

CHAPTER 356

HEALTH CARE POLICY AND FINANCING

SENATE BILL 04-177

BY SENATOR(S) Gordon, Arnold, Cairns, Chlouber, Dyer, Entz, Evans, Fitz-Gerald, Groff, Grossman, Hanna, Hillman, Isgar, Johnson S., Jones, Keller, Kester, Phillips, Sandoval, Takis, Tapia, Taylor, Veiga, and Windels;
also REPRESENTATIVE(S) Hefley, Stafford, Pommer, Borodkin, Briggs, Butcher, Carroll, Coleman, Decker, Frangas, Hodge, Jahn, Judd, Madden, Marshall, McCluskey, McFadyen, McGihon, Miller, Rippy, Romanoff, Rose, Salazar, Stengel, Tochtrop, Weissmann, Welker, White, Williams S., Boyd, Merrifield, Paccione, Plant, Spence, and Vigil.

AN ACT**CONCERNING HOME- AND COMMUNITY-BASED SERVICES UNDER THE STATE'S MEDICAID PROGRAM FOR CHILDREN WITH AUTISM.**

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

SECTION 1. Part 6 of article 4 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPART to read:

**SUBPART 7
HOME- AND COMMUNITY-BASED SERVICES
FOR CHILDREN WITH AUTISM**

26-4-691. Short title. THIS SUBPART 7 SHALL BE KNOWN AND MAY BE CITED AS THE "HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM ACT".

26-4-692. Definitions. AS USED IN THIS SUBPART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

(a) IS ELIGIBLE FOR THE STATE'S MEDICAID PROGRAM PURSUANT TO SECTION 26-4-201, 26-4-301, OR 26-4-303;

(b) IS AGE BIRTH TO SIX YEARS;

(c) HAS A DIAGNOSIS OF AUTISM;

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

(d) IS AT RISK OF INSTITUTIONALIZATION IN EITHER AN INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED, A HOSPITAL, OR A NURSING FACILITY; AND

(e) IS NOT RECEIVING SERVICES FROM ANY OF THE ALTERNATIVES TO LONG-TERM CARE WAIVER PROGRAMS ESTABLISHED IN THIS TITLE.

(2) "LEAD PROVIDER" MEANS THE CREDENTIALLED, CERTIFIED, OR LICENSED PROFESSIONAL WHO IS THE ELIGIBLE CHILD'S PRIMARY PROVIDER AND WHO IS RESPONSIBLE FOR SUPERVISION OF THE ELIGIBLE CHILD'S CARE PLAN.

(3) "SERVICES" MEANS THE HOME- AND COMMUNITY-BASED SERVICES PROVIDED PURSUANT TO THIS SUBPART 7.

26-4-693. Federal authorization - budget neutrality - available appropriations. (1) THE STATE DEPARTMENT SHALL SEEK THE FEDERAL AUTHORIZATION NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SUBPART 7.

(2) HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM SHALL MEET AGGREGATE FEDERAL WAIVER BUDGET NEUTRALITY REQUIREMENTS.

(3) (a) THE PROVISION OF SERVICES PURSUANT TO THIS SUBPART 7 IS SUBJECT TO AVAILABLE APPROPRIATIONS FROM THE COLORADO AUTISM TREATMENT FUND ESTABLISHED IN SECTION 26-4-695.

(b) THE PROVISION OF HOME- AND COMMUNITY-BASED SERVICES PURSUANT TO THIS SUBPART 7 SHALL BE SUBJECT TO THE AVAILABILITY OF FEDERAL MATCHING MEDICAID FUNDS, PURSUANT TO TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, FOR PAYMENT OF THE COSTS FOR ADMINISTRATION AND THE COSTS FOR THE PROVISION OF SUCH SERVICES.

(4) THE STATE DEPARTMENT SHALL:

(a) SEEK AND UTILIZE ANY AVAILABLE FEDERAL, STATE, OR PRIVATE FUNDS WHICH ARE AVAILABLE FOR CARRYING OUT THE PURPOSES OF THIS SUBPART 7, INCLUDING BUT NOT LIMITED TO MEDICAID FUNDS PURSUANT TO TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(b) PROVIDE A SYSTEM OF REIMBURSEMENT FOR SERVICES THAT ENCOURAGES THE MOST COST-EFFECTIVE PROVISION OF SERVICES.

26-4-694. Services - duties of the state department - rules. (1) SUBJECT TO THE PROVISIONS OF THIS SUBPART 7, HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM SHALL INCLUDE ONLY THE FOLLOWING SERVICES, AS SPECIFIED IN THE ELIGIBLE CHILD'S CARE PLAN:

(a) OCCUPATIONAL THERAPY;

(b) SPEECH THERAPY;

(c) PSYCHOLOGICAL AND PSYCHIATRIC SERVICES;

(d) PHYSICAL THERAPY; AND

(e) BEHAVIORAL THERAPY.

(2) NO ELIGIBLE CHILD MAY RECEIVE SERVICES IN AN AMOUNT IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS ANNUALLY.

(3) THE STATE DEPARTMENT SHALL UTILIZE THE SERVICES OF EXISTING SERVICE PROVIDER AGENCIES TO PROVIDE SERVICES PURSUANT TO THIS SUBPART 7. A SERVICE PROVIDER AGENCY SHALL RETAIN NO MORE THAN FIFTEEN PERCENT OF THE ESTABLISHED SERVICE REIMBURSEMENT RATE FOR ADMINISTRATIVE COSTS.

(4) A CARE PLANNING AGENCY MAY BE CERTIFIED TO PROVIDE THE SERVICES DESCRIBED IN SUBSECTION (1) OF THIS SECTION IF OTHERWISE QUALIFIED AS A PROVIDER UNDER THE STATE MEDICAL ASSISTANCE PROGRAM.

(5) THE STATE DEPARTMENT SHALL CONTRACT WITH A COMMUNITY CENTERED BOARD FOR PERSONS WITH DEVELOPMENTAL DISABILITIES TO SERVE AS THE SINGLE ENTRY POINT AGENCY FOR SERVICES AND AS THE CARE PLANNING AGENCY FOR ELIGIBLE CHILDREN. THE CARE PLANNING PROCESS SHALL INCLUDE THE ELIGIBLE CHILD'S FAMILY OR GUARDIAN, THE ELIGIBLE CHILD'S LEAD PROVIDER, AND THE ELIGIBLE CHILD'S CASE MANAGER. FOR THE PURPOSE OF IMPLEMENTING THIS SUBPART 7 THE CARE PLANNING PROCESS SHALL BE COORDINATED WITH ANY OTHER CARE PLAN OR CASE MANAGER THE ELIGIBLE CHILD MAY HAVE.

(6) A MEMBER OF AN ELIGIBLE CHILD'S FAMILY MAY BE EMPLOYED TO PROVIDE SERVICES TO THE CHILD. THE REIMBURSEMENT LIMITATION IN SECTION 26-4-609 SHALL NOT APPLY TO SERVICES PROVIDED PURSUANT TO THIS SUBPART 7 BY A FAMILY MEMBER.

(7) THE STATE DEPARTMENT SHALL DEVELOP THE SERVICE PROVISIONS, WHICH SHALL INCLUDE PROVISIONS FOR THE SUPERVISION OF DIRECT CARE PROVIDERS, AND THE CARE PLANNING PROCESS UNDER THIS SUBPART 7 IN CONSULTATION WITH PARENTS OF CHILDREN WITH AUTISM AND MEDICAL PROFESSIONALS WHO HAVE EXPERTISE IN TREATING CHILDREN WITH AUTISM.

(8) THE STATE BOARD SHALL ADOPT RULES NECESSARY TO IMPLEMENT AND ADMINISTER THE PROVISIONS OF THIS SUBPART 7, INCLUDING BUT NOT LIMITED TO REQUIRING AN ONGOING EVALUATION PROCESS FOR EACH ELIGIBLE CHILD AND THE USE OF AN EXTERNAL EVALUATION CONTRACTOR FOR THIS PURPOSE.

26-4-695. Colorado autism treatment fund. THE COLORADO AUTISM TREATMENT FUND IS HEREBY CREATED AND ESTABLISHED IN THE STATE TREASURY FOR THE PURPOSE OF PAYING FOR SERVICES PROVIDED TO ELIGIBLE CHILDREN PURSUANT TO THIS SUBPART 7. SUCH FUND SHALL BE COMPRISED OF TOBACCO SETTLEMENT MONEYS ALLOCATED TO SUCH FUND. MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSES OF THIS SUBPART 7. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSE OF THIS SUBPART 7 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.

SECTION 2. 26-4-303 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26-4-303. Optional programs with special state provisions. (1) Subject to the provisions of subsection (2) of this section, this section specifies programs developed by Colorado to increase federal financial participation through selecting optional services or optional eligible groups. These programs include but are not limited to:

(n) HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM, AS SPECIFIED IN SUBPART 7 OF PART 6 OF THIS ARTICLE.

SECTION 3. 24-22-115 (1), Colorado Revised Statutes, as amended by House Bill 04-1421, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is amended to read:

24-22-115. Tobacco litigation settlement cash fund - creation. (1) 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. 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. 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. 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 GENERAL FUND AT THE END OF THE FISCAL YEAR AS REQUIRED BY THIS SUBSECTION (1), AN AMOUNT NEEDED, UP TO ONE MILLION DOLLARS, TO PAY THE STATE'S SHARE OF THE ANNUAL FUNDING REQUIRED BY THE "HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM ACT", SUBPART 7 OF PART 6 OF ARTICLE 4 OF TITLE 26, C.R.S., SHALL BE TRANSFERRED FROM THE CASH FUND TO THE COLORADO AUTISM TREATMENT FUND CREATED PURSUANT TO SECTION 26-4-695, C.R.S. Except as provided in subsection (2) of this section, at the end of any fiscal year commencing on or after July 1, 2004, all unexpended and unencumbered moneys and all moneys not appropriated for the

following fiscal year in the cash fund shall be transferred to the general fund.

SECTION 4. 24-75-1104 (1) (d), Colorado Revised Statutes, is 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:

(d) The tobacco education, prevention, and cessation grant program created in part 8 of article 3.5 of title 25, C.R.S., shall receive fifteen percent of the total amount of settlement moneys annually received by the state LESS ANY AMOUNT NEEDED, UP TO ONE MILLION DOLLARS, TO PAY THE STATE'S SHARE OF THE ANNUAL FUNDING REQUIRED BY THE "HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN WITH AUTISM ACT", SUBPART 7 OF PART 6 OF ARTICLE 4 OF TITLE 26, C.R.S., WHICH SHALL BE TRANSFERRED TO THE COLORADO AUTISM TREATMENT FUND BEGINNING IN STATE FISCAL YEAR 2005-06; except that the amount received in any fiscal year FOR BOTH PROGRAMS shall not exceed fifteen million dollars;

SECTION 5. 25-3.5-807 (2) (a), Colorado Revised Statutes, is amended to read:

25-3.5-807. Tobacco program fund - created. (2) (a) Except as otherwise provided in section 24-75-1104 (1) (d), (1.7) (d), ~~or~~ AND (1.8) (a) (III), C.R.S., beginning in fiscal year 2000-01 and for fiscal years thereafter so long as the state receives moneys pursuant to the master settlement agreement, the general assembly shall annually appropriate to the fund fifteen percent of the amount transmitted to the state treasurer pursuant to the provisions of the master settlement agreement, other than attorney fees and costs, during the preceding fiscal year; except that the amount so appropriated to the fund in any fiscal year shall not exceed fifteen million dollars. The general assembly shall appropriate the amount specified in this subsection (2) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

SECTION 6. Effective date. (1) Except as provided for in subsections (2) and (3) of this section, this act shall take effect January 1, 2005.

(2) Section 3 of this act shall only take effect if House Bill 04-1421 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(3) Sections 4 and 5 of this act shall only take effect if House Bill 04-1421 is not enacted at the Second Regular Session of the Sixty-fourth General Assembly and does not become law.

(4) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall

take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: June 1, 2004