

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee
FROM JBC Staff
DATE April 11, 2023
SUBJECT Long Bill Conference Committee Amendments

This memorandum includes staff recommendations for the Joint Budget Committee (JBC) to consider when it acts as the conference committee on the Long Bill (S.B. 23-214).

AMENDMENTS ADOPTED BY THE SENATE OR HOUSE

Both the Senate and House adopted a problematic amendment (Senate Amendment #17 J056 and House Amendment #5 J130) to add \$111,631 General Fund to the Department of Health Care Policy and Financing with a footnote explaining that the purpose is to pay 4.0 percent interest on rate increases that have been delayed for providers of durable medical equipment.

The proposed interest funding is not an allowable payment under federal Medicaid guidelines and would not earn a federal match. The Department does not have explicit statutory authority to make a General Fund payment. Delays in implementing Medicaid rate changes are very common¹, whether for increases or decreases, and the JBC staff is concerned about setting a precedent for paying or collecting interest. The stated purpose of the amendment was to motivate the Department to fix the technology issue that has caused the delay, but the Department has already been working on a fix that is scheduled to take effect April 7, 2023.

Staff recommends that the conference committee remove the \$111,631 General Fund added through these amendments on the basis that it is substantive law, which is prohibited in the Long Bill, it would set a standard and precedent that the General Assembly might not want to continue, and the programming issue that caused the payment delay has already been fixed.

Another option available to the conference committee would be to convert the funding to a rate increase, instead of an interest payment. A rate increase would leverage an additional \$148,763 federal funds, resulting in a larger net benefit to the providers of \$260,934. There would be no legal or precedent issues with a rate increase. However, a rate increase would create an on-going General Fund obligation when the original amendment was intended as one-time. A rate increase would also be subject to approval by the federal Centers for Medicare and Medicaid Services.

While the JBC staff does not recommend keeping the funding in the Long Bill, the conference committee may also want to consider that the amendment was adopted by both the Senate and the House, it would be presumed constitutional unless determined by the courts to be otherwise, and it is one-time funding.

¹ Common causes for delays in rate changes include waiting for approval from the federal Centers for Medicare and Medicaid Services or the State's Medical Services Board, required notifications and stakeholder engagement, and system programming issues.

APRIL 11, 2023

ADDITIONAL BACKGROUND INFORMATION

The majority of durable medical equipment payments are subject to a federal upper payment limit. There is some nuance to how the upper payment limit is calculated, but conceptually it prevents the State from paying more than the equivalent Medicare rate for these services. In FY 2018-19, Colorado had to reduce a number of durable medical equipment rates to comply with this federal rule and it significantly decreased durable medical equipment provider payments.

In FY 2022-23, the Medicaid Provider Rate Review Advisory Committee recommended rebalancing the remaining durable medical equipment rates that were not capped by the upper payment limit to within 80-100 percent of the benchmark. The JBC and General Assembly approved just the increases in rates with no decreases in rates. Implementing the policy has taken longer than expected, primarily because there are different rates for rural and urban providers. When the Department made the technology changes, some of the rates were paid at the correct rate, some were paid at the old rate, and providers complain that some rates were not paid at all, although the Department has not confirmed whether that actually occurred.

The Department has continued to work on the issue and will implement needed programming changes on Friday, April 7, 2023, that will allow the rates to be paid at the correct amounts. With the changes in place, the vendor will begin reprocessing payments since July 1, 2022, and start making back payments to providers. The Department expects vendors to receive the back payments they are owed over the next couple weeks.

AMENDMENTS TO CORRECT ERRORS

The JBC staff recommends that the conference committee on the Long Bill make the changes to appropriations listed in the table below to correct technical errors and be consistent with the Joint Budget Committee's original intent. In net these adjustments increase appropriations by \$95,620 total funds, including \$448,108 General Fund

AMENDMENTS TO CORRECT ERRORS							
J#	DEPT.	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
062	Early Childhood	\$1,148,357	\$551,480	\$0	\$0	\$596,877	2.0
166	Early Childhood	0	0	0	0	0	0.0
171	Early Childhood	0	0	0	0	0	0.0
173	Early Childhood	351,733	72,461	0	0	279,272	0.0
190	Early Childhood	0	0	0	0	0	0.0
172	Education	66,600	66,600	0	0	0	0.0
174	Health Care Policy & Financing	0	0	0	0	0	0.0
168	Health Care Policy & Financing	(945,662)	0	(945,662)	0	0	0.0
179	Health Care Policy & Financing	0	(2,575)	0	0	2,575	0.0
169	Health Care Policy & Financing	0	0	0	0	0	0.0
170	Health Care Policy & Financing	0	0	0	0	0	0.0
180	Health Care Policy & Financing	0	0	0	0	0	0.0
184	Health Care Policy & Financing	(620,892)	(304,236)	0	0	(316,656)	0.0
185	Health Care Policy & Financing	0	0	0	0	0	0.0
188	Health Care Policy & Financing	135,360	135,360	0	0	0	0.0
189	Health Care Policy & Financing	0	0	0	0	0	0.0
177	Health Care Policy & Financing/ Human Services	(137,788)	(68,894)	0	0	(68,894)	0.0

AMENDMENTS TO CORRECT ERRORS							
J#	DEPT.	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
178	Judicial	0	0	431,663	(431,663)	0	0.0
186	Labor	0	0	0	0	0	0.0
187	Labor	(2,088)	(2,088)	0	0	0	0.0
181	Local Affairs	0	0	0	0	0	0.0
182	Local Affairs	0	0	0	0	0	0.0
183	Public Health & Environment	0	0	0	0	0	0.0
176	Public Safety	100,000	0	100,000	0	0	0.0
TOTAL		\$95,620	\$448,108	(\$413,999)	(\$431,663)	\$493,174	2.0

EARLY CHILDHOOD

J.062: Adds \$1,148,357 total funds, including \$551,480 General Fund, and 2.0 FTE to the Department of Early Childhood for IT Accessibility. The JBC approved funding statewide for this initiative but funding for the Department of Early Childhood was omitted from the introduced bill due to a drafting error.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Early Childhood	\$551,480	\$0	\$0	\$596,877	\$1,148,357	2.0

J.166: Moves \$1,000 federal Child Care Development Funds out of the Local Capacity Building Grants line item in the Department of Early Childhood and puts \$500 in the Early Care and Education Recruitment and Retention Grant and Scholarship Program line item and \$500 in the Child Care Sustainability Grant Program line item.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Early Childhood	\$0	\$0	\$0	\$0	\$0	0.0

J.171: Inserts two footnotes to provide limited flexibility for the Department of **Early Childhood** to spend federal funds in order to increase the likelihood that the Department will be able to obligate all the federal Child Care Development Fund stimulus money by the federal deadline of September 30, 2023. One footnote allows the Department to spend up to 10 percent of the FY 2022-23 appropriation from federal stimulus funds in FY 2023-24. The other footnote allows the Department to transfer FY 2023-24 appropriations of federal stimulus money that the Department will not be able to obligate prior to September 30, 2023, to the Child Care Sustainability Grant Program line item or to the Early Care and Education Recruitment and Retention Grant and Scholarship Program line item.

The JBC previously approved these footnotes in concept, but the amounts by line item and the specific footnote language were not finalized prior to the introduction of the Long Bill.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Early Childhood	\$0	\$0	\$0	\$0	\$0	0.0

J.173: In the Department of Early Childhood: (1) Moves \$229,162 federal Child Care Development Funds from the Operating Expenses line item to a new line item for Information Technology Systems Managed by Other Departments; (2) Increases General Fund and decreases federal funds by \$72,461 for the new line item to reflect the share of costs attributable to programs other than the Colorado Child Care Assistance Program; and (3) Adds \$351,733 federal Child Care Development Funds for the Department's share of costs associated with information technology systems managed by the Department of Human Services, including TRAILS, CBMS, and SNAP to match the reappropriated funds spending authority provided in the Department of Human Services.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Early Childhood	\$72,461	\$0	\$0	\$279,272	\$351,733	0.0

J.190: Corrects a spelling error.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Early Childhood	\$0	\$0	\$0	\$0	\$0	0.0

EDUCATION

J.172: Adds shift differential for the Colorado School for the Deaf and the Blind, correcting a technical error in the request.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Education	\$66,600	\$0	\$0	\$0	\$66,600	0.0

HEALTH CARE POLICY AND FINANCING

J.168: Reduces \$945,662 cash funds from the FY 2022-23 appropriation for the Children's Basic Health Plan Medical and Dental Costs line item in the Department of Health Care Policy and Financing (HCPF) to correct a data entry error and match the February 2023 forecast of expenditures.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	\$0	(\$945,662)	\$0	\$0	(\$945,662)	0.0

J.179: Makes a net-zero correction in HCPF to reduce the General Fund appropriation associated with the Children and Youth Mental Health Treatment Act by \$2,575 and increase the federal funds by the same amount.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	(\$2,575)	\$0	\$0	\$2,575	\$0	0.0

J.169: Makes net \$0 corrections to the fund sources for the Executive Directors' Office in HCPF, including a decrease of \$796 from the Medicaid Nursing Facility Cash Fund, an increase of \$796 from the Nursing Home Penalty Cash Fund, a decrease of \$5,994 transferred from the Colorado Benefits Management System, an increase of \$5,354 transferred from Human Services, a decrease of \$245 transferred from Personnel and Administration, and an increase of \$885 transferred from Higher Education.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	\$0	\$0	\$0	\$0	\$0	0.0

J.170: Corrects the source of cash funds for the Medicaid Management Information System Maintenance and Projects line item in HCPF to increase the amount identified as coming from the Health Care Policy and Financing Cash Fund by \$247,901 and decrease the amount identified as coming from the Healthcare Affordability and Sustainability Fee Cash Fund by the same amount.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	\$0	\$0	\$0	\$0	\$0	0.0

J.180: Makes net \$0 corrections to the cash fund sources in HCPF identified for targeted provider rate increases in the Medical Services Premiums line item, reducing the amount from the Healthcare Affordability and Sustainability Fee Cash Fund by \$2,931,191, increasing the amount from the Home- and Community-based Services Improvement Fund by \$2,916,409, and adding an amount from the ARPA Home- and Community-Based Services Account of \$14,782.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	\$0	\$0	\$0	\$0	\$0	0.0

J.184: Increases the estimated savings in HCPF for nursing home costs as a result of additional housing vouchers in the Department of Local Affairs by \$620,892 total funds, including \$304,236 General Fund, to align with the forecast used for the housing vouchers initiative.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	(\$304,236)	\$0	\$0	(\$316,656)	(\$620,892)	0.0

J.185: Corrects a reference in HCPF to a transfer for the Nurse Home Visitor Program from the Department of Human Services to instead say the transfer is from the Department of Early Childhood, since the program was moved from the Department of Human Services to the Department of Early Childhood.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	\$0	\$0	\$0	\$0	\$0	0.0

J.188: Adds \$135,360 General Fund in HCPF to correctly align the appropriation for the General Professional Services and Special Projects line item with the Committee's decision regarding BA 11 (Behavioral Health Crisis Response System Funding).

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy and Financing	\$135,360	\$0	\$0	\$0	\$135,360	0.0

J.189: Corrects the cash fund splits outlined in the letternote totals for the Office of Community Living's Medicaid Programs in HCPF.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy and Financing	\$0	\$0	\$0	\$0	\$0	0.0

J.177: Removes a line item in HCPF that duplicates an existing appropriation within the Department, reducing the total appropriation by \$137,788 total funds, including \$68,894 General Fund. Additionally, updates subdivision numbering in the Department of Human Services Medicaid-funded Programs division within HCPF. Finally, amends a letternote in the Department of Human Services to reference the correct line item from which reappropriated funds are received.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Health Care Policy & Financing	(\$68,894)	\$0	\$0	(\$68,894)	(\$137,788)	0.0
Human Services	0	0	0	0	0	0.0
Total	(\$68,894)	\$0	\$0	(\$68,894)	(\$137,788)	0.0

JUDICIAL

J.178: Makes technical letternote corrections and budget-neutral cash and reappropriated balancing adjustments related to Correctional Treatment Cash Fund (CTCF) appropriations for the Judicial Department related to the comeback that refinanced General Fund with CTCF.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Judicial	\$0	\$431,663	(\$431,663)	\$0	\$0	0.0

LABOR

J.186: Corrects the cash fund splits outlined in the letternote total for the Executive Director's Office in the Department of Labor and Employment.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Labor and Employment	\$0	\$0	\$0	\$0	\$0	0.0

J.187: Removes a duplicate salary adjustment from the Division of Employment and Training that is previously adjusted in the Executive Director's Office in the Department of Labor and Employment.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Labor and Employment	(\$2,088)	\$0	\$0	\$0	(\$2,088)	0.0

LOCAL AFFAIRS

J.181: Corrects the spelling of two line items in the Department of Local Affairs.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Local Affairs	\$0	\$0	\$0	\$0	\$0	0.0

J.182: Makes a technical adjustment to the line item name for H.B. 17-1326 Crime Prevention Initiative Grants to specify that the appropriation goes into the Targeted Crime Reduction Grant Program Cash Fund within the Department of Local Affairs.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Local Affairs	\$0	\$0	\$0	\$0	\$0	0.0

PUBLIC HEALTH AND ENVIRONMENT

J.183: Corrects a letternote error in the Department of Public Health and Environment to accurately reflect Medicaid funds reappropriated from the Department of Health Care Policy and Financing.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Public Health and Environment	\$0	\$0	\$0	\$0	\$0	0.0

PUBLIC SAFETY

J.176: Corrects an error in the annualization of S.B. 22-196 (Health Needs of Persons in Criminal Justice System), which was the omission of \$100,000 cash funds from the Behavioral and Mental Health Cash Fund in the Division of Criminal Justice in the Department of Public Safety.

Fiscal Impact of Amendment						
Department	GF	CF	RF	FF	Total	FTE
Public Safety	\$0	\$100,000	\$0	\$0	\$100,000	0.0