

CHAPTER 371

**APPROPRIATIONS**

HOUSE BILL 06-1369

BY REPRESENTATIVE(S) Plant, Buescher, Hall, Benefield, Borodkin, Boyd, Green, Hodge, McGihon, Merrifield, Riesberg, and Solano;  
also SENATOR(S) Tapia, Keller, and Owen.

**AN ACT**

**CONCERNING A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.**

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

**SECTION 1.** Part V (2), (4), (6) (G), and the affected totals of section 2 of chapter 354, Session Laws of Colorado 2005, as amended by House Bill 06-1217 enacted at the Second Regular Session of the Sixty-fifth General Assembly, are amended, and the said Part V is further amended BY THE ADDITION OF THE FOLLOWING NEW FOOTNOTES, to read:

Section 2. **Appropriation.**

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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.*

APPROPRIATION FROM

ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$

**PART V  
DEPARTMENT OF HEALTH CARE POLICY AND FINANCING**

**(2) MEDICAL SERVICES PREMIUMS ~~34, 35, 36, 37, 38, 39, 40, 41, 42~~ PREMIUMS <sup>34, 35, 36, 37, 37a, 38, 39, 40, 40a, 41, 42, 42a</sup>**

Services for 35,308						
Supplemental Security						
Income Adults 65 and						
Older (SSI 65 +) at an						
average cost of						
<del>\$19,467.57</del>	\$19,549.17					
		687,361,114				
		690,242,167				
Services for 5,943						
Supplemental Security						
Income Adults 60 to 64						
Years of Age (SSI 60 -						
64) at an average cost of						
<del>\$13,491.96</del>	\$13,541.73					
		80,162,161				
		80,478,501				

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ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
		GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$
Services for 11,355 Qualified Medicare Beneficiaries (QMBs) and Special Low-Income Medicare Beneficiaries (SLIMBs) at an average cost of \$1,079.07	<del>12,252,164</del> 12,252,896					
Services for 48,673 Supplemental Security Income Disabled Individuals at an average cost of <del>\$11,816.04</del> \$11,863.29	<del>575,122,358</del> 577,421,678					
Services for 58,784 Categorically Eligible Low-income Adults at an average cost of <del>\$3,915.74</del> \$3,918.90	<del>230,182,759</del> 230,368,610					

Services for 8,100 Baby Care Program Adults at an average cost of <del>\$7,786.80</del> \$7,793.31	<del>63,073,107</del> 63,125,837					
Services for 219 Breast and Cervical Cancer Treatment Clients at an Average Cost of \$22,341.68	4,892,827					
Services for 236,841 Eligible Children at an average cost of <del>\$1,342.00</del> \$1,343.10	<del>317,841,321</del> 318,100,512					
Services for 16,303 Foster Children at an average cost of <del>\$3,134.07</del> \$3,143.51	<del>51,094,670</del> 51,248,601					
Services for 5,621 Non-Citizens at an average cost of <del>\$11,108.48</del> \$11,124.65	<del>62,440,792</del> <u>62,531,644</u>					
		2,084,423,273	1,023,642,714(M)	76,512 <sup>a</sup>	22,782,311 <sup>b</sup>	1,037,921,736
		2,090,663,273	1,026,762,714(M) <sup>c</sup>			1,041,041,736

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ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
		GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$

<sup>a</sup> This amount shall be from service fees received from privately owned intermediate care facilities for the mentally retarded, pursuant to Section 26-4-410 (1) (d) (I), C.R.S.

<sup>b</sup> Of this amount, \$13,934,260 represents public funds certified as representing expenditures incurred by public nursing homes and hospitals that are eligible for federal financial participation under the Medicaid program, \$6,216,752 shall be from the imposition of additional state cigarette and tobacco taxes pursuant to Section 21 of Article X of the State Constitution, \$1,462,635 shall be public funds certified as representing expenditures incurred by Denver Health and Hospital Authority for out-stationing expenditures that are eligible for federal financial participation under the Medicaid program, \$855,289 shall be from the Breast and Cervical Cancer Prevention and Treatment Fund created in Section 26-4-532 (7), C.R.S., and \$313,375 shall be from the Colorado Autism Treatment Fund created in Section 26-4-695, C.R.S.

<sup>c</sup> OF THIS AMOUNT, \$2,550,000 SHALL BE USED TO INCREASE RATES FOR HOME- AND COMMUNITY-BASED SERVICE PROVIDERS IN ACCORDANCE TO FOOTNOTE 40a. ANY OF THESE FUNDS UNEXPENDED PRIOR TO JULY 1, 2006, SHALL BE ROLLED FORWARD AND SHALL REMAIN AVAILABLE FOR EXPENDITURE IN FY 2006-07.

#### (4) INDIGENT CARE PROGRAM

Safety Net Provider

Payments <sup>43</sup>	281,007,750	9,432,484(M)		131,071,391 <sup>a</sup>	140,503,875
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The Children's Hospital,

Clinic Based Indigent

Care	6,119,760	3,059,880(M)			3,059,880
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Pediatric Speciality

Hospital	5,452,134	2,726,067(M)			2,726,067
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H.B. 97-1304 Children's

Basic Health Plan Trust	<del>23,342,785</del>	<del>2,255,000</del>		160,256 <sup>b</sup>	20,927,529 <sup>c</sup>
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	25,342,785	4,255,000			
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Children's Basic Health Plan Administration	4,181,207		1,947,089 <sup>d</sup>	2,234,118
Children's Basic Health Plan Premium Costs <sup>44</sup>	77,006,123		27,056,309 <sup>d</sup>	49,949,814
Children's Basic Health Plan Dental Benefit Costs	6,218,783		2,176,574 <sup>d</sup>	4,042,209
Comprehensive Primary and Preventive Care Fund	2,615,941		2,615,941 <sup>e</sup>	
Comprehensive Primary and Preventive Care Grants Program	<u>2,615,941</u>		2,615,941 <sup>f</sup>	
	<del>408,560,424</del>			
	410,560,424			

<sup>a</sup> This amount represents public funds certified as representing expenditures incurred by hospitals that are eligible for federal financial participation under the Medicaid Major Teaching Hospital Program, Medicaid, and the Medicaid Disproportionate Share Payments to Hospitals Program.

<sup>b</sup> This amount shall be from annual premiums paid by participating families.

<sup>c</sup> This amount shall be from the Tobacco Litigation Settlement Cash Fund created in Section 24-22-115, C.R.S., pursuant to Section 24-75-1104.5 (1) (c), C.R.S.

<sup>d</sup> These amounts shall be from the Children's Basic Health Plan Trust created in Section 26-19-105, C.R.S.

<sup>e</sup> This amount shall be from the Tobacco Litigation Settlement Cash Fund created in Section 24-22-115, C.R.S., pursuant to Section 24-75-1104.5 (1) (b), C.R.S.

<sup>f</sup> This amount shall be from the Comprehensive Primary and Preventive Care Fund created in Section 26-4-1007, C.R.S., pursuant to Section 24-75-1104.5 (1) (b), C.R.S.

**(6) DEPARTMENT OF HUMAN SERVICES MEDICAID-FUNDED PROGRAMS**

**(G) Services for People  
with Developmental  
Disabilities - Medicaid  
Funding**

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	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
			GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
	\$	\$	\$	\$	\$	\$	\$
Community Services Administration	2,337,168		1,168,584(M)				1,168,584
Community Services Adult Program Costs and CCMS Replacement - Medicaid Funding	<del>223,788,132</del> 224,591,646		<del>111,882,316(M)*</del> 112,284,073(M)*				<del>111,905,816*</del> 112,307,573*
Federally-matched Local Program Costs	24,281,838					12,140,919 <sup>b</sup>	12,140,919 <sup>a</sup>
Regional Centers - Medicaid Funding	39,321,388		18,917,494(M)			743,200 <sup>c</sup>	19,660,694
Regional Center Depreciation and Annual Adjustments	1,498,251		749,126(M)				749,125
Services for Children and Families - Medicaid Funding	<u>3,813,077</u> <del>295,039,854</del> 295,843,368		1,906,539(M)*				1,906,538 <sup>a</sup>

\* Up to 3.0 percent of these funds, if not expended prior to July 1, 2006, shall be rolled forward and shall remain available for expenditure in FY 2006-07.

<sup>b</sup> This amount represents funds certified as expenditures incurred by local governments that are eligible for federal financial participation under Medicaid. Up to 3.0 percent of these funds, if not expended prior to July 1, 2006, shall be rolled forward and shall remain available for expenditure in FY 2006-07.

<sup>c</sup> This amount shall be from service fees from regional centers for the developmentally disabled, pursuant to Section 26-4-410 (1) (d) (I), C.R.S.

442,822,528

443,626,042

**TOTALS PART V  
(HEALTH CARE  
POLICY AND  
FINANCING)<sup>4, 5</sup>**

\$3,300,352,702	\$1,395,254,474	\$655,697	\$300,340,778 <sup>a</sup>	\$1,604,101,753
<u>\$3,309,396,216</u>	<u>\$1,400,776,231</u>			<u>\$1,607,623,510</u>

<sup>a</sup> Of this amount, \$45,988,426 contains a (T) notation, and \$551,894 contains an (L) notation.

**FOOTNOTES** -- The following statements are referenced to the numbered footnotes throughout section 2.

~~37a DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, MEDICAL SERVICE PREMIUMS — THE CALCULATIONS FOR THIS LINE ITEM INCLUDE \$831,000 TOTAL FUNDS FOR A 1.0 PERCENT RATE INCREASE FOR INPATIENT HOSPITAL SERVICES PROVIDED TO MEDICAID CLIENTS. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE MEDICAL SERVICES BOARD ADOPT RULES THAT INCREASE EACH INDIVIDUAL HOSPITAL'S MEDICAID REIMBURSEMENT RATE BY 1.0 PERCENT FOR INPATIENT HOSPITAL SERVICES PROVIDED TO MEDICAID CLIENTS. THE DEPARTMENT IS ALSO REQUESTED TO PROVIDE A REPORT TO THE JOINT BUDGET COMMITTEE BY JUNE 1, 2006, ON THE STATUS OF THE RULES ADOPTED BY THE MEDICAL SERVICES BOARD REGARDING THIS RATE INCREASE.~~

(Governor lined through this provision. See the editor's note and the Governor's letter following this act.)

~~40a DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, MEDICAL SERVICES PREMIUMS — THE CALCULATIONS FOR THIS LINE ITEM INCLUDE \$5,100,000 TOTAL FUNDS FOR RATE INCREASES FOR LONG-TERM CARE COMMUNITY PROVIDERS. IT IS THE INTENT OF THE GENERAL ASSEMBLY~~

ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
		GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	CASH FUNDS EXEMPT	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$
<del>THAT THE DEPARTMENT INCREASE RATES AS FOLLOWS:</del>						
<del>PROVIDER CLASS</del>			<del>RATE INCREASE</del>		<del>ESTIMATED FUNDING</del>	
<del>ASSISTED LIVING FACILITIES</del>			<del>15.07%</del>		<del>\$1,142,490</del>	
<del>DAY CARE SERVICES</del>			<del>3.57%</del>		<del>\$46,367</del>	
<del>SKILLED NURSING</del>			<del>7.20%</del>		<del>\$567,960</del>	
<del>HOME HEALTH AIDES</del>			<del>4.20%</del>		<del>\$586,690</del>	
<del>PHYSICAL THERAPY</del>			<del>36.30%</del>		<del>\$286,990</del>	
<del>SPEECH THERAPY</del>			<del>35.90%</del>		<del>\$146,664</del>	
<del>OCCUPATIONAL THERAPY</del>			<del>29.20%</del>		<del>\$173,356</del>	
<del>PRIVATE DUTY REGISTERED NURSING</del>			<del>3.80%</del>		<del>\$90,220</del>	
<del>PRIVATE DUTY LICENSED NURSING</del>			<del>8.00%</del>		<del>\$90,218</del>	
<del>PERSONAL CARE/HOMEMAKER</del>			<del>10.00%</del>		<del>\$1,846,514</del>	
<del>ALL OTHER</del>			<del>2.57%</del>		<del>\$122,531</del>	
<del>TOTAL</del>					<del>\$5,100,000</del>	

~~THE DEPARTMENT IS REQUESTED TO REPORT TO THE JOINT BUDGET COMMITTEE BY JUNE 1, 2006 THE RATE PLAN THAT HAS BEEN ADOPTED BY THE MEDICAL SERVICES BOARD.~~

(Governor lined through this provision. See the editor's note and the Governor's letter following this act.)

~~DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, MEDICAL SERVICE PREMIUMS — THE CALCULATIONS FOR THIS LINE ITEM INCLUDES \$309,000 TOTAL FUNDS FOR A 2.0 PERCENT RATE INCREASE FOR DURABLE MEDICAL EQUIPMENT RATES. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE MEDICAL SERVICES BOARD ADOPT RULES THAT INCREASE EACH DURABLE MEDICAL EQUIPMENT RATES BY 2.0 PERCENT. THE DEPARTMENT IS ALSO REQUESTED TO PROVIDE A REPORT TO THE JOINT BUDGET COMMITTEE BY JUNE 1, 2006, ON THE STATUS OF THE RULES ADOPTED BY THE MEDICAL SERVICES BOARD REGARDING THIS RATE INCREASE.~~

(Governor lined through this provision. See the editor's note and the Governor's letter following this act.)

**SECTION 2. 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 in part and vetoed in part: March 31, 2006

**Editor's note:** The following is a reprinting of the Governor's message filed with House Bill 06-1369 when he approved the bill in part and vetoed it in part on March 31, 2006. Markings were made on the bill by the Governor purporting to veto provisions contained in footnotes. For the reasons set forth in the letter to the Governor on page 131 of Volume 1 of the 1989 Session Laws of Colorado, the President of the Senate and the Speaker of the House of Representatives expressed their opinion that similar markings made on the 1989 long bill did not constitute valid vetoes. However, the Colorado Supreme Court has held that such purported vetoes are entitled to a presumption of validity. See *Romer v. Colorado General Assembly*, 810 P.2d 215 (Colo. 1991). In view of this holding, the purported vetoes are reflected in the version of the bill printed on the preceding pages. Subsequently the Colorado Supreme Court held that such purported vetoes to definitional headnotes are not "items" subject to the Governor's item veto power, but they were found to violate the separation of powers by intruding on the authority of the executive branch to administer the laws. See *Colorado General Assembly v. Owens*, No. 04SC816 (Colo. June 12, 2006).

March 31, 2006

The Honorable Colorado House of Representatives  
Sixty-Fifth General Assembly  
Second Regular Session  
State Capitol  
Denver, Colorado 80203

Ladies and Gentlemen:

I am filing with the Secretary of State House Bill 06-1369, "Concerning a supplemental appropriation to the Department of Health Care Policy and Financing." Approved in part and disapproved in part on March 31, 2006 at 2:10 p.m.

With regard to my veto in this bill, under article IV, section 12 of the Colorado Constitution, I have the "power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items." I have exercised this power with respect to a distinct item in House Bill 06-1369. Pursuant to the Colorado Constitution, I have forwarded copies of the vetoed item from this bill, with my objections, to the house of origin. In lining through this provision, I have vetoed the following items, and this letter sets forth my reasons for doing so.

I have lined through the following items in Section 1 of the bill, thereby vetoing these provisions:

1. **Footnotes 37a, pages 6-7,** "Department of Health Care Policy and Financing, Medical Service Premiums -- The calculations for this line item include \$831,000 total funds for a 1.0 percent rate increase for inpatient hospital services provided to Medicaid clients. It is the intent of the General Assembly that the Medical Services Board adopt rules that increase each individual hospital's Medicaid reimbursement rate by 1.0 percent for inpatient hospital services provided to Medicaid clients. The Department is also requested to provide a report to the Joint Budget Committee by June 1, 2006, on the status of the rules adopted by the Medical Services Board regarding this rate increase."

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

2. **Footnote 40a, page 7,** "Department of Health Care Policy and Financing, Medical Services Premiums -- The calculations for this line item include \$5,100,000 total funds for rate increases for long-term care community providers. It is the intent of the General Assembly that the Department increase rates as follows:

Provider Class	Rate Increase	Estimated Funding
Assisted Living Facilities	15.07%	\$1,142,490
Day Care Services	3.57%	\$46,367
Skilled Nursing	7.20%	\$567,960
Home Health Aides	4.20%	\$586,690
Physical Therapy	36.30%	\$286,990
Speech Therapy	35.90%	\$146,664
Occupational Therapy	29.20%	\$173,356
Private Duty Registered Nursing	3.80%	\$90,220
Private Duty Licensed Nursing	8.00%	\$90,218
Personal Care Homemaker	10.00%	\$1,846,514
All Other	2.57%	\$122,531
Total		\$5,100,000

The Department is requested to report to the Joint Budget Committee by June 1, 2006 the rate plan that has been adopted by the Medical Services Board."

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill.

3. **Footnote 42a, page 7**, "Department of Health Care Policy and Financing, Medical Service Premiums -- The calculations for this line item includes \$309,000 total funds for a 2.0 percent rate increase for durable medical equipment rates. It is the intent of the General Assembly that the Medical Services Board adopt rules that increase each durable medical equipment rates by 2.0 percent. The Department is also requested to provide a report to the Joint Budget Committee by June 1, 2006, on the status of the rules adopted by the Medical Services Board regarding this rate increase."

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

For these reasons, I have exercised the line item veto in House Bill 06-1369.

Sincerely,

Bill Owens  
Governor