

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

SENATE BILL 11-125

BY SENATOR(S) White, Guzman, Jahn, Tochtrop, Aguilar, Boyd, Giron, Nicholson, Williams S.;  
also REPRESENTATIVE(S) Sonnenberg, Pace, Fields, Fischer, Labuda, Riesberg, Schafer S., Todd, Wilson.

CONCERNING MEDICAID NURSING FACILITY PROVIDER FEES, AND, IN CONNECTION THEREWITH, INCREASING THE CAP ON THE MEDICAID NURSING FACILITY PROVIDER FEE, CHANGING THE PRIORITY OF USES FOR SUPPLEMENTAL PAYMENTS FROM THE MEDICAID NURSING FACILITY CASH FUND, AND MAKING AN APPROPRIATION.

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

**SECTION 1.** 25.5-6-203 (1) (a) (II) and (2), Colorado Revised Statutes, are amended to read:

**25.5-6-203. Nursing facilities - provider fees - federal waiver - fund created - rules - repeal.** (1) (a) (II) For the fiscal year YEARS commencing July 1, 2009, ~~the provider fee shall not exceed seven dollars and fifty cents per nonmedicare-resident day.~~ For the fiscal year commencing AND July 1, 2010, and each fiscal year thereafter, the provider fee shall not exceed seven dollars and fifty cents per nonmedicare-resident day. FOR THE FISCAL YEAR COMMENCING JULY 1, 2011, AND EACH FISCAL

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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.*

YEAR THEREAFTER, THE PROVIDER FEE SHALL NOT EXCEED TWELVE DOLLARS PER NONMEDICARE-RESIDENT DAY plus inflation based on the national skilled nursing facility market basket index as determined by the secretary of the department of health and human services pursuant to 42 U.S.C. sec. 1395yy (e) (5) or any successor index.

(2) (a) All provider fees collected pursuant to this section by the state department shall be transmitted to the state treasurer, who shall credit the same to the medicaid nursing facility cash fund, which fund is hereby created and referred to in this section as the "fund".

(b) (I) All moneys in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the administrative costs of implementing section 25.5-6-202 and this section and to pay the supplemental medicaid payments TO OFFSET PAYMENT OF THE PROVIDER FEE established under section 25.5-6-202 (7).

(II) Following the payment of the amounts described in subparagraph (I) of this paragraph (b), the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments FOR ACUITY OR CASE-MIX OF RESIDENTS established under section ~~25.5-6-202 (9) (b) (H)~~ 25.5-6-202 (2).

~~(H.3)~~ (III) (A) Except as provided in sub-subparagraph (B) of this subparagraph ~~(H.3)~~ (III), after the payment of the amounts described in subparagraphs (I) and (II) of this paragraph (b), the moneys remaining in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments FOR HIGHER QUALITY PERFORMANCE established under section 25.5-6-202 (5).

(B) Notwithstanding any other provision of this paragraph (b), the supplemental medicaid payments established pursuant to section 25.5-6-202 (5) shall not be less than ten percent of the supplemental medicaid payments established under section 25.5-6-202 (7) in the prior state fiscal year.

~~(H.5)~~ (IV) Following the payment of the amounts described in subparagraphs (I) to ~~(H.3)~~ (III) of this paragraph (b), the moneys remaining

in the fund shall be subject to federal matching as authorized under federal law and subject to annual appropriation by the general assembly for the purpose of paying the supplemental medicaid payments FOR RESIDENTS WHO HAVE MODERATELY TO VERY SEVERE MENTAL HEALTH CONDITIONS, COGNITIVE DEMENTIA, OR ACQUIRED BRAIN INJURY established under section 25.5-6-202 (6).

~~(H.7) (A) Notwithstanding any other provision of law to the contrary, for the 2009-10 state fiscal year only, money in the medicaid nursing facility cash fund may be used to reimburse the general fund for increased reimbursements due to House Bill 08-1114, enacted in 2008, paid to nursing facilities for services provided to hospice patients during the 2009-10 fiscal year for services provided during the 2008-09 fiscal year.~~

~~(B) This subparagraph (H.7) is repealed, effective July 1, 2011.~~

(V) FOLLOWING THE PAYMENT OF THE AMOUNTS DESCRIBED IN SUBPARAGRAPHS (I) TO (IV) OF THIS PARAGRAPH (b), THE MONEYS REMAINING IN THE FUND SHALL BE SUBJECT TO FEDERAL MATCHING AS AUTHORIZED UNDER FEDERAL LAW AND SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSE OF PAYING THE SUPPLEMENTAL MEDICAID PAYMENTS FOR THE AMOUNT BY WHICH THE AVERAGE STATEWIDE PER DIEM RATE EXCEEDS THE GENERAL FUND SHARE ESTABLISHED UNDER SECTION 25.5-6-202 (9) (b) (II).

~~(HH)~~ (VI) Any moneys in the fund not expended for ~~these~~ THE purposes SPECIFIED IN THIS SECTION 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 but may be appropriated by the general assembly to pay nursing facility providers in future fiscal years.

**SECTION 2. Appropriation - adjustments in 2011 long bill.** For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2011, to the department of health care policy and financing, shall be adjusted as follows:

(1) The appropriation to the executive director's office, for general professional services and special projects, is increased by sixty thousand dollars (\$60,000). Of said sum, thirty thousand dollars (\$30,000) shall be from the general fund and thirty thousand dollars (\$30,000) shall be from federal funds.

(2) The appropriation to the medical services premiums section is increased by thirty million nine hundred ninety-four thousand four hundred eleven dollars (\$30,994,411). Of said sum, fifteen million four hundred ninety-seven thousand two hundred six dollars (\$15,497,206) shall be cash funds from the medicaid nursing facility cash fund created in section 25.5-6-203 (2) (a), Colorado Revised Statutes, and fifteen million four hundred ninety-seven thousand two hundred five dollars (\$15,497,205) shall be from federal funds.

**SECTION 3. Act subject to petition - effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless

approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Frank McNulty  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO