

CHAPTER 149

**HEALTH CARE POLICY AND FINANCING**

SENATE BILL 11-216

BY SENATOR(S) Hodge, Steadman, Lambert;  
also REPRESENTATIVE(S) Ferrandino, Becker, Gerou.

**AN ACT**

**CONCERNING THE REDUCTION OF GENERAL FUND APPROPRIATIONS FOR THE CHILDREN'S BASIC HEALTH PLAN BY REALLOCATING TOBACCO-RELATED REVENUE STREAMS, AND, IN CONNECTION THEREWITH, ABOLISHING THE PEDIATRIC SPECIALTY HOSPITAL FUND AND THE SUPPLEMENTAL TOBACCO LITIGATION SETTLEMENT MONEY ACCOUNT IN THE PEDIATRIC SPECIALTY HOSPITAL FUND, ABOLISHING THE COMPREHENSIVE PRIMARY AND PREVENTIVE CARE FUND, ABOLISHING THE COMPREHENSIVE PRIMARY AND PREVENTIVE CARE GRANT PROGRAM, AND MAKING AN APPROPRIATION.**

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

**SECTION 1.** 24-22-117 (1) (c) (I) (B) and (2) (e), Colorado Revised Statutes, are amended, and the said 24-22-117 (1) (c) (I) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

**24-22-117. Tobacco tax cash fund - accounts - creation - legislative declaration - repeal.** (1) (c) For each fiscal year from the 2004-05 fiscal year through the 2007-08 fiscal year and for the 2012-13 fiscal year and each fiscal year thereafter, the general assembly shall annually appropriate three percent of the moneys estimated to be deposited in that fiscal year into the cash fund, plus three percent of the interest and income earned on the deposit and investment of moneys in the cash fund, and, for the 2008-09, 2009-10, 2010-11, and 2011-12 fiscal years, the general assembly shall annually appropriate three percent of the moneys estimated to be deposited in that fiscal year into the cash fund, for health-related purposes to provide revenue for the state's general fund and old age pension fund and for municipal and county governments to compensate proportionately for tax revenue reductions attributable to lower cigarette and tobacco sales resulting from the implementation of the tax imposed pursuant to section 21 of article X of the state constitution, as follows:

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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.*

(I) (B) Beginning in fiscal year 2006-07 and for ~~each fiscal year thereafter~~, 2007-08 THROUGH FISCAL YEAR 2010-11, of the moneys specified in sub-subparagraph (A) of this subparagraph (I), fifty percent shall be appropriated for the purposes of providing immunizations performed by county or district public health agencies in areas that were served by county public health nursing services prior to July 1, 2008, and fifty percent shall be appropriated to the pediatric specialty hospital fund, created in paragraph (e) of subsection (2) of this section, for the purposes of augmenting hospital reimbursement rates for regional pediatric trauma centers as defined in section 25-3.5-703 (4) (f), C.R.S., under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.

(B.5) BEGINNING IN FISCAL YEAR 2011-12 AND FOR EACH FISCAL YEAR THEREAFTER, OF THE MONEYS SPECIFIED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), FIFTY PERCENT SHALL BE APPROPRIATED FOR THE PURPOSES OF PROVIDING IMMUNIZATIONS PERFORMED BY COUNTY OR DISTRICT PUBLIC HEALTH AGENCIES IN AREAS THAT WERE SERVED BY COUNTY PUBLIC HEALTH NURSING SERVICES PRIOR TO JULY 1, 2008, AND FIFTY PERCENT SHALL BE APPROPRIATED FOR EXPENDITURES IN THE CHILDREN'S BASIC HEALTH PLAN CREATED IN ARTICLE 8 OF TITLE 25.5, C.R.S.

(2) There are hereby created in the state treasury the following funds:

(e) (I) The pediatric specialty hospital fund to be administered by the department of health care policy and financing. For fiscal year 2006-07 and for ~~each fiscal year thereafter~~ FISCAL YEAR 2007-08 THROUGH FISCAL YEAR 2010-11, moneys in the pediatric specialty hospital fund shall be annually appropriated by the general assembly to the department of health care policy and financing to augment hospital reimbursement rates for regional pediatric trauma centers as defined in section 25-3.5-703 (4) (f), C.R.S., under the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S. THE BALANCE REMAINING IN THE PEDIATRIC SPECIALTY HOSPITAL FUND AFTER PAYMENT OF ALL OBLIGATIONS OF FISCAL YEAR 2010-11 SHALL BE CREDITED TO THE GENERAL FUND ON AUGUST 1, 2011, AND THE PEDIATRIC SPECIALTY HOSPITAL FUND IS ABOLISHED ON SEPTEMBER 1, 2011.

(II) The supplemental tobacco litigation settlement moneys account is hereby created in the pediatric specialty hospital fund created in subparagraph (I) of this paragraph (e). The principal of the account shall consist of moneys transferred by the state treasurer to the account in accordance with section 24-75-1104.5 (1.5) (a) (X). The principal of the account shall be subject to annual appropriation by the general assembly to the department of health care policy and financing to offset the medicaid shortfall experienced by the regional pediatric trauma center as defined in section 25-3.5-703 (4) (f), C.R.S., by augmenting its hospital reimbursement rates; except that, at the end of the 2007-08 fiscal year and at the end of ~~each fiscal year thereafter~~ FISCAL YEAR 2008-09, FISCAL YEAR 2009-10, AND FISCAL YEAR 2010-11, all unexpended and unencumbered principal of the account shall be transferred to the short-term innovative health program grant fund created in section 25-36-101 (2), C.R.S., in accordance with section 24-75-1104.5 (1.5) (b). Interest and income earned on the deposit and investment of moneys in the account shall be credited to the account and shall remain in the account until the end of the fiscal year in which credited, when it shall be transferred to the short-term innovative health program grant fund in accordance with section 24-75-1104.5 (1.5) (b).

(III) THIS PARAGRAPH (e) IS REPEALED, EFFECTIVE SEPTEMBER 15, 2011.

**SECTION 2.** 24-75-1104.5 (1.5) (a) (X), Colorado Revised Statutes, is amended to read:

**24-75-1104.5. Use of settlement moneys - programs - repeal.** (1.5) (a) Except as otherwise provided in subsections (5) and (6) of this section, for the 2007-08 fiscal year and for each fiscal year thereafter, the following programs, services, and funds shall receive the following specified amounts from the portion of any settlement moneys received and allocated by the state in the current fiscal year that remains after the programs, services, and funds receiving such moneys pursuant to subsection (1) of this section have been fully funded, and the portion of all other settlement moneys received by the state in the preceding fiscal year that remains after the programs, services, and funds receiving such other settlement moneys pursuant to subsection (1) of this section have been fully funded and all overexpenditures and supplemental appropriations allowed for the 2006-07, 2007-08, 2008-09, or 2009-10 fiscal years pursuant to section 24-22-115 (4) have been made:

(X) (A) The supplemental tobacco litigation settlement moneys account of the pediatric specialty hospital fund created in section 24-22-117 (2) (e) shall receive one percent of the settlement moneys, which the state treasurer shall transfer thereto and which shall be used, subject to annual appropriation by the general assembly to the department of health care policy and financing, for the purpose of offsetting the medicaid shortfall for the regional pediatric trauma center as defined in section 25-3.5-703 (4) (f), C.R.S.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (X), the amount transferred to the supplemental tobacco litigation settlement moneys account of the pediatric specialty hospital fund shall be three hundred seventeen thousand dollars for the 2008-09 fiscal year, two hundred eighty-three thousand dollars for the 2009-10 fiscal year, and three hundred seven thousand dollars for the 2010-11 fiscal year. The difference between the amount that would have been transferred to the supplemental tobacco litigation settlement moneys account of the pediatric specialty hospital fund pursuant to sub-subparagraph (A) of this subparagraph (X) and the amount transferred pursuant to this sub-subparagraph (B) in each of said fiscal years shall be transferred to the general fund. This sub-subparagraph (B) is repealed, effective July 1, 2011.

(C) THIS SUBPARAGRAPH (X) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2011.

**SECTION 3.** 24-75-1104.5 (1) (b), (1) (c), (1.5) (a) (V), and (3), Colorado Revised Statutes, are amended to read:

**24-75-1104.5. Use of settlement moneys - programs - repeal.** (1) Except as otherwise provided in subsection (5) of this section, for the 2004-05 fiscal year and for each fiscal year thereafter, the following programs, services, or funds shall receive the following specified amounts from the settlement moneys received by the state in the preceding fiscal year; except that fifteen million four hundred thousand dollars of strategic contribution fund moneys and, for the 2010-11 fiscal year and for each fiscal year thereafter only, the lesser of sixty-five million dollars of other

settlement moneys or all other settlement moneys shall be allocated in each fiscal year in which they are received by the state and except that, of the other settlement moneys received by the state in the 2009-10 fiscal year, the lesser of sixty-five million dollars or all of such moneys shall be transferred to the general fund on June 30, 2010, and shall not be allocated:

(b) (I) The comprehensive primary and preventive care grant program created in part 2 of article 3 of title 25.5, C.R.S., shall receive three percent of the total amount of settlement moneys annually received by the state, not to exceed five million dollars in any fiscal year, as provided in section 25.5-3-207, C.R.S.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), for the 2009-10 fiscal year, the amount transferred to the comprehensive primary and preventive care grant program shall be the amount of grant moneys committed pursuant to the comprehensive primary and preventive care grant program on or before September 30, 2009. Any of the remaining settlement moneys that would have been transferred to the comprehensive primary and preventive care grant program pursuant to the provisions of subparagraph (I) of this paragraph (b) shall be transferred to the general fund. This subparagraph (II) is repealed, effective July 1, 2011.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (b), for the 2010-11 fiscal year, the settlement moneys transferred to the comprehensive primary and preventive care grant program pursuant to the provisions of subparagraph (I) of this paragraph (b) shall be transferred to the general fund. ~~This subparagraph (III) is repealed, effective July 1, 2012.~~

(IV) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2011.

(c) (I) FOR FISCAL YEAR 2004-05 THROUGH FISCAL YEAR 2010-11, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive twenty-four percent of the total amount of settlement moneys annually received by the state, not to exceed thirty million dollars in any fiscal year, as provided in said section. If in any fiscal year the percentage of settlement moneys specified in this paragraph (c) does not equal at least seventeen million five hundred thousand dollars, the general assembly shall appropriate the amount of the shortfall out of the tobacco litigation settlement trust fund pursuant to section 24-22-115.5 (2) (a.7) (I) and, if necessary, for fiscal years prior to the 2007-08 fiscal year, out of the amount of settlement moneys transferred to the general fund pursuant to section 24-22-115 (3) or, for the 2007-08 fiscal year and for ~~each~~ THE 2008-09 fiscal year ~~thereafter~~, THROUGH THE 2010-11 FISCAL YEAR, and prior to their allocation, out of the amount of settlement moneys to be allocated and transferred pursuant to subsection (1.5) of this section.

(II) FOR THE 2011-12 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, THE CHILDREN'S BASIC HEALTH PLAN TRUST CREATED IN SECTION 25.5-8-105, C.R.S., SHALL RECEIVE TWENTY-SEVEN PERCENT OF THE TOTAL AMOUNT OF SETTLEMENT MONEYS ANNUALLY RECEIVED BY THE STATE, NOT TO EXCEED THIRTY-THREE MILLION DOLLARS IN ANY FISCAL YEAR, AS PROVIDED IN SAID SECTION. IF IN ANY FISCAL YEAR THE PERCENTAGE OF SETTLEMENT MONEYS SPECIFIED IN THIS PARAGRAPH (c) DOES NOT EQUAL AT LEAST SEVENTEEN MILLION FIVE HUNDRED

THOUSAND DOLLARS, THE GENERAL ASSEMBLY SHALL APPROPRIATE THE AMOUNT OF THE SHORTFALL OUT OF THE TOBACCO LITIGATION SETTLEMENT TRUST FUND PURSUANT TO SECTION 24-22-115.5 (2) (a.7) (I) OR, FOR THE 2011-12 FISCAL YEAR AND FOR EACH FISCAL YEAR THEREAFTER, AND PRIOR TO THEIR ALLOCATION, OUT OF THE AMOUNT OF SETTLEMENT MONEYS TO BE ALLOCATED AND TRANSFERRED PURSUANT TO SUBSECTION (1.5) OF THIS SECTION.

(1.5) (a) Except as otherwise provided in subsections (5) and (6) of this section, for the 2007-08 fiscal year and for each fiscal year thereafter, the following programs, services, and funds shall receive the following specified amounts from the portion of any settlement moneys received and allocated by the state in the current fiscal year that remains after the programs, services, and funds receiving such moneys pursuant to subsection (1) of this section have been fully funded, and the portion of all other settlement moneys received by the state in the preceding fiscal year that remains after the programs, services, and funds receiving such other settlement moneys pursuant to subsection (1) of this section have been fully funded and all overexpenditures and supplemental appropriations allowed for the 2006-07, 2007-08, 2008-09, or 2009-10 fiscal years pursuant to section 24-22-115 (4) have been made:

(V) (A) For fiscal years 2007-08 through 2009-10, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive five percent of the settlement moneys, which the state treasurer shall transfer thereto.

(B) For the 2010-11 fiscal year, ~~and each fiscal year thereafter~~, the children's basic health plan trust created in section 25.5-8-105, C.R.S., shall receive thirteen and one-half percent of the settlement moneys, which the state treasurer shall transfer thereto.

(C) FOR THE 2011-12 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER, THE CHILDREN'S BASIC HEALTH PLAN TRUST CREATED IN SECTION 25.5-8-105, C.R.S., SHALL RECEIVE FOURTEEN AND ONE-HALF PERCENT OF THE SETTLEMENT MONEYS, WHICH THE STATE TREASURER SHALL TRANSFER THERETO.

(3) Notwithstanding the provisions of subsections (1) and (1.5) of this section, for purposes of sections 22-7-908 (3), 23-20-136 (3.5) (a), 25-4-1411 (6) (a), 25-4-1415 (2), 25-20.5-201 (2) (c), 25-23-104 (2), 25-31-107 (2) (d) (I), ~~25.5-3-207 (3)~~, 25.5-6-805 (2), 25.5-8-105 (3), 27-67-106 (2) (b), and 28-5-709 (2) (a), C.R.S., settlement moneys received and allocated by the state pursuant to said subsections (1) and (1.5) during the same fiscal year shall be deemed to be moneys received for or during the preceding fiscal year.

**SECTION 4. Repeal.** 25.5-3-201, 25.5-3-202, 25.5-3-203, 25.5-3-204, 25.5-3-205, 25.5-3-206, and part 3 of article 3 of title 25.5, Colorado Revised Statutes, are repealed.

**SECTION 5.** 25.5-3-207, Colorado Revised Statutes, is amended to read:

**25.5-3-207. Program funding - comprehensive primary and preventive care fund - creation - repeal.** (1) Moneys for service grants and for the payment of program administrative costs incurred by the state department shall be payable from

the comprehensive primary and preventive care fund, which fund is hereby created in the state treasury. The comprehensive primary and preventive care fund, referred to in this section as the "fund", shall consist of moneys transferred thereto by the state treasurer from moneys received pursuant to the master settlement agreement in the amount described in subsection (3) of this section. In addition, the state treasurer may credit to the fund any public or private gifts, grants, or donations received by the state department for implementation of the program. The fund shall be subject to annual appropriation by the general assembly to the state department. In addition, the state department may retain up to one percent of the amount annually appropriated from the fund for the actual costs incurred by the state department in implementing the provisions of this part 2. Notwithstanding the provisions of section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any unencumbered moneys appropriated from moneys received pursuant to the master settlement agreement remaining in the fund at the end of any fiscal year shall be transferred to the tobacco litigation settlement trust fund created in section 24-22-115.5, C.R.S.; EXCEPT THAT ON AUGUST 1, 2011, THE BALANCE REMAINING IN THE COMPREHENSIVE PRIMARY AND PREVENTIVE CARE FUND AFTER PAYMENT OF ALL OBLIGATIONS OF FISCAL YEAR 2010-11 SHALL NOT BE TRANSFERRED TO THE TOBACCO LITIGATION SETTLEMENT TRUST FUND AND INSTEAD SHALL BE CREDITED TO THE GENERAL FUND ON AUGUST 1, 2011, AND THE COMPREHENSIVE PRIMARY AND PREVENTIVE CARE FUND IS ABOLISHED ON SEPTEMBER 1, 2011.

(2) It is the intent of the general assembly that general fund moneys not be appropriated for implementation of the program.

(3) Pursuant to section 24-75-1104.5 (1) (b), C.R.S., and except as otherwise provided in section 24-75-1104.5 (5), C.R.S., beginning with the 2006-07 fiscal year, and for each fiscal year thereafter so long as the state receives moneys pursuant to the master settlement agreement, the state treasurer shall transfer to the fund three percent of the total amount of moneys received by the state pursuant to the master settlement agreement, not including attorney fees and costs, during the preceding fiscal year; except that the amount so transferred to the fund shall not exceed five million dollars in any fiscal year. The state treasurer shall transfer the amount specified in this subsection (3) from moneys credited to the tobacco litigation settlement cash fund created in section 24-22-115, C.R.S.

(4) Repealed.

(5) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 15, 2011.

**SECTION 6. Appropriation - adjustments in 2011 long bill.** 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, 2011, shall be adjusted as follows:

(1)(a) The cash fund appropriation to the executive director's office, for general administration, is decreased by twenty-four thousand three hundred sixty-three dollars (\$24,363). Said sum shall be from the comprehensive primary and preventive care fund created in section 25.5-3-207 (1), Colorado Revised Statutes.

(b) The number of FTE for the executive director's office, for general administration, is decreased by 0.2 FTE.

(2) The cash fund appropriation to the indigent care program, for the comprehensive primary and preventive care grant program, is decreased by two million seven hundred six thousand nine hundred ninety-five dollars (\$2,706,995). Said sum shall be from the comprehensive primary and preventive care fund created in section 25.5-3-207 (1), Colorado Revised Statutes.

(3) The appropriation to the indigent care program, for the pediatric specialty hospital, is decreased by one million four hundred eighty-five thousand nine hundred forty-four dollars (\$1,485,944). Of said sum, two hundred ninety-six thousand eight hundred seventy-two dollars (\$296,872) shall be cash funds from the supplemental tobacco litigation settlement moneys account in the pediatric specialty hospital fund created in section 24-22-117 (2) (e) (II), Colorado Revised Statutes, four hundred forty-six thousand one hundred dollars (\$446,100) shall be reappropriated funds from the pediatric specialty hospital fund created in section 24-22-117 (2) (e), Colorado Revised Statutes, and seven hundred forty-two thousand nine hundred seventy-two dollars (\$742,972) shall be from federal funds.

(4) The general fund exempt appropriation to the indigent care program, for the appropriation from general fund to the pediatric specialty hospital fund, is decreased by four hundred forty-six thousand one hundred dollars (\$446,100).

(5) The general fund appropriation to the indigent care program, for children's basic health plan medical and dental costs, is decreased by three million four hundred forty-nine thousand nine hundred sixty-seven dollars (\$3,449,967).

(6) The appropriation to the indigent care program, for children's basic health plan medical and dental costs, is increased by three million four hundred forty-nine thousand nine hundred sixty-seven dollars (\$3,449,967). Of said sum, four hundred forty-six thousand one hundred dollars (\$446,100) shall be from general fund exempt, and three million three thousand eight hundred sixty-seven dollars (\$3,003,867) shall be cash funds from the children's basic health plan trust created in section 25.5-8-105 (1), Colorado Revised Statutes. The general fund exempt appropriation is not subject to the limitation on state fiscal year spending imposed by section 20 of article X of the state constitution. This amount is also not subject to any statutory spending limitation pursuant to section 21 (8) of article X of the state constitution.

**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: May 5, 2011