEDICAID PATIENT DAYS. THE STATE DEPARTMENT SHALL DISTRIBUTE GRANTS UNDER THE PROGRAM NO MORE THAN FOURTEEN DAYS AFTER RECEIPT OF THE FEE CHARGED PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE STATE DEPARTMENT SHALL PAY FOR THE NURSING FACILITY QUALITY OF CARE GRANTS FROM MONEYS IN THE FUND.

(4) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE NURSING FACILITY QUALITY OF CARE GRANT PROGRAM SHALL BE IN ADDITION TO THE AMOUNT OF THE GENERAL ASSEMBLY'S ANNUAL APPROPRIATION FOR NURSING FACILITY MEDICAID PAYMENTS MADE PURSUANT TO THE COLORADO MEDICAL ASSISTANCE ACT.

(5) IF THE NURSING FACILITY PROVIDER FEE REQUIRED BY SUBSECTION (1) OF THIS SECTION IS REPEALED, NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE STATE DEPARTMENT SHALL NOT CONTINUE THE NURSING FACILITY QUALITY OF CARE GRANT PROGRAM ESTABLISHED IN SUBSECTION (3) OF THIS SECTION. IF THE NURSING FACILITY QUALITY OF CARE GRANT PROGRAM ESTABLISHED IN SUBSECTION (3) OF THIS SECTION IS REPEALED, NOTWITHSTANDING ANY OTHER PROVISION OF THIS

SECTION, THE STATE DEPARTMENT IS NOT AUTHORIZED TO CHARGE THE NURSING FACILITY PROVIDER FEE REQUIRED BY SUBSECTION (1) OF THIS SECTION.

**SECTION 2.** Article 15 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2**  
**STATE NURSING FACILITY SERVICE PROGRAM**

**26-15-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ELIGIBLE PERSON" MEANS A PERSON WHO:

(a) WAS LEGALLY RECEIVING NURSING FACILITY SERVICES THROUGH THE STATE'S MEDICAL ASSISTANCE PROGRAM PURSUANT TO ARTICLE 4 OF THIS TITLE AND RESIDED IN A NURSING FACILITY ON MARCH 5, 2003;

(b) BECAME INELIGIBLE FOR MEDICAL ASSISTANCE PURSUANT TO ARTICLE 4 OF THIS TITLE DUE TO THE PASSAGE OF SENATE BILL 03-176; AND

(c) IS LIVING IN A NURSING FACILITY AS OF THE EFFECTIVE DATE OF THE STATE NURSING FACILITY SERVICE PROGRAM.

(2) "NURSING FACILITY" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 26-4-103 (11).

(3) "STATE DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

**26-15-202. State nursing facility service program - authorization - rates.**

(1) THERE IS HEREBY ESTABLISHED THE STATE NURSING FACILITY SERVICE PROGRAM FOR THE PURPOSE OF PAYING NURSING FACILITY PROVIDERS FOR SERVICES PROVIDED TO ELIGIBLE PERSONS. THE STATE NURSING FACILITY SERVICE PROGRAM SHALL BE SUBJECT TO AVAILABLE APPROPRIATIONS BY THE GENERAL ASSEMBLY FROM THE NURSING FACILITY CASH FUND ESTABLISHED IN SECTION 26-4-410.2 (2).

(2) THE STATE DEPARTMENT SHALL PAY A NURSING FACILITY PROVIDER FOR SERVICES PROVIDED ON THE IMPLEMENTATION DATE OF SENATE BILL 03-176, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, AND EACH DAY THEREAFTER TO AN ELIGIBLE PERSON UNTIL THAT PERSON IS DISCHARGED FROM NURSING FACILITY CARE. THE PAYMENT FOR ANY SERVICES PROVIDED BETWEEN THE IMPLEMENTATION DATE OF SENATE BILL 03-176, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, AND JUNE 30, 2003, UNDER THIS PART 2 SHALL BE MADE RETROACTIVELY BY THE STATE DEPARTMENT AFTER JULY 1, 2003. THE STATE DEPARTMENT SHALL PAY THE NURSING FACILITY PROVIDER A RATE EQUAL TO THE ESTIMATED STATEWIDE AVERAGE DAILY RATE MINUS THE PATIENT'S SHARE, AS DETERMINED PURSUANT TO ARTICLE 4 OF THIS TITLE, OR THE NURSING FACILITY PROVIDER'S MEDICAID RATE, WHICHEVER IS LESS, FOR EACH DAY AN ELIGIBLE PERSON IS LIVING IN THE NURSING FACILITY. THE ESTIMATED STATEWIDE AVERAGE DAILY RATE SHALL BE ADJUSTED ANNUALLY BY THE

ESTIMATED ANNUAL INCREASE IN THE STATEWIDE AVERAGE DAILY RATE. A NURSING FACILITY PROVIDING SERVICES TO AN ELIGIBLE PERSON PURSUANT TO THIS PART 2 SHALL RETAIN THE PATIENT'S SHARE OF PAYMENT AS DEFINED PURSUANT TO ARTICLE 4 OF THIS TITLE AS PARTIAL PAYMENT FOR SERVICES PROVIDED TO THE PATIENT. A NURSING FACILITY PROVIDING SERVICES UNDER THE STATE NURSING FACILITY SERVICE PROGRAM SHALL PROVIDE, AT A MINIMUM, THE SPECTRUM OF SERVICES REQUIRED UNDER THE RATE PAID TO THAT FACILITY PURSUANT TO ARTICLE 4 OF THIS TITLE, BUT MAY USE THE RATE PAID PURSUANT TO THIS SUBSECTION (2) TO PAY FOR ANY ADDITIONAL HEALTH CARE SERVICES PROVIDED TO THE PATIENT WHILE UNDER THAT FACILITY'S CARE. IN ADDITION, A NURSING FACILITY MAY SEEK ADDITIONAL FUNDS FROM OTHER SOURCES FOR THE COST OF PROVIDING HEALTH CARE SERVICES THAT ARE NOT FULLY COVERED BY THE RATE PAID TO THAT NURSING FACILITY PURSUANT TO THIS PART 2.

(3) THE STATE DEPARTMENT SHALL NOT PAY A NURSING FACILITY PROVIDER FOR SERVICES PROVIDED TO AN ELIGIBLE PERSON IN THE STATE NURSING FACILITY SERVICE PROGRAM UNLESS THE PROVIDER IS ELIGIBLE TO RECEIVE PAYMENT FOR SUCH SERVICES UNDER ARTICLE 4 OF THIS TITLE.

**26-15-203. Rule-making authority - report.** (1) THE MEDICAL SERVICES BOARD SHALL ADOPT ANY RULES NECESSARY FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE STATE NURSING FACILITY SERVICE PROGRAM. AT A MINIMUM, THE RULES SHALL ADDRESS AN ELIGIBLE PERSON'S RIGHTS AND RESPONSIBILITIES, INCLUDING THE PAYMENT OF THE PATIENT'S SHARE PURSUANT TO SECTION 26-15-202 (2), UNDER THE STATE NURSING FACILITY SERVICE PROGRAM.

(2) THE STATE DEPARTMENT SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY BY JULY 15, 2003, AND EACH JULY 15 THEREAFTER, THE NUMBER OF ELIGIBLE PERSONS ENROLLED IN THE STATE NURSING FACILITY SERVICE PROGRAM AT THE BEGINNING OF THE FISCAL YEAR AND THE RATE TO BE PAID TO NURSING FACILITY PROVIDERS PURSUANT TO SECTION 26-15-202 (2) FOR THAT FISCAL YEAR.

**26-15-204. Implementation of part.** THIS PART 2 SHALL ONLY BE IMPLEMENTED WHEN SENATE BILL 03-176, AS ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, IS IMPLEMENTED.

**26-15-205. Repeal of part.** THIS PART 2 IS REPEALED, EFFECTIVE JULY 1, 2008. PRIOR TO SUCH REPEAL, THE STATE NURSING FACILITY SERVICE PROGRAM SHALL BE REVIEWED AS PROVIDED FOR IN SECTION 24-34-104, C.R.S.

**SECTION 3.** 24-34-104 (39) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (39) (b) The following agencies, functions, or both, shall terminate on July 1, 2008:

(XVI) THE STATE NURSING FACILITY SERVICE PROGRAM IMPLEMENTED BY THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING PURSUANT TO PART 2 OF ARTICLE 15 OF TITLE 26, C.R.S.

**SECTION 4.** 26-15-101, Colorado Revised Statutes, is amended to read:

**26-15-101. Short title.** This ~~article~~ PART 1 shall be known and may be cited as the "Reform Act for the Provision of Health Care for the Medically Indigent".

**SECTION 5.** The introductory portion to 26-15-103, Colorado Revised Statutes, is amended to read:

**26-15-103. Definitions.** As used in this ~~article~~ PART 1, unless the context otherwise requires:

**SECTION 6.** 26-15-104, Colorado Revised Statutes, is amended to read:

**26-15-104. Program for the medically indigent established.** A program for the medically indigent is hereby established, to commence July 1, 1983, which shall be administered by the department of health care policy and financing, to provide payment to providers for the provision of medical services to eligible persons who are medically indigent. The department of health care policy and financing may promulgate such rules and regulations as are necessary for the implementation of this ~~article~~ PART 1 in accordance with article 4 of title 24, C.R.S.

**SECTION 7.** 26-15-104.3, Colorado Revised Statutes, is amended to read:

**26-15-104.3. Eligibility of legal immigrants for services.** A legal immigrant who is a resident of the state of Colorado shall be eligible to receive services under this ~~article~~ PART 1 so long as he or she meets the eligibility requirements. As used in this section, "legal immigrant" has the same meaning as described in section 26-4-103 (8.5). As a condition of eligibility for services under this ~~article~~ PART 1, a legal immigrant shall agree to refrain from executing an affidavit of support for the purpose of sponsoring an alien on or after July 1, 1997, under rules promulgated by the immigration and naturalization service during the pendency of such legal immigrant's receipt of services under this ~~article~~ PART 1. Nothing in this section shall be construed to affect a legal immigrant's eligibility for services under this ~~article~~ PART 1 based upon such legal immigrant's responsibilities under an affidavit of support entered into before July 1, 1997.

**SECTION 8.** 26-15-106 (5) (a) (II) (C), (8) (a), and (13) (a), Colorado Revised Statutes, are amended to read:

**26-15-106. Responsibility of the department of health care policy and financing - provider contracts.** (5) (a) The responsibilities of providers who provide medical care through the program for the medically indigent are as follows:

(II) (C) When acting in the capacity of a provider, university hospital shall comply with all requirements of this ~~article~~ PART 1 relating to contracts with providers.

(8) Each provider contract shall specify that:

(a) Contract dollars provided over the fiscal year will be managed to assure that funds are available to provide the emergency services as defined in this ~~article~~ PART 1; and

(13) (a) Every contract shall require that a medically indigent person who wishes to be determined eligible for assistance under this ~~article~~ PART 1 shall submit a signed application therefor to the provider or to the state department.

**SECTION 9.** 26-15-110 (2), Colorado Revised Statutes, is amended to read:

**26-15-110. Existing programs included - exceptions - appropriations.**

(2) The general assembly shall make annual appropriations to the state department to accomplish the purposes of this ~~article~~ PART 1.

**SECTION 10.** 26-15-111, Colorado Revised Statutes, is amended to read:

**26-15-111. Effect of part 1.** This ~~article~~ PART 1 shall not affect the department of ~~institution's~~ HUMAN SERVICES' responsibilities for the provision of mental health care in accordance with part 2 of article 1 of title 27, C.R.S., and this ~~article~~ PART 1 shall not affect any provisions of article 22 of title 23, C.R.S., or any other provisions of law relating to the university of Colorado psychiatric hospital.

**SECTION 11.** 26-15-112, Colorado Revised Statutes, is amended to read:

**26-15-112. Penalties.** Any person who represents that any medical service is reimbursable or subject to payment under this ~~article~~ PART 1 when he or she knows that it is not and any person who represents that he or she is eligible for assistance under this ~~article~~ PART 1 when he or she knows that he or she is not commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

**SECTION 12. Appropriation - adjustments to the 2003 long bill.** (1) 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, 2003, shall be adjusted as follows:

(a) The medical services premiums general fund appropriation is decreased by nine million nine hundred thirty-four thousand dollars (\$9,934,000) and the cash fund appropriation is increased by nine million nine hundred thirty-four thousand dollars (\$9,934,000). The cash fund appropriation shall be from the nursing facility cash fund created in section 26-4-410.2 (2), Colorado Revised Statutes.

(b) The appropriation for the medical services premiums is increased by thirty million five hundred seventeen thousand and sixteen dollars (\$30,517,016). Of said sum, fifteen million two hundred fifty-eight thousand five hundred eight dollars (\$15,258,508) shall be cash funds and fifteen million two hundred fifty-eight thousand five hundred eight dollars (\$15,258,508) shall be federal funds. The cash fund appropriation shall be from the nursing facility cash fund created in section 26-4-410.2 (2), Colorado Revised Statutes. The appropriation shall be for the nursing facility quality of care grant program established in section 26-4-410.2 (3), Colorado Revised Statutes.

(c) The cash fund appropriation for other medical services is increased by five million, two hundred fifty-eight thousand, five hundred eight dollars (\$5,258,508). The cash fund appropriation shall be from the nursing facility cash fund established in section 26-4-410.2 (2), Colorado Revised Statutes. The appropriation shall be for

the state nursing facility service program established in section 26-15-202, Colorado Revised Statutes.

(d) The appropriation for the executive director's office is increased by eighty-eight thousand dollars (\$88,000) and 2.0 FTE. Of said sum, sixty-six thousand dollars (\$66,000) shall be cash funds and twenty-two thousand dollars (\$22,000) shall be federal funds. The cash fund appropriation shall be from the nursing facility cash fund established in section 26-4-410.2 (2), Colorado Revised Statutes.

**SECTION 13. 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 1, 2003