

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0307.03 Jason Gelender x4330

HOUSE BILL 15-1389

HOUSE SPONSORSHIP

Hullinghorst and Court,

SENATE SPONSORSHIP

Steadman,

House Committees

Health, Insurance, & Environment

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF AN ENTERPRISE THAT IS EXEMPT FROM
102 THE REQUIREMENTS OF SECTION 20 OF ARTICLE X OF THE STATE
103 CONSTITUTION TO ADMINISTER A STATE HOSPITAL PROVIDER
104 FEE PROGRAM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the health care affordability enterprise (enterprise) as a **type 2** agency and government-owned business within the department of health care policy and financing (HCPF) for the purpose

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

of charging and collecting a new hospital provider fee that replaces the existing hospital provider fee and participating in the implementation and administration of the state hospital provider fee program (program) created by the "Health Care Affordability Act of 2009" on and after July 1, 2016. The bill does not take effect if the federal centers for medicare and medicaid services determine that it does not comply with federal law. The enterprise is designated as an enterprise for purposes of the taxpayer's bill of rights (TABOR) so long as it meets TABOR requirements. The primary powers and duties of the enterprise are to:

- ! Charge and collect a new hospital provider fee;
- ! Leverage new hospital provider fee revenue collected to obtain federal matching money, working with or through HCPF and the state medical services board to the extent required by federal law or otherwise necessary; and
- ! Expend money from a newly created new hospital provider fee cash fund for the purposes of the program;
- ! Issue revenue bonds payable from its revenues;
- ! Enter into agreements with HCPF as necessary to collect and expend new hospital provider fee revenue;
- ! Engage the services of private consultants and legal counsel; and
- ! Adopt and amend or repeal policies for the regulation of its affairs and the conduct of its business.

The powers, duties, and functions of the existing hospital provider fee oversight and advisory board (advisory board) are transferred, by a **type 3** transfer, to the enterprise on July 1, 2016, and the advisory board is abolished. The current members of the advisory board continue to serve as members of the enterprise board, and future enterprise board appointments are done in the same way as current advisory board appointments.

The bill specifies that unlike hospital provider fees charged and collected by HCPF before July 1, 2016, so long as the enterprise qualifies as a TABOR-exempt enterprise, new hospital provider fee revenue does not count against either the TABOR state fiscal year spending limit or the referendum C cap, the higher statutory state fiscal year spending limit established after the voters of the state approved referendum C in 2005. The bill clarifies that termination of the authority of HCPF to charge and collect hospital provider fees and creation of a new enterprise to charge and collect a new hospital provider fee does not constitute qualification of an enterprise for purposes of TABOR or state law and therefore does not require or authorize downward adjustment of the TABOR fiscal year spending limit or the referendum C cap.

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

1 **SECTION 1.** In Colorado Revised Statutes, 25.5-4-402.3, **amend**
2 (2) (b), (2) (c) introductory portion, (3) (a) introductory portion, (3) (a)
3 (III), (3) (b), (3) (c) (I) introductory portion, (3) (c) (II) introductory
4 portion, (3) (c) (II) (C), (3) (c) (III) introductory portion, (3) (c) (III) (E),
5 (3) (c) (III) (F), (3) (d), (3) (e), (3) (f), (3) (g), (4) (a), (4) (b) introductory
6 portion, (4) (b) (IV) introductory portion, (4) (b) (VI), (5) (a) (I), (5) (b)
7 introductory portion, (5) (b) (II), (5) (b) (III) (A), (5) (b) (III) (B), (5) (c),
8 (6) (b) (I) introductory portion, (6) (b) (II), (6) (b) (III), (6) (b) (IV), (6)
9 (c), (6) (d), (6) (e) introductory portion, (6) (e) (I), (6) (e) (II), (6) (e) (III),
10 (6) (e) (VIII), (6) (e) (IX), (6) (f) introductory portion, (6) (f) (II), (6) (f)
11 (III) introductory portion, and (6) (f) (IV); **repeal** (3) (a) (IV), (6) (a), and
12 (6) (g); and **add** (2) (d), (2) (e), (2) (f), (2.5), (3) (c) (IV), (6) (b) (I.5), (6)
13 (e) (VIII.5), and (6) (h) as follows:

14 **25.5-4-402.3. Hospital providers - provider fees and new**
15 **provider fees - legislative declaration - health care affordability**
16 **enterprise - federal waiver - fund created - rules. (2) Legislative**
17 **declaration.** The general assembly hereby finds and declares that:

18 (b) Hospital providers within the state incur significant costs by
19 providing uncompensated emergency department care and other
20 uncompensated medical services to low-income and uninsured
21 populations; ~~and~~

22 (c) This section is enacted as part of a comprehensive health care
23 reform and is intended to provide the following ~~state~~ services and benefits
24 TO HOSPITAL PROVIDERS AND INDIVIDUALS:

25 (d) (I) THE STATE DEPARTMENT CURRENTLY PROVIDES A BUSINESS
26 SERVICE TO HOSPITALS WHEN, IN EXCHANGE FOR PAYMENT OF HOSPITAL
27 PROVIDER FEES, IT OBTAINS FEDERAL MATCHING MONEY AND, AFTER

1 COVERING ITS ADMINISTRATIVE COSTS, RETURNS BOTH THE HOSPITAL
2 PROVIDER FEES AND THE FEDERAL MATCHING MONEY TO HOSPITALS:

3 (A) DIRECTLY BY INCREASING REIMBURSEMENT RATES TO
4 HOSPITALS FOR PROVIDING MEDICAL CARE UNDER THE STATE MEDICAL
5 ASSISTANCE PROGRAM AND THE COLORADO INDIGENT CARE PROGRAM;
6 AND

7 (B) INDIRECTLY BY INCREASING THE NUMBER OF INDIVIDUALS
8 COVERED BY PUBLIC MEDICAL ASSISTANCE;

9 (II) IT IS NECESSARY, APPROPRIATE, AND IN THE BEST INTEREST OF
10 THE STATE TO ACKNOWLEDGE THE NATURE OF THE BUSINESS SERVICE
11 THAT THE STATE DEPARTMENT PROVIDES TO HOSPITALS BY CREATING A
12 HEALTH CARE AFFORDABILITY ENTERPRISE AS A GOVERNMENT-OWNED
13 BUSINESS WITHIN THE STATE DEPARTMENT AUTHORIZED TO CHARGE AND
14 COLLECT A NEW HOSPITAL PROVIDER FEE AND BY DESIGNATING THE
15 HEALTH CARE AFFORDABILITY ENTERPRISE AS AN ENTERPRISE FOR
16 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO
17 LONG AS IT MEETS THE REQUIREMENTS OF THAT SECTION; AND

18 (III) CONSISTENT WITH THE DETERMINATION OF THE COLORADO
19 SUPREME COURT IN *NICHOLL V. E-470 PUBLIC HIGHWAY AUTHORITY*, 896
20 P.2d 859 (COLO. 1995), THAT THE POWER TO IMPOSE TAXES IS
21 INCONSISTENT WITH ENTERPRISE STATUS UNDER SECTION 20 OF ARTICLE
22 X OF THE STATE CONSTITUTION, IT IS THE CONCLUSION OF THE GENERAL
23 ASSEMBLY THAT THE NEW HOSPITAL PROVIDER FEE CHARGED AND
24 COLLECTED BY THE HEALTH CARE AFFORDABILITY ENTERPRISE IS A FEE,
25 NOT A TAX, BECAUSE IT IS IMPOSED FOR THE SPECIFIC PURPOSES OF
26 ALLOWING THE ENTERPRISE TO DEFRAY ITS COSTS IN IMPLEMENTING AND
27 ADMINISTERING THIS SECTION, OBTAIN FEDERAL MATCHING MONEY, AND

1 PROVIDE A SERVICE TO HOSPITALS BY INCREASING THE NET TOTAL
2 AMOUNT OF REIMBURSEMENT PAID FOR THE MEDICAL CARE THAT THEY
3 PROVIDE TO STATE-SUBSIDIZED PATIENTS;

4 (e) UNLIKE THE HOSPITAL PROVIDER FEE CHARGED AND
5 COLLECTED BY THE STATE DEPARTMENT BEFORE JULY 1, 2016, SO LONG
6 AS THE HEALTH CARE AFFORDABILITY ENTERPRISE QUALIFIES AS AN
7 ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE
8 CONSTITUTION, THE REVENUES FROM THE NEW HOSPITAL PROVIDER FEE
9 CHARGED AND COLLECTED BY THE ENTERPRISE ARE NOT STATE FISCAL
10 YEAR SPENDING, AS DEFINED IN SECTION 24-77-102 (17), C.R.S., OR STATE
11 REVENUES, AS DEFINED IN SECTION 24-77-103.6 (6) (c), C.R.S., AND DO
12 NOT COUNT AGAINST EITHER THE STATE FISCAL YEAR SPENDING LIMIT
13 IMPOSED BY SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR
14 THE EXCESS STATE REVENUES CAP, AS DEFINED IN SECTION 24-77-103.6 (6)
15 (b) (I) (B), C.R.S.; AND

16 (f) TERMINATION OF THE AUTHORITY OF THE STATE DEPARTMENT
17 TO CHARGE AND COLLECT THE HOSPITAL PROVIDER FEE AND CREATION OF
18 A NEW ENTERPRISE TO CHARGE AND COLLECT THE NEW HOSPITAL
19 PROVIDER FEE DOES NOT CONSTITUTE QUALIFICATION OF AN ENTERPRISE
20 FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION
21 OR SECTION 24-77-103.6 (6) (b) (II), C.R.S., AND DOES NOT REQUIRE OR
22 AUTHORIZE ADJUSTMENT OF THE STATE FISCAL YEAR SPENDING LIMIT
23 CALCULATED PURSUANT TO SECTION 20 OF ARTICLE X OF THE STATE
24 CONSTITUTION OR THE EXCESS STATE REVENUES CAP, AS DEFINED IN
25 SECTION 24-77-103.6 (6) (b) (I) (B), C.R.S.

26 (2.5) (a) THE HEALTH CARE AFFORDABILITY ENTERPRISE,
27 HEREINAFTER REFERRED TO IN THIS SECTION AS THE "ENTERPRISE", IS

1 HEREBY CREATED. THE ENTERPRISE IS AND OPERATES AS A
2 GOVERNMENT-OWNED BUSINESS WITHIN THE STATE DEPARTMENT FOR THE
3 PURPOSE OF CHARGING AND COLLECTING A NEW HOSPITAL PROVIDER FEE
4 ON AND AFTER JULY 1, 2016, LEVERAGING NEW HOSPITAL PROVIDER FEE
5 REVENUE TO OBTAIN FEDERAL MATCHING MONEY, AND EXPENDING THE
6 FEE REVENUE AND MATCHING MONEY AS AUTHORIZED IN THIS SECTION.

7 (b) THE ENTERPRISE CONSTITUTES AN ENTERPRISE FOR PURPOSES
8 OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT
9 RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS AND RECEIVES LESS
10 THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL
11 COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT
12 CONSTITUTES AN ENTERPRISE PURSUANT TO THIS PARAGRAPH (b), THE
13 ENTERPRISE IS NOT SUBJECT TO ANY PROVISIONS OF SECTION 20 OF
14 ARTICLE X OF THE STATE CONSTITUTION.

15 (c) THE ENTERPRISE'S PRIMARY POWERS AND DUTIES ARE:

16 (I) TO CHARGE AND COLLECT A NEW HOSPITAL PROVIDER FEE AS
17 SPECIFIED IN SUBSECTION (3) OF THIS SECTION;

18 (II) TO LEVERAGE NEW HOSPITAL PROVIDER FEE REVENUE
19 COLLECTED TO OBTAIN FEDERAL MATCHING MONEY, WORKING WITH OR
20 THROUGH THE STATE DEPARTMENT AND THE STATE BOARD TO THE EXTENT
21 REQUIRED BY FEDERAL LAW OR OTHERWISE NECESSARY; AND

22 (III) TO EXPEND NEW HOSPITAL PROVIDER FEE REVENUE,
23 MATCHING FEDERAL MONEY, AND ANY OTHER MONEY FROM THE NEW
24 HOSPITAL PROVIDER FEE CASH FUND AS SPECIFIED IN SUBSECTIONS (3) AND
25 (4) OF THIS SECTION;

26 (IV) TO ISSUE REVENUE BONDS PAYABLE FROM THE REVENUES OF
27 THE ENTERPRISE;

1 (V) TO ENTER INTO AGREEMENTS WITH THE STATE DEPARTMENT
2 TO THE EXTENT NECESSARY TO COLLECT AND EXPEND NEW HOSPITAL
3 PROVIDER FEE REVENUE;

4 (VI) TO ENGAGE THE SERVICES OF PRIVATE CONSULTANTS AND
5 LEGAL COUNSEL FOR PROFESSIONAL AND TECHNICAL ASSISTANCE, ADVICE,
6 AND OTHER SERVICES IN CONDUCTING ITS AFFAIRS WITHOUT REGARD TO
7 THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF
8 TITLE 24, C.R.S.; AND

9 (VII) TO ADOPT AND AMEND OR REPEAL POLICIES FOR THE
10 REGULATION OF ITS AFFAIRS AND THE CONDUCT OF ITS BUSINESS
11 CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

12 (d) THE ENTERPRISE SHALL EXERCISE ITS POWERS AND PERFORM
13 ITS DUTIES AS IF THE SAME WERE TRANSFERRED TO THE STATE
14 DEPARTMENT BY A **TYPE 2** TRANSFER, AS DEFINED IN SECTION 24-1-105,
15 C.R.S.

16 (3) **Hospital provider fee and new hospital provider fee.**

17 (a) Beginning with the fiscal year commencing July 1, 2009, and each
18 fiscal year thereafter ENDING WITH THE FISCAL YEAR COMMENCING JULY
19 1, 2015, the state department is authorized to charge and collect hospital
20 provider fees, as described in 42 CFR 433.68 (b), on outpatient and
21 inpatient services provided by all licensed or certified hospitals, referred
22 to in this section as "hospitals", for the purpose of obtaining federal
23 financial participation under the state medical assistance program as
24 described in this article and articles 5 and 6 of this title, referred to in this
25 section as the "state medical assistance program", and the Colorado
26 indigent care program described in part 1 of article 3 of this title, referred
27 to in this section as the "Colorado indigent care program". FOR THE

1 FISCAL YEAR COMMENCING JULY 1, 2016, AND FOR EACH FISCAL YEAR
2 THEREAFTER, THE ENTERPRISE IS AUTHORIZED TO CHARGE AND COLLECT
3 A NEW HOSPITAL PROVIDER FEE, AS DESCRIBED IN 42 CFR 433.68 (b), ON
4 OUTPATIENT AND INPATIENT SERVICES PROVIDED BY HOSPITALS FOR THE
5 SAME PURPOSE. The hospital provider fees shall be used BY THE STATE
6 DEPARTMENT BEFORE JULY 1, 2016, AND AFTER JULY 1, 2016, TO THE
7 EXTENT NECESSARY TO EXPEND ALL HOSPITAL PROVIDER FEE REVENUE
8 COLLECTED BEFORE JULY 1, 2016, AND THE NEW HOSPITAL PROVIDER FEE
9 SHALL BE USED BY THE ENTERPRISE ON AND AFTER JULY 1, 2016, to:

10 (III) Pay the administrative costs, FROM HOSPITAL PROVIDER FEE
11 REVENUE COLLECTED BEFORE JULY 1, 2016, ONLY, to the state department
12 OR PAY THE ADMINISTRATIVE COSTS, FROM NEW HOSPITAL PROVIDER FEE
13 REVENUE ONLY, TO THE ENTERPRISE in implementing and administering
14 this section. ~~and~~

15 (IV) ~~Offset general fund expenditures for the state medicaid~~
16 ~~program for state fiscal years 2011-12 and 2012-13 only.~~

17 (b) The ENTERPRISE SHALL RECOMMEND FOR APPROVAL AND
18 ESTABLISHMENT BY THE STATE BOARD THE AMOUNT OF THE NEW provider
19 ~~fees shall be assessed pursuant to rules adopted by the state board,~~
20 ~~pursuant to section 24-4-103, C.R.S.~~ FEE THAT IT INTENDS TO CHARGE
21 AND COLLECT. The STATE BOARD MUST ESTABLISH THE FINAL amount of
22 ~~the fee shall be established by rule of the state board but~~ NEW PROVIDER
23 FEE BY RULES PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF TITLE
24 24, C.R.S. THE STATE BOARD shall not ~~exceed~~ ESTABLISH ANY AMOUNT
25 THAT EXCEEDS the federal limit for such fees. THE STATE BOARD MAY
26 DEVIATE FROM THE RECOMMENDATIONS OF THE ENTERPRISE, BUT SHALL
27 EXPRESS IN WRITING THE REASONS FOR ANY DEVIATIONS. In establishing

1 the amount of the fee and in promulgating the rules governing the fee, the
2 state board shall:

3 (I) Consider recommendations of the ~~hospital provider fee~~
4 ~~oversight and advisory board established pursuant to subsection (6) of this~~
5 ~~section~~ ENTERPRISE; AND

6 (II) Establish the amount of the NEW provider fee so that the
7 amount collected from the fee and federal matching funds associated with
8 the fee are sufficient to pay for the items described in paragraph (a) of
9 this subsection (3), but nothing in this subparagraph (II) shall require the
10 state board to increase the NEW provider fee above the amount
11 recommended by the ~~advisory board~~; and ENTERPRISE.

12 (III) ~~Establish the amount of the provider fee so that the amount~~
13 ~~collected from the fee is approximately equal to or less than the amount~~
14 ~~of the appropriation specified for the fee in the general appropriation act~~
15 ~~or any supplemental appropriation act.~~

16 (c) (I) In accordance with the redistributive method set forth in 42
17 CFR 433.68 (e) (1) and (e) (2), the ENTERPRISE, ACTING IN CONCERT WITH
18 OR THROUGH AN AGREEMENT WITH THE state department IF REQUIRED BY
19 FEDERAL LAW, may seek a waiver from the broad-based NEW provider
20 fees requirement or the uniform NEW provider fees requirement, or both.
21 Subject to federal approval and to minimize the financial impact on
22 certain hospitals, the ~~state department in consultation with the advisory~~
23 ~~board~~, ENTERPRISE may exempt from payment of the NEW provider fee
24 certain types of hospitals, including but not limited to:

25 (II) In determining whether a hospital may be excluded, the ~~state~~
26 ~~department~~ ENTERPRISE shall use one or more of the following criteria:

27 (C) A hospital whose inclusion or exclusion would not

1 significantly affect the net benefit to hospitals paying the NEW provider
2 fee; or

3 (III) The ~~state department~~ ENTERPRISE may reduce the amount of
4 the NEW provider fee for certain hospitals to obtain federal approval and
5 to minimize the financial impact on certain hospitals. In determining for
6 which hospitals the ~~state department~~ ENTERPRISE may reduce the amount
7 of the NEW provider fee, the ~~state department~~ ENTERPRISE shall use one
8 or more of the following criteria:

9 (E) If the hospital paid a reduced NEW provider fee, the reduced
10 provider fee would not significantly affect the net benefit to hospitals
11 paying the NEW provider fee; or

12 (F) The hospital is required not to pay a reduced NEW provider fee
13 as a condition of federal approval.

14 (IV) THE ENTERPRISE MAY CHANGE HOW IT PAYS HOSPITAL
15 REIMBURSEMENT OR QUALITY INCENTIVE PAYMENTS, OR BOTH, IN WHOLE
16 OR IN PART, UNDER THE AUTHORITY OF A FEDERAL WAIVER IF THE TOTAL
17 REIMBURSEMENT TO HOSPITALS IS EQUAL TO OR ABOVE THE FEDERAL
18 UPPER PAYMENT LIMIT CALCULATION UNDER THE WAIVER.

19 (d) The ~~state department~~ ENTERPRISE may ~~with the approval of the~~
20 ~~advisory board~~, alter the process prescribed in this subsection (3) to the
21 extent necessary to meet the federal requirements and to obtain federal
22 approval.

23 (e) (I) The ~~state board, in consultation with the advisory board~~
24 ENTERPRISE shall ~~promulgate rules~~ ESTABLISH POLICIES on the calculation,
25 assessment, and timing of the NEW provider fee. The ~~state department~~
26 ENTERPRISE shall assess the NEW provider fee on a schedule to be set by
27 the ~~state~~ ENTERPRISE board ~~through rule~~ AS PROVIDED IN PARAGRAPH (e)

1 OF SUBSECTION (6) OF THIS SECTION. ~~The state board rules shall require~~
2 ~~that the~~ periodic NEW provider fee payments from a hospital and the ~~state~~
3 ~~department's~~ ENTERPRISE'S reimbursement to the hospital under
4 subparagraphs (I) and (II) of paragraph (b) of subsection (4) of this
5 section are due as nearly simultaneously as feasible; except that the ~~state~~
6 ~~department's~~ ENTERPRISE'S reimbursement to the hospital shall be due no
7 more than two days after the periodic NEW provider fee payment is
8 received from the hospital. The NEW provider fee shall be imposed on
9 each hospital even if more than one hospital is owned by the same entity.
10 The fee shall be prorated and adjusted for the expected volume of service
11 for any year in which a hospital opens or closes.

12 (II) ~~The state department~~ ENTERPRISE is authorized to refund any
13 unused portion of the NEW provider fee. For any portion of the NEW
14 provider fee that has been collected by the ~~state department~~ ENTERPRISE
15 but for which the ~~state department~~ ENTERPRISE has not received federal
16 matching funds, the ~~state department~~ ENTERPRISE shall refund back to the
17 hospital that paid the fee the amount of such portion of the fee within five
18 business days after the fee is collected.

19 (III) ~~The state board, in consultation with the advisory board shall~~
20 ~~promulgate rules on~~ ENTERPRISE SHALL ESTABLISH REQUIREMENTS FOR
21 the reports that hospitals ~~shall be required to~~ MUST submit for TO the ~~state~~
22 ~~department~~ ENTERPRISE TO ALLOW THE ENTERPRISE to calculate the
23 amount of the NEW provider fee. Notwithstanding the provisions of part
24 2 of article 72 of title 24, C.R.S., OR PARAGRAPH (h) OF SUBSECTION (6)
25 OF THIS SECTION, information provided to the ~~state department~~
26 ENTERPRISE pursuant to this section ~~shall be considered~~ IS confidential
27 and ~~shall not be deemed~~ IS NOT a public record. Nonetheless, the ~~state~~

1 ~~department in consultation with the advisory board,~~ ENTERPRISE may
2 prepare and release summaries of the reports to the public.

3 (f) A hospital shall not include any amount of the NEW provider
4 fee as a separate line item in its billing statements.

5 (g) The state board shall promulgate any rules pursuant to the
6 "State Administrative Procedure Act", article 4 of title 24, C.R.S.,
7 necessary for the administration and implementation of this section. Prior
8 to submitting any proposed rules concerning the administration or
9 implementation of the NEW provider fee to the state board, the state
10 ~~department~~ BOARD shall consult with the ~~advisory board~~ ENTERPRISE on
11 the proposed rules as specified in paragraph (e) of subsection (6) of this
12 section.

13 (4) **Hospital provider fee and new hospital provider fee cash**
14 **funds.** (a) All provider fees collected pursuant to this section BEFORE
15 JULY 1, 2016, by the state department shall be transmitted to the state
16 treasurer, who shall credit the same to the hospital provider fee cash fund
17 FOR USE AS SPECIFIED IN THIS SECTION AS IT EXISTED PRIOR TO JULY 1,
18 2016. ALL NEW PROVIDER FEE REVENUE COLLECTED PURSUANT TO THIS
19 SECTION ON AND AFTER JULY 1, 2016, BY THE ENTERPRISE SHALL BE
20 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME
21 TO THE NEW HOSPITAL PROVIDER FEE FUND, which fund is hereby created
22 and referred to in this section as the "fund".

23 (b) All moneys in the fund ~~shall be~~ ARE subject to federal
24 matching as authorized under federal law and ~~subject to annual~~
25 ~~appropriation by the general assembly~~ ARE CONTINUOUSLY APPROPRIATED
26 TO THE ENTERPRISE for the following purposes:

27 (IV) Subject to available revenue from the NEW provider fee and

1 federal matching funds, to expand eligibility for public medical assistance
2 by:

3 (VI) To pay the ~~state department's~~ ENTERPRISE'S actual
4 administrative costs of implementing and administering this section,
5 including but not limited to the following costs:

6 (A) ADMINISTRATIVE expenses of the ~~advisory board, including~~
7 ~~but not limited to the state department's personal services and operating~~
8 ~~costs related to the administration of the advisory board~~ ENTERPRISE;

9 (B) The ~~state department's~~ ENTERPRISE'S actual costs related to
10 implementing and maintaining the NEW provider fee, including personal
11 services, operating, and consulting expenses;

12 (C) The ~~state department's~~ ENTERPRISE'S actual costs for the
13 changes and updates to the medicaid management information system for
14 the implementation of subparagraphs (I) to (III) of this paragraph (b);

15 (D) The ~~state department's~~ ENTERPRISE'S personal services and
16 operating costs related to personnel, consulting services, and for review
17 of hospital costs necessary to implement and administer the increases in
18 inpatient and outpatient hospital payments made pursuant to subparagraph
19 (I) of this paragraph (b), increases in the Colorado indigent care program
20 payments made pursuant to subparagraph (II) of this paragraph (b), and
21 quality incentive payments made pursuant to subparagraph (III) of this
22 paragraph (b);

23 (E) The ~~state department's~~ ENTERPRISE'S actual costs for the
24 changes and updates to the Colorado benefits management system and
25 medicaid management information system to implement and maintain the
26 expanded eligibility provided for in subparagraphs (IV) and (V) of this
27 paragraph (b);

1 (F) The ~~state department's~~ ENTERPRISE'S personal services and
2 operating costs related to personnel necessary to implement and
3 administer the expanded eligibility for public medical assistance provided
4 for in subparagraphs (IV) and (V) of this paragraph (b), including but not
5 limited to administrative costs associated with the determination of
6 eligibility for public medical assistance by county departments;

7 (G) The ~~state department's~~ ENTERPRISE'S personal services,
8 operating, and systems costs related to expanding the opportunity for
9 individuals to apply for public medical assistance directly at hospitals or
10 through another entity outside the county departments, in connection with
11 section 25.5-4-205, that would increase access to public medical
12 assistance and reduce the number of uninsured served by hospitals; and

13 (5) **Appropriations.** (a) (I) The provider fee ~~is~~ AND THE NEW
14 PROVIDER FEE ARE to supplement, not supplant, general fund
15 appropriations to support hospital reimbursements as of July 1, 2009.
16 General fund appropriations for hospital reimbursements shall be
17 maintained at the level of appropriations in the medical services premium
18 line item made for the fiscal year commencing July 1, 2008; except that
19 general fund appropriations for hospital reimbursements may be reduced
20 if an index of appropriations to other providers shows that general fund
21 appropriations are reduced for other providers. If the index shows that
22 general fund appropriations are reduced for other providers, the general
23 fund appropriations for hospital reimbursements shall not be reduced by
24 a greater percentage than the reductions of appropriations for the other
25 providers as shown by the index.

26 (b) If the revenue from the provider fee, OR ON AND AFTER JULY
27 1, 2016, THE NEW PROVIDER FEE, is insufficient to fully fund all of the

1 purposes described in paragraph (b) of subsection (4) of this section:

2 (II) The hospital provider reimbursement and quality incentive
3 payment increases described in subparagraphs (I) to (III) of paragraph (b)
4 of subsection (4) of this section and the costs described in subparagraphs
5 (VI) and (VII) of paragraph (b) of subsection (4) of this section shall be
6 fully funded using ANY UNSPENT revenue from the provider fee
7 COLLECTED BEFORE JULY 1, 2016, REVENUE FROM THE NEW PROVIDER FEE,
8 and federal matching funds before any eligibility expansion is funded;
9 and

10 (III) (A) If the state board promulgates rules that expand eligibility
11 for medical assistance to be paid for pursuant to subparagraph (IV) of
12 paragraph (b) of subsection (4) of this section and the state department
13 thereafter notifies the ~~advisory board~~ ENTERPRISE that the revenue
14 available from ~~the~~ ANY UNSPENT provider fee COLLECTED BEFORE JULY
15 1, 2016, THE NEW PROVIDER FEE, and the federal matching funds will not
16 be sufficient to pay for all or part of the expanded eligibility, the ~~advisory~~
17 ~~board~~ ENTERPRISE shall recommend to the state board reductions in
18 medical benefits or eligibility so that the revenue will be sufficient to pay
19 for all of the reduced benefits or eligibility. After receiving the
20 recommendations of the ~~advisory board~~ ENTERPRISE, the state board shall
21 adopt rules providing for reduced benefits or reduced eligibility for which
22 the revenue shall be sufficient and shall forward any adopted rules to the
23 joint budget committee. Notwithstanding the provisions of section
24 24-4-103 (8) and (12), C.R.S., following the adoption of rules pursuant
25 to this sub-subparagraph (A), the state board shall not submit the rules to
26 the attorney general and shall not file the rules with the secretary of state
27 until the joint budget committee approves the rules pursuant to

1 sub-subparagraph (B) of this subparagraph (III).

2 (B) The joint budget committee shall promptly consider any rules
3 adopted by the state board pursuant to sub-subparagraph (A) of this
4 subparagraph (III). The joint budget committee shall promptly notify THE
5 ENTERPRISE, the state department, AND the state board ~~and the advisory~~
6 ~~board~~ of any action on such rules. If the joint budget committee does not
7 approve the rules, the joint budget committee shall recommend a
8 reduction in benefits or eligibility so that ~~the~~ ANY UNSPENT revenue from
9 the provider fee COLLECTED BEFORE JULY 1, 2016, THE NEW PROVIDER
10 FEE, and the matching federal funds will be sufficient to pay for the
11 reduced benefits or eligibility. After approving the rules pursuant to this
12 sub-subparagraph (B), the joint budget committee shall request that the
13 committee on legal services, created pursuant to section 2-3-501, C.R.S.,
14 extend the rules as provided for in section 24-4-103 (8), C.R.S., unless the
15 committee on legal services finds after review that the rules do not
16 conform with section 24-4-103 (8) (a), C.R.S.

17 (c) Notwithstanding any other provision of this section, if, after
18 receipt of authorization to receive federal matching funds for moneys in
19 the fund, the authorization is withdrawn or changed so that federal
20 matching funds are no longer available, the ~~state department~~ ENTERPRISE
21 shall cease collecting the NEW provider fee and shall repay to the
22 hospitals any moneys received by the fund that are not subject to federal
23 matching funds.

24 (6) **Health care affordability enterprise board.** (a) ~~There is~~
25 ~~hereby created in the state department the hospital provider fee oversight~~
26 ~~and advisory board, referred to in this section as the "advisory board".~~

27 (b) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (I.5)

1 OF THIS PARAGRAPH (b), the ~~advisory board shall consist~~ ENTERPRISE
2 BOARD CONSISTS of thirteen members appointed by the governor, with the
3 advice and consent of the senate, as follows:

4 (I.5) THE INITIAL MEMBERS OF THE ENTERPRISE BOARD ARE THE
5 MEMBERS OF THE HOSPITAL PROVIDER FEE OVERSIGHT AND ADVISORY
6 BOARD THAT WAS CREATED AND EXISTED PURSUANT TO THIS SUBSECTION
7 (6) PRIOR TO JULY 1, 2016, AND SUCH MEMBERS SHALL SERVE ON AND
8 AFTER JULY 1, 2016, FOR THE REMAINDER OF THE TERMS FOR WHICH THEY
9 WERE APPOINTED AS MEMBERS OF THE ADVISORY BOARD. THE POWERS,
10 DUTIES, AND FUNCTIONS OF THE HOSPITAL PROVIDER FEE OVERSIGHT AND
11 ADVISORY BOARD ARE TRANSFERRED BY A **TYPE 3** TRANSFER, AS DEFINED
12 IN SECTION 24-1-105, C.R.S., TO THE ENTERPRISE, AND THE HOSPITAL
13 PROVIDER FEE OVERSIGHT AND ADVISORY BOARD IS ABOLISHED.

14 (II) The governor shall consult with representatives of a statewide
15 organization of hospitals in making the appointments pursuant to
16 sub-subparagraphs (A) and (B) of subparagraph (I) of this paragraph (b).
17 No more than six members of the ~~advisory~~ ENTERPRISE board may be
18 members of the same political party.

19 (III) Members of the ~~advisory~~ ENTERPRISE board shall serve at the
20 pleasure of the governor. ~~In making the appointments, the governor shall~~
21 ~~specify that four members shall serve initial terms of two years and three~~
22 ~~members shall serve initial terms of three years. All other terms including~~
23 ~~terms after the initial terms shall be~~ ARE FOR four years. A member who
24 is appointed to fill a vacancy shall serve the remainder of the unexpired
25 term of the former member.

26 (IV) The governor shall designate a chair from among the
27 members of the ~~advisory~~ ENTERPRISE board appointed pursuant to

1 sub-subparagraphs (A) to (G) of subparagraph (I) of this paragraph (b).
2 The ~~advisory~~ ENTERPRISE board shall elect a vice-chair from among its
3 members.

4 (c) Members of the ~~advisory~~ ENTERPRISE board ~~shall~~ serve without
5 compensation but shall be reimbursed from moneys in the fund for actual
6 and necessary expenses incurred in the performance of their duties
7 pursuant to this section.

8 (d) The ~~advisory~~ ENTERPRISE board may ~~direct the state~~
9 ~~department to~~ contract for a group facilitator to assist the members of the
10 ~~advisory~~ ENTERPRISE board in performing their required duties.

11 (e) The ~~advisory~~ ENTERPRISE board ~~shall have~~ HAS, at a minimum,
12 the following duties:

13 (I) To ~~recommend to the state department~~ DETERMINE the timing
14 and method by which the ~~state department~~ ENTERPRISE shall assess the
15 NEW provider fee and the amount of the fee;

16 (II) If requested by the health and human services committees of
17 the senate or house of representatives, or any successor committees, to
18 consult with the committees on any legislation that may impact the NEW
19 provider fee or hospital reimbursements established pursuant to this
20 section;

21 (III) To ~~recommend to the state department~~ DETERMINE changes
22 in the NEW provider fee that increase the number of hospitals benefitting
23 from the uses of the NEW provider fee described in subparagraphs (I) to
24 (V) of paragraph (b) of subsection (4) of this section or that minimize the
25 number of hospitals that suffer losses as a result of paying the NEW
26 provider fee;

27 (VIII) To monitor the impact of the NEW hospital provider fee on

1 the broader health care marketplace; and

2 (VIII.5) TO ESTABLISH REQUIREMENTS FOR THE REPORTS THAT
3 HOSPITALS MUST SUBMIT TO THE ENTERPRISE TO ALLOW THE ENTERPRISE
4 TO CALCULATE THE AMOUNT OF THE NEW PROVIDER FEE; AND

5 (IX) To perform any other duties required to fulfill the ~~advisory~~
6 ENTERPRISE board's charge or those assigned to it by the state board or the
7 executive director.

8 (f) On or before ~~January 15, 2010~~ JANUARY 15, 2017, and on or
9 before January 15 each year thereafter, the ~~advisory~~ ENTERPRISE board
10 shall submit a written report to the health and human services committees
11 of the senate and the house of representatives, or any successor
12 committees, the joint budget committee of the general assembly, the
13 governor, and the state board. The report shall include, but need not be
14 limited to:

15 (II) A description of the formula for how the NEW provider fee is
16 calculated and the process by which the NEW provider fee is assessed and
17 collected;

18 (III) An itemization of the total amount of the NEW provider fee
19 paid by each hospital and any projected revenue that each hospital is
20 expected to receive due to:

21 (IV) An itemization of the costs incurred by the ~~state department~~
22 ENTERPRISE in implementing and administering the NEW hospital provider
23 fee; and

24 (g) ~~(H) This subsection (6) is repealed, effective July 1, 2019.~~

25 ~~(H) Prior to said repeal, the advisory board shall be reviewed as~~
26 ~~provided in section 2-3-1203, C.R.S.~~

27 (h) (I) THE ENTERPRISE IS SUBJECT TO THE OPEN MEETINGS

1 PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN
2 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S., AND THE "COLORADO OPEN
3 RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S.

4 (II) FOR PURPOSES OF THE "COLORADO OPEN RECORDS ACT",
5 PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., AND EXCEPT AS MAY
6 OTHERWISE BE PROVIDED BY FEDERAL LAW OR REGULATION OR STATE
7 LAW, THE RECORDS OF THE ENTERPRISE ARE PUBLIC RECORDS, AS DEFINED
8 IN SECTION 24-72-202 (6), C.R.S., REGARDLESS OF WHETHER THE
9 ENTERPRISE RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL
10 REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), C.R.S.,
11 FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED.

12 (III) THE ENTERPRISE IS A PUBLIC ENTITY FOR PURPOSES OF PART
13 2 OF ARTICLE 57 OF TITLE 11, C.R.S.

14 **SECTION 2.** In Colorado Revised Statutes, 24-1-119.5, **add** (9)
15 as follows:

16 **24-1-119.5. Department of health care policy and financing -**
17 **creation.** (9) THE HEALTH CARE AFFORDABILITY ENTERPRISE CREATED IN
18 SECTION 25.5-4-402.3 (2.5), C.R.S., SHALL EXERCISE ITS POWERS AND
19 PERFORM ITS DUTIES AND FUNCTIONS AS IF THE SAME WERE TRANSFERRED
20 BY A **TYPE 2** TRANSFER, AS DEFINED IN SECTION 24-1-105, TO THE
21 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

22 **SECTION 3.** In Colorado Revised Statutes, **amend** 2-3-119 as
23 follows:

24 **2-3-119. Audit of new hospital provider fee - cost shift.** ~~Starting~~
25 ~~with the second full state fiscal year following the receipt of the notice~~
26 ~~from the executive director of the department of health care policy and~~
27 ~~financing pursuant to section 25.5-4-402.3 (7), C.R.S., and thereafter At~~

1 the discretion of the legislative audit committee, the state auditor shall
2 conduct or cause to be conducted a performance and fiscal audit of the
3 NEW hospital provider fee established pursuant to section 25.5-4-402.3,
4 C.R.S.

5 **SECTION 4.** In Colorado Revised Statutes, 2-3-1203, **repeal** (3)
6 (ff) (V) as follows:

7 **2-3-1203. Sunset review of advisory committees.** (3) (ff) July
8 1, 2019:

9 (V) ~~The hospital provider fee oversight and advisory board,~~
10 ~~created in section 25.5-4-402.3, C.R.S.;~~

11 **SECTION 5.** In Colorado Revised Statutes, 25.5-5-201, **amend**
12 (1) (o) (II) and (1) (r) (II) as follows:

13 **25.5-5-201. Optional provisions - optional groups - repeal.**

14 (1) The federal government allows the state to select optional groups to
15 receive medical assistance. Pursuant to federal law, any person who is
16 eligible for medical assistance under the optional groups specified in this
17 section shall receive both the mandatory services specified in sections
18 25.5-5-102 and 25.5-5-103 and the optional services specified in sections
19 25.5-5-202 and 25.5-5-203. Subject to the availability of federal financial
20 aid funds, the following are the individuals or groups that Colorado has
21 selected as optional groups to receive medical assistance pursuant to this
22 article and articles 4 and 6 of this title:

23 (o) (II) Notwithstanding the provisions of subparagraph (I) of this
24 paragraph (o), if the moneys in the NEW hospital provider fee cash fund
25 established pursuant to section 25.5-4-402.3 (4), together with the
26 corresponding federal matching funds, are insufficient to fully fund all of
27 the purposes described in section 25.5-4-402.3 (4) (b), after receiving

1 recommendations from the ~~hospital provider fee oversight and advisory~~
2 ~~board~~ HEALTH CARE AFFORDABILITY ENTERPRISE established pursuant to
3 section 25.5-4-402.3 (2.5), for individuals with disabilities who are
4 participating in the medicaid buy-in program established in part 14 of
5 article 6 of this title, the state board by rule adopted pursuant to the
6 provisions of section 25.5-4-402.3 (5) (b) (III) may reduce the medical
7 benefits offered or the percentage of the federal poverty line to below
8 four hundred fifty percent or may eliminate this eligibility group.

9 (r) (II) Notwithstanding the provisions of subparagraph (I) of this
10 paragraph (r), if the moneys in the NEW hospital provider fee cash fund
11 established pursuant to section 25.5-4-402.3 (4), together with the
12 corresponding federal matching funds, are insufficient to fully fund all of
13 the purposes described in section 25.5-4-402.3 (4) (b), after receiving
14 recommendations from the ~~hospital provider fee oversight and advisory~~
15 ~~board~~ HEALTH CARE AFFORDABILITY ENTERPRISE established pursuant to
16 section 25.5-4-402.3 (2.5), for persons eligible for a medicaid buy-in
17 program established pursuant to section 25.5-5-206, the state board by
18 rule adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b)
19 (III) may reduce the medical benefits offered, or the percentage of the
20 federal poverty line, or may eliminate this eligibility group.

21 **SECTION 6.** In Colorado Revised Statutes, 25.5-5-204.5, **amend**
22 (2) as follows:

23 **25.5-5-204.5. Continuous eligibility - children - repeal.**

24 (2) Notwithstanding the provisions of subsection (1) of this section, if the
25 moneys in the NEW hospital provider fee cash fund established pursuant
26 to section 25.5-4-402.3 (4), together with the corresponding federal
27 matching funds, are insufficient to fully fund all of the purposes described

1 in section 25.5-4-402.3 (4) (b), after receiving recommendations from the
2 ~~hospital provider fee oversight and advisory board~~ HEALTH CARE
3 AFFORDABILITY ENTERPRISE established pursuant to section 25.5-4-402.3
4 (2.5), the state board by rule adopted pursuant to the provisions of section
5 25.5-4-402.3 (5) (b) (III) may eliminate the continuous enrollment
6 requirement pursuant to this section.

7 **SECTION 7.** In Colorado Revised Statutes, 25.5-8-103, **amend**
8 (4) (a) (II) and (4) (b) (II) as follows:

9 **25.5-8-103. Definitions - repeal.** As used in this article, unless
10 the context otherwise requires:

11 (4) "Eligible person" means:

12 (a) (II) Notwithstanding the provisions of subparagraph (I) of this
13 paragraph (a), if the moneys in the NEW hospital provider fee cash fund
14 established pursuant to section 25.5-4-402.3 (4), together with the
15 corresponding federal matching funds, are insufficient to fully fund all of
16 the purposes described in section 25.5-4-402.3 (4) (b), after receiving
17 recommendations from the ~~hospital provider fee oversight and advisory~~
18 ~~board~~ HEALTH CARE AFFORDABILITY ENTERPRISE established pursuant to
19 section 25.5-4-402.3 (2.5), for persons less than nineteen years of age, the
20 state board may by rule adopted pursuant to the provisions of section
21 25.5-4-402.3 (5) (b) (III) reduce the percentage of the federal poverty line
22 to below two hundred fifty percent, but the percentage shall not be
23 reduced to below two hundred five percent.

24 (b) (II) Notwithstanding the provisions of subparagraph (I) of this
25 paragraph (b), if the moneys in the NEW hospital provider fee cash fund
26 established pursuant to section 25.5-4-402.3 (4), together with the
27 corresponding federal matching funds, are insufficient to fully fund all of

1 the purposes described in section 25.5-4-402.3 (4) (b), after receiving
2 recommendations from the ~~hospital provider fee oversight and advisory~~
3 ~~board~~ HEALTH CARE AFFORDABILITY ENTERPRISE established pursuant to
4 section 25.5-4-402.3 (2.5), for pregnant women, the state board by rule
5 adopted pursuant to the provisions of section 25.5-4-402.3 (5) (b) (III)
6 may reduce the percentage of the federal poverty line to below two
7 hundred fifty percent, but the percentage shall not be reduced to below
8 two hundred five percent.

9 **SECTION 8. Effective date.** (1) Except as otherwise provided
10 in this section, this act takes effect July 1, 2016.

11 (2) (a) This act does not take effect if the centers for medicare and
12 medicaid services determine that the amendments set forth in this act do
13 not comply with federal law.

14 (b) If the centers for medicare and medicaid services make the
15 determination described in paragraph (a) of this subsection (2), the
16 executive director of the department of health care policy and financing
17 shall, no later than June 1, 2016, notify the revisor of statutes in writing
18 of that determination.

19 **SECTION 9. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.