JOINT
BUDGET
COMMITTEE

STAFF BUDGET BRIEFING
FY 2017-18

TOBACCO MASTER SETTLEMENT AGREEMENT

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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TOBACCO MASTER SETTLEMENT AGREEMENT

OVERVIEW

The Tobacco Master Settlement Agreement (MSA) provides Colorado with an annual revenue stream which is directed via a statutory formula to a wide variety of programs. Revenue from the Tobacco Master Settlement Agreement is the result of a 1998 legal settlement between tobacco manufacturers and the states who sued the tobacco manufacturers to recover Medicaid and other health-related costs incurred by the states as a result of treating smoking related illnesses.

GENERAL FACTORS DRIVING THE BUDGET

Annual Tobacco Master Settlement Agreement payments are received by the state in April of each year. Annual payments are driven by the following three factors:

- The number of units sold[1] nationwide in the prior calendar year;
- The amount of withheld disputed payments in the prior calendar year; and
- The inflation adjustment for the prior calendar year.

The number of units sold nationwide is used to calculate each Participating Manufacturers Tobacco Master Settlement Agreement payment prior to any withholdings. For example the April 2016 payment is based on the number of units sold in 2015.

The amount of disputed payments withheld by Participating Manufacturers reduces the State's payment. Participating Manufacturers determine the amount of disputed payments they are not going to pay and disputed payments are subject to arbitration proceedings. To the extent the State is successful in arbitration proceedings for calendars years 2004 and beyond, as it was in 2003, Colorado should ultimately receive funds withheld in that year. Funds received as a result of successful arbitrations are one-time.

The inflation adjustment is equal to the greatest of 3.0 percent or the Consumer Price Index percentage change for the calendar year being used to determine the payment. Therefore, if the CPI percentage is lower than 3.0 percent, the inflation adjustment for that year is 3.0 percent. The inflation adjustment compounds each year so the 2016 Tobacco Master Settlement Agreement payment included an inflation adjustment equal to 68.7 percent of the base payment. There have only been four years since the inception of the Tobacco Master Settlement Agreement when CPI was greater than 3.0 percent[2]. The CPI for the April 2016 payment was 0.73 percent.

[1] Pursuant to Section 39-28-202 (10), C.R.S., "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on containers of roll-your-own tobacco, and on packs of cigarettes bearing the excise tax stamp of the state.
[2] The years where CPI exceeded 3.0 percent were 2000 (3.39%), 2004 (3.26%), 2005 (3.42%), and 2007 (4.08%).

ISSUE: TOBACCO MASTER SETTLEMENT AGREEMENT OVERVIEW

The 1998 Tobacco Master Settlement Agreement (MSA) provides Colorado with an annual revenue stream from Participating Manufacturers as a result of legal action taken by Settling States to recover state expenses incurred for the treatment of illnesses resulting from tobacco use. Tobacco Master Settlement Agreement money is distributed to certain programs based on a statutory formula. This issue provides an overview of the Tobacco Master Settlement Agreement including what comprises the Tobacco Master Settlement Agreement annual payment to Colorado, disputed payments, and arbitration of disputed payments.

SUMMARY

- The Tobacco Master Settlement Agreement requires Participating Manufacturers to make perpetual payments to Settling States to offset past and future healthcare costs for treatment of tobacco related illnesses. The Tobacco Master Settlement Agreement also limited marketing efforts by the tobacco industry while releasing Participating Manufacturers from future claims by the Settling States.

- Tobacco Master Settlement Agreement payments are driven by the number of units sold, the inflation adjustment, and the amount of disputed payments withheld by Participating Manufacturers. Colorado's annual revenue from MSA payments ranges from $83.0 million to $100.0 million.

- The General Assembly enacted a legislative change starting in FY 2008-09 so that Tobacco Master Settlement Agreement appropriations were in part reliant on funds that would come during the current fiscal year's April payment (i.e. the FY 2010-11 appropriation was reliant in part on the April 2011 payment). Prior to this change, the annual appropriation was based on money received in the prior fiscal year's April payment. This change is referred to as accelerating the use of tobacco revenues or accelerated payments.

- Participating Manufacturers withhold a portion of their annual payment based on the belief that Settling States are not properly enforcing tobacco laws that were enacted by states as part of the Tobacco Master Settlement Agreement. The money withheld by Participating Manufacturers is called disputed payments. The dispute between the original Settling States and the Participating Manufacturers regarding diligent enforcement of tobacco laws is resolved through an arbitration process. Each calendar year in which there were disputed payments withheld by Participating Manufacturers will have an arbitration proceeding. The arbitration for calendar year 2004 is currently underway.

DISCUSSION

History
In 1995, Colorado and six other states sued major tobacco companies to recover, among other things, health-care costs attributed to smoking-related illnesses. After four years, and tobacco company losses in similar lawsuits, the states and tobacco companies agreed to a settlement on

November 28, 1998 (this is called the Tobacco Master Settlement Agreement or MSA). The MSA was signed by forty-six states[3], the District of Columbia, and five U.S. territories (collectively called the Settling States), and the original Participating Manufacturers (Philip Morris, R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company). The Tobacco Master Settlement Agreement went into effect April 2000. The MSA settled and released past and future claims by Settling States against Participating Manufacturers and required Participating Manufacturers to make annual payments in perpetuity based upon their annual nationwide cigarette sales. Participating Manufacturers are subject to an array of advertising, marketing and other restrictions as part of the Tobacco Master Settlement Agreement.

Subsequent Participating Manufacturers and Non-Participating Manufacturers
Current there are fifty-three manufacturers who have agreed to be bound to the terms of the MSA. Manufacturers who signed the MSA after the original three manufacturers are called Subsequent Participating Manufacturers (note for the purpose of this briefing all manufacturers subject to the terms of the MSA are called Participating Manufacturers). Manufacturers who have not signed the MSA are called Non-Participating Manufacturers.

Each Participating Manufacturer makes a single annual payment based on that manufacturer's nationwide annual cigarette sales volume for a given calendar year. Payments are calculated by an independent auditor and are due on April 15 of the following calendar year. Payments are modified by the inflation adjustment and disputed payment withholdings. The following table summarizes the total payments by Participating Manufacturers since 2003 and the total non-Participating Manufacturer (NPM) adjustments (i.e. disputed payments withheld by Participating Manufacturers – disputed payments are discussed in detail in the following section).

NATIONAL TOBACCO MSA PAYMENTS AND NPM ADJUSTMENTS

Sales Year	Payment Year	State's Payment Without NPM	NPM Adjustment	NPM adjustments as % of State's Payments
2003	2004	$5,863,058,276	$1,147,566,065	19.6%
2004	2005	6,286,714,341	1,137,395,925	18.1%
2005	2006	6,375,972,583	753,345,638	11.8%
2006	2007	5,832,686,276	700,344,418	12.0%
2007	2008	6,070,161,916	749,358,662	12.3%
2008	2009	6,990,917,084	888,409,725	12.7%
2009	2010	7,647,315,603	859,075,468	11.2%
2010	2011	6,393,360,364	872,492,380	13.6%
2011	2012	6,035,499,690	727,710,677	12.1%
2012	2013	6,154,221,970	789,299,038	12.8%
2013	2014	7,612,023,676	814,193,830	10.7%
2014	2015	5,980,622,351	815,580,615	13.6%
2015	2016	6,841,236,872	890,168,454	13.0%
TOTAL		**$84,083,791,002**	**$11,144,940,895**	**13.4%**

Information from National Association of Attorneys General, April 21 2016 "Tobacco Product Manufacturers Market Shares and Potential NPM Adjustment Amounts"

[3] Florida, Minnesota, Mississippi, and Texas did not sign the MSA because they had entered into separate settlements prior to the MSA.

The MSA added approximately $6.55 to the cost of a carton of cigarettes purchased from Participating Manufacturers. The costs of the MSA were expected to place Participating Manufacturers at a competitive disadvantage when compared to the Non-Participating Manufacturers who had not joined the agreement. In an effort to offset the disadvantage, the MSA required Settling States to enact laws (based on a model statute provided as part of the MSA) that forced Non-Participating Manufacturers to make payments into escrow accounts comparable to what they would have paid to states if they had participated in the MSA.

The payments by Non-Participating Manufacturers remain in escrow for twenty-five years. Non-Participating Manufacturers control the interest earnings from the escrow payments and the money can only be access if states sued Non-Participating Manufacturers and won. Twenty-five years from the date of each escrow payments, the money is returned to the non-Participating Manufacturers. It is unclear what happens to funds paid by Non-Participating Manufacturers that have gone out of business during the twenty-five year time frame. To date, no money from the escrow payments has been accessed by any of the Settling States.

To ensure states enforced the model statute which protected Participating Manufacturer interests, the MSA included a Non-Participating Manufacturer adjustment clause to reduce manufacturer payments to states when three conditions are met in a given calendar year:

- The market share of Participating Manufacturers declines by 2.0 percent or more relative to the market share prior to the enactment of the MSA;
- An independent economic consultant finds that the Tobacco Master Settlement Agreement significantly contributed to the market share decline; and
- An arbitration panel finds that a given state failed to diligently enforce the Non-Participating Manufacturer statute.

The determination of the Participating Manufacturers' change in market share is done by a market analysis and applies to all Settling States. Therefore, regardless what happens at a state level, if the national market share of Participating Manufacturers declines by 2.0 percent or more, the first condition is satisfied. If the market share for a specific calendar year has declined by 2.0 percent or more, an independent auditor evaluates if the MSA was a significate factor in the decline. The determination of whether the second condition is met is also done on a national level.

Participating Manufacturers have used the Non-Participating Manufacturer adjustment clause to withhold a portion of their payment since the MSA went into effect. In order to determine if the Participating Manufacturers were justified in withholding a portion of their payments (called disputed payments) states and Participating Manufacturers enter into arbitration. Each state received a ruling from the arbitration panel based on whether the three conditions were satisfied. Since the first two conditions are done at a national level, the arbitration panel is ruling on each state's diligent enforcement of the tobacco laws. For states the arbitration panel finds to have not diligently enforced the tobacco laws, the total Non-Participating Manufacturer adjustment is applied to those states. Therefore if only one state is determined to have failed in diligently enforcing the Non-Participating Manufacturers provisions, that state will be held financially responsible for Participating Manufacturers' loss of market share nationwide. The maximum Non-Participating Manufacturers adjustment penalty faced by a state cannot exceed the total amount of tobacco settlement funds the state was due in the year in question.

The structure of the penalty within the Non-Participating Manufacturer adjustment clause increases the stakes for all states related to diligent enforcement of the tobacco laws. Further, because of the way the Non-Participating Manufacturer reduction penalty is allocated, diligent enforcement determinations must be made for all states participating in arbitration before the aggregate adjustment can be distributed. Some diligent enforcement issues arose but have been settled for payment years 1999 through 2002. However, whether Participating Manufacturers were entitled to a Non-Participating Manufacturer adjustment for CY 2003 and each subsequent year has been disputed by the Participating Manufacturers. See the Arbitration Section of this issue for additional information on the 2003 and 2004 arbitrations.

Components

There are three components of MSA revenue: the base settlement agreement payment also called the base payment, the strategic contribution payment, and disputed payments.

The base payment represents the Participating Manufacturers core settlement agreement payment. The MSA indicates the base payments continue in perpetuity and are adjusted annually based on tobacco sales and inflationary factors. Colorado's April 2016 base payment (prior to withholdings of disputed payments described below) was $103.9 million.

The strategic contribution payment is allocated among states (including Colorado) based on their level of participation in the original lawsuit. These payments are for a ten year period only (April 2008 through April 2017). The strategic contribution payments will not be received after the April 2017 payment, resulting in a reduction of $15.0 to $17.0 million available for appropriation in FY 2018-19.

Pursuant to the Non-Participating Manufacturers adjustment clause, Participating Manufacturers have been withholding a portion of their annual payments because the Participating Manufacturers saw a market share lost to Non-Participating Manufacturers as a result of the Tobacco Master Settlement Agreement. These withheld funds are called disputed payments. The table below reflects the amount of MSA revenue Colorado has received in recent years.

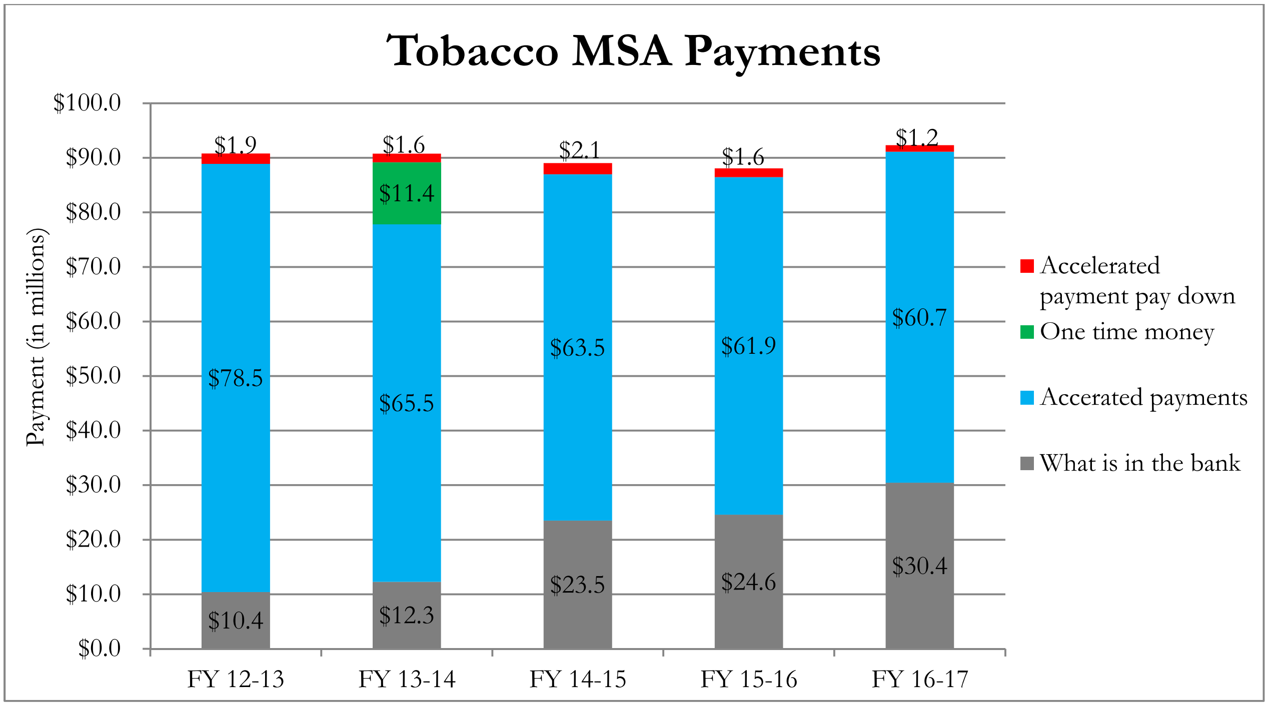
COLORADO TOBACCO MASTER SETTLEMENT AGREEMENT PAYMENTS					
Sales Year	**Payment Year**	**Appropriation Year**	**Base Payment + Strategic Contribution**	**Disputed Payment**	**Released Disputed Payments**
2007	2008	FY 2008-09	$103,640,385	($11,413,328)	$0
2008	2009	FY 2009-10	105,419,647	(13,995,449)	7,411,531
2009	2010	FY 2010-11	94,587,045	(13,081,760)	0
2010	2011	FY 2011-12	89,065,763	(12,781,879)	0
2011	2012	FY 2012-13	90,809,964	(10,665,021)	0
2012	2013	FY 2013-14	90,769,997	(11,609,878)	0
2013	2014	FY 2014-15	89,037,054	(12,072,478)	11,367,403
2014	2015	FY 2015-16	88,079,225	(11,977,943)	0
2015	2016	FY 2016-17	92,200,153	(11,692,998)	0

Accelerated Payments
Prior to FY 2007-08, the Long Bill appropriation of MSA revenue was based on MSA revenue received in April of the prior fiscal year (i.e. the appropriation was based on funds already received by the state.) In response to the economic downturns, the General Assembly changed statute so that Long Bill appropriations were in part reliant on the April payment that would occur during the upcoming fiscal year (i.e. the FY 2010-11 appropriation was reliant in part on the April 2011 payment). This change is referred to as accelerating the use of tobacco revenues or accelerated payments.

- Starting in FY 2008-09, statute was changed to rely on the current year strategic contribution payments to support current year allocations, allowing for a one-time redirect of $15.4 million to other purposes without reducing support for MSA-funded programs.
- Starting in FY 2010-11, the General Assembly expanded the use of current year revenue to support MSA funded programs, requiring MSA-funded programs to operate for most of the fiscal year before the majority of MSA was received in April.[4] The FY 2010-11 changes allowed for access to $65.0 million in one-time funding without reducing support for MSA programs. This change is similar to how General Fund was "accessed" through the pay date shift.

Since most program expenditures are made prior to the receipt of MSA funds, programs are loaned money from the General Fund for approximately nine months each year. In order to lessen the reliance on General Fund advances prior to the April payment, H.B. 12-1247 began to gradually reduce the use of such advances from the Treasury by reducing the use of current year revenue and increasing the use of prior year revenue. The bill required spending from current year revenue be reduced each year by any unallocated MSA funds and other residual funds in the Tobacco Litigation Settlement Cash Fund. This change is similar to transitioning a small number of employees each year off the pay date shift. Statute was also amended in 2014 to require disputed payments be used to reduce the amount of spending from current year revenue. A total of $11.4 million received in April 2014 was used for this purpose. The following table summarizes the size of the accelerated payment since FY 2012-13.

[4] This is accomplished through General Fund advances from the Treasury which were then repaid in April.



The size of the accelerated payment should be a concern if there is a possibility that the April payment will be significantly lower than the amount that was used to set the appropriation, or if Colorado is unsuccessful in disputed payment arbitration. For example if the appropriation was based on the forecast of $90.0 million and the actual payment was for $50.0 million, there will be a portion of General Fund that has been expended which cannot be paid back with Tobacco Master Settlement Agreement money, thus resulting in an unaccounted for General Fund expenditure during the fiscal year.

Distribution of MSA Revenue

House Bill 16-1408 redesigned how revenues are allocated to programs funded with MSA revenue. Prior to FY 2016-17, revenues were distributed according to a two-tier system. Starting in FY 2016-17, revenues are allocated on a percentage basis. The next issue brief contains more information on the distribution of MSA revenue and the changes implemented in H.B. 16-1408.

Arbitration

2003 Disputed Payments

A three-member arbitration panel began state-specific hearings on whether states had "diligently enforced" their Non-Participating Manufacturer (NPM) statutes in June 2012. For Colorado, the potential arbitration outcomes ranged from "winning," which would entitle Colorado to receive all their disputed payments ($9.9 million) plus interest, to "losing" which would require Colorado to repay all of the state's 2003 Tobacco Master Settlement Agreement money ($88.2 million) plus interest.

On September 11, 2013, the panel issued its ruling on the Colorado case. Because the original MSA did not define "diligent enforcement," the arbitration panel had to make various determinations regarding what constituted diligent enforcement and how certain provisions of the model NPM statute should be interpreted. In general, the panel found that various interpretations of the model statute were acceptable as long as they appeared rational based on the plain language of the statute. The panel then outlined the various factors it would consider in determining diligent enforcement, such as a state's collection rate from the Non-Participating Manufacturers, enforcement efforts, etc. Based on the specific facts in Colorado, the panel concluded:

> *The Participating Manufacturers criticize Colorado for the amount of turnover in the Office of the Attorney General, the lack of a formal planning process, and the fact that no one in the Office of the Attorney General was exclusively assigned to MSA enforcement, or spent enough time on escrow matters. The panel agrees that more could have, and possibly should have, been done regarding injunctions and audits. For example, Colorado could have gone after General (Sun) Tobacco sooner; however, it did reach a settlement for all prior years in 2003.*
>
> *Balancing those criticisms, the record as a whole indicates that Colorado was aware of its obligations beginning in 1999, that it passed appropriate legislation and regulations, established reasonable spheres of responsibility between the Department of Revenue and the Office of the Attorney General, generally met those responsibilities, and dramatically reduced non-compliant sales during calendar year 2003. In sum, there was a culture of compliance. The civil burden of proof requires only a tipping of the evidentiary balance, and Colorado has achieved that.*

As a result of this ruling, Colorado received $11,367,403, which was equal to amounts previously withheld due to the 2003 Non-Participating Manufacturer adjustment plus interest.

2004 Disputed Payments
The 2004 arbitration commenced with hearings on common issues in February 2016. Three subsequent hearings have been held and the parties are in the process of documenting discovery now. The Common Case, the parties opening statements of the arbitration, is scheduled for June 2017. State hearings should begin in the fall 2017.

ISSUE: HOUSE BILL 16-1408 DISTRIBUTION CHANGES AND FY 2017-18 ALLOCATIONS

The strategic contribution payment for Colorado will end after the April 2017 Tobacco Master Settlement Agreement payment. Therefore, the April 2018 payment will be approximately $15.0 million lower than the April 2017 payment. Section 24-75-1104.5 (1.3) (a.5) (II), C.R.S., requires the amount of money received in April 2017 and allocated to programs be reduced by $15.0 million in order to reduce the accelerated payment. It does not appear that any department as part of their November 1 request accounted for the reduction in revenues available for appropriation in FY 2017-18.

SUMMARY

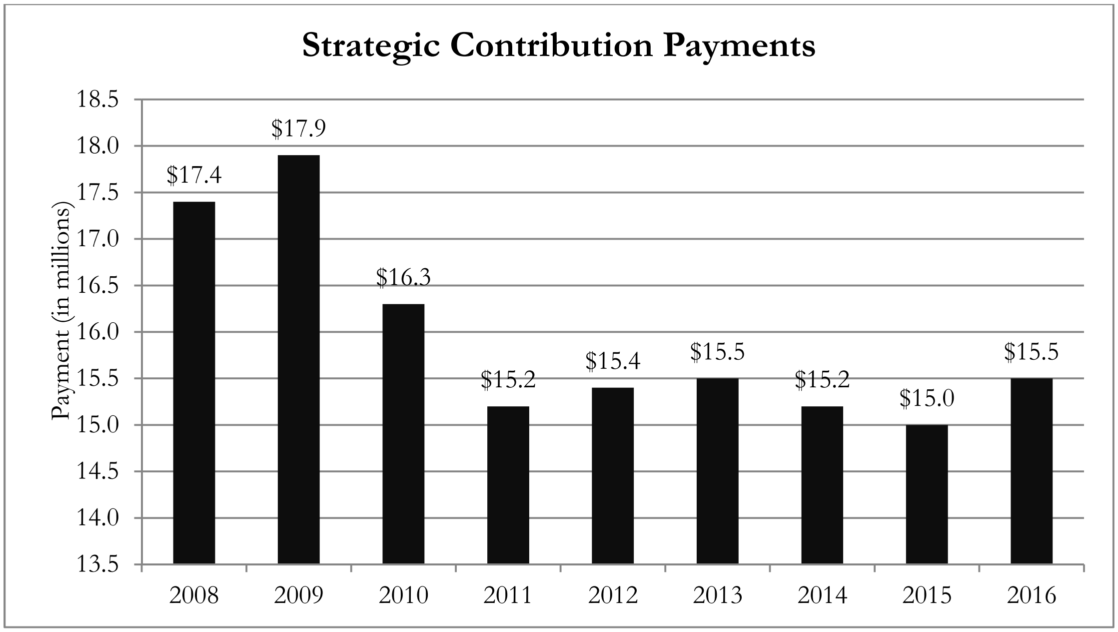
- The Tobacco Master Settlement Agreement (MSA) payment to Colorado includes the strategic contribution payments, which began in April 2008 and last through the April 2017 payment. The amount of the strategic contribution payment is based on each state's contribution to the initial MSA litigation.

- House Bill 16-1408 redesigned how revenues are allocated to programs. Prior to FY 2016-17 revenues were distributed according to a two-tier system. Starting in FY 2016-17, revenues will be allocated on a percentage basis.

- Section 24-75-1104.5 (1.3) (a.5) (II), C.R.S., requires the amount of money received in April 2017 and allocated to programs be reduced by $15.0 million in order to reduce the accelerated payment prior to the reduction of the April 2018 payment due to the elimination of the strategic contribution payment. It does not appear that any department as part of their November 1 request accounted for the reduction in revenues available for appropriation in FY 2017-18.

DISCUSSION

The Tobacco Master Settlement Agreement (MSA) payment to Colorado includes the strategic contribution payments, which began in April 2008 and last through the April 2017 payment. The amount of the strategic contribution payment is based on each state's contribution to the initial MSA litigation. Colorado receives a disproportionate share of the strategic contribution payments because of the state's significant contribution to the original litigation effort. Once the strategic contribution payments are completed, there will be an ongoing reduction in the amount of Tobacco Master Settlement Agreement revenues Colorado receives that can be used to support programs.

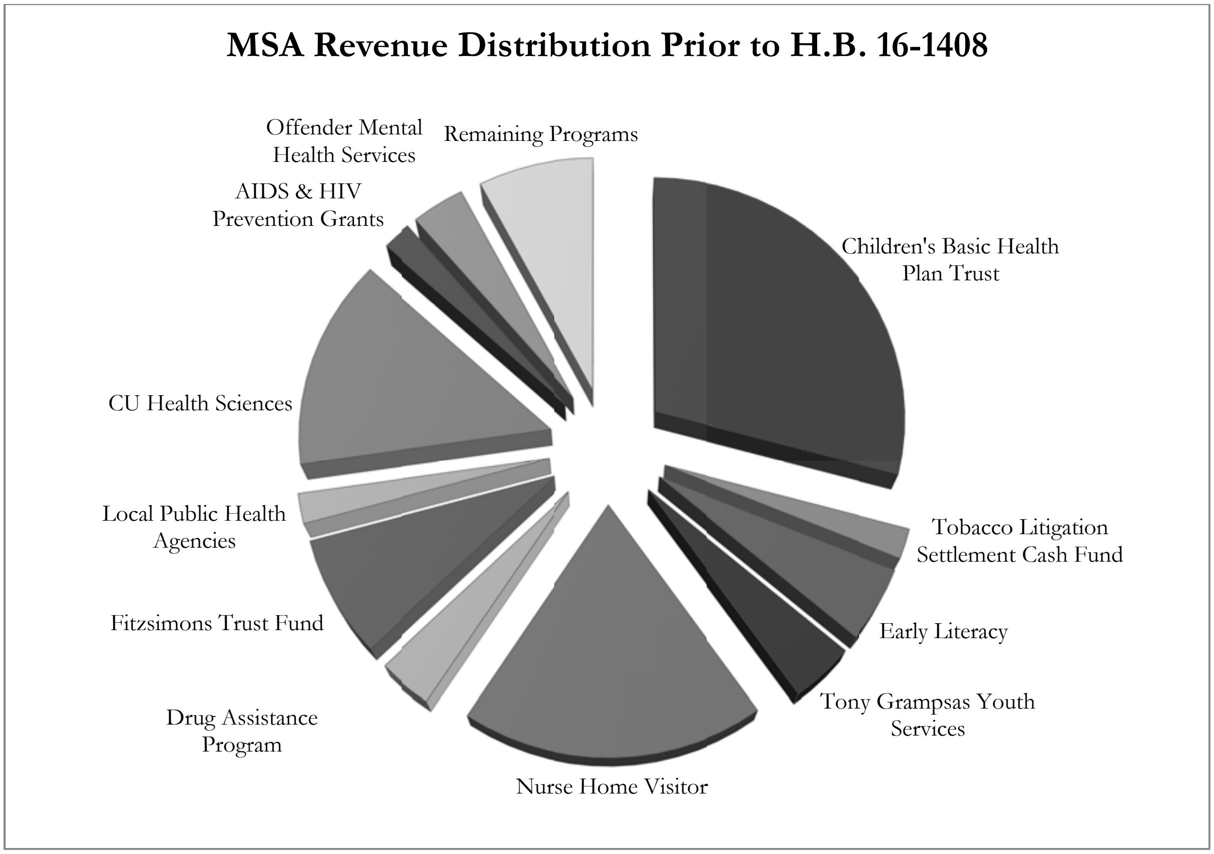


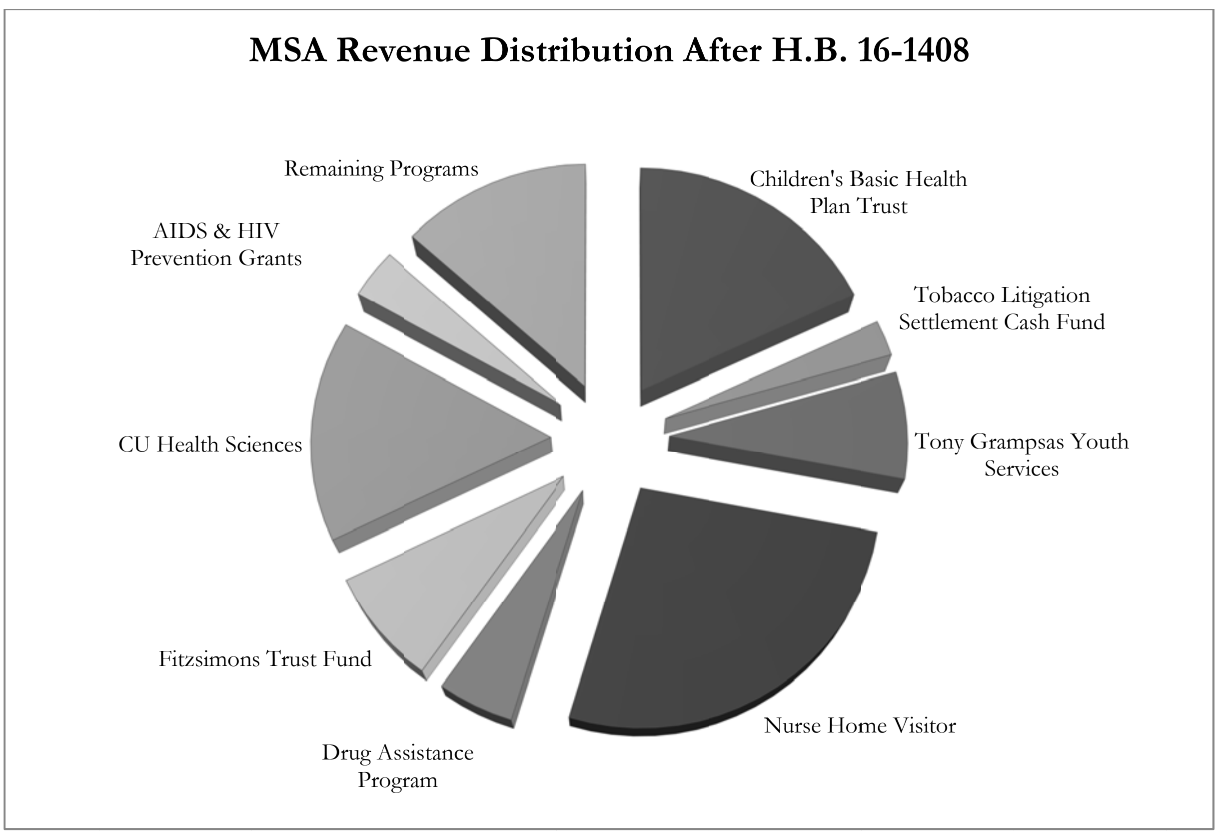
House Bill 16-1408 realigned the distribution formula to account for the reduction in Tobacco Master Settlement revenue by refinancing certain programs with Marijuana Tax Cash Fund (MTCF) dollars and providing remaining programs with additional revenue that can be used once the strategic contribution payment concludes. Marijuana Tax Cash Fund revenue was seen as a more sustainable funding source of certain programs, so H.B. 16-1408 refinanced programs that could statutorily receive this money. This resulted in fewer programs dependent on Tobacco Master Settlement Agreement money and allowed the remaining programs to receive additional funds for FY 2016-17. These additional funds, if properly managed by the programs, can be used to offset permanent funding reductions starting in FY 2017-18. See the "Points to Consider for Figure Setting" section at the end of this issue for additional information on the FY 2017-18 allocation reduction.

Distribution Changes Resulting from H.B. 16-1408

House Bill 16-1408 redesigned how revenues are allocated to programs. Prior to FY 2016-17, revenues were distributed according to a two-tier system. Starting in FY 2016-17, revenues will be allocated on a percentage basis. The following table summarizes the changes made to revenue distribution starting in FY 2016-17. Marijuana funds in the table below represent programs which, starting in FY 2016-17, will be funded with money in the Marijuana Tax Cash Fund and no longer funded with MSA money.

Summary of Distribution Changes		
	Current Distribution Tiers	New Distribution No Tiers
Tier 1 Programs		
Children's Basic Health Plan Trust	25.0%	18.0%
Nurse Home Visitor	19.0%	26.7%
Fitzsimons Trust Fund	8.0%	8.0%
Early Literacy	5.0%	Marijuana Funds
Tony Grampsas Youth Services	4.0%	7.5%
Drug Assistance Program (Ryan White)	3.5%	5.0%
AIDS and HIV Prevention Grants	2.0%	3.5%
Tobacco Litigation Settlement Cash Fund	2.0%	2.5%
State Veterans	1.0%	1.0%
Dental Loan Repayment	$200,000	1.0%
Child Mental Health Treatment Act	$300,000	Marijuana Funds
Cancer Program	0	2.0%
Autism Treatment	$1,000,000	2.0%
Tier 2 Programs	**% of Remaining Money After Tier 1 programs**	
CU Health Sciences	49.00%	15.5%
Children's Basic Health Plan Trust	14.50%	Eliminated
Offender Mental Health Services	12.00%	Marijuana Funds
Alcohol & Drug Abuse	3.00%	Marijuana Funds
Local Public Health Agencies	7.00%	Marijuana Funds
Supplemental State Contribution	4.50%	2.3%
CO Immunization Fund	4.00%	2.5%
Health Services Corps (Loan Repayment)	$250,000	1.0%
State Auditor's Office	$89,000	Eliminated
Unallocated amount		1.5%


MSA Revenue Distribution Prior to H.B. 16-1408
Offender Mental Health Services
Remaining Programs
AIDS & HIV Prevention Grants
Children's Basic Health Plan Trust
CU Health Sciences
Local Public Health Agencies
Tobacco Litigation Settlement Cash Fund
Fitzsimons Trust Fund
Early Literacy
Tony Grampsas Youth Services
Drug Assistance Program
Nurse Home Visitor


MSA Revenue Distribution After H.B. 16-1408
Remaining Programs
Children's Basic Health Plan Trust
AIDS & HIV Prevention Grants
Tobacco Litigation Settlement Cash Fund
CU Health Sciences
Tony Grampsas Youth Services
Fitzsimons Trust Fund
Nurse Home Visitor
Drug Assistance Program

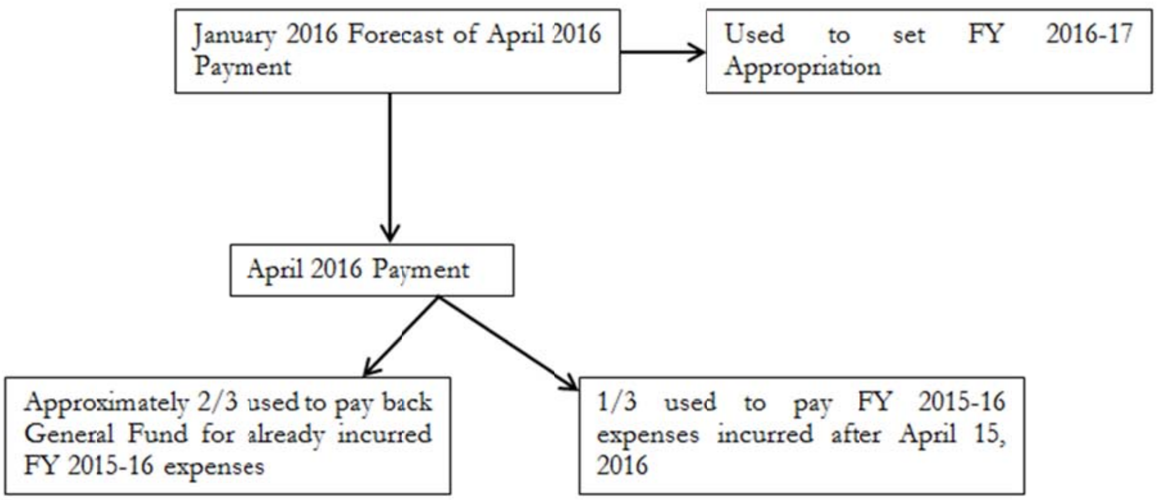
The table below summarizes the combined total allocations by department and program for FY 2015-16 and FY 2016-17 as changed by H.B. 16-1408. Refinanced programs were funded at the level shown in the "FY 2016-17 allocation prior to H.B. 16-1408" column with Marijuana Tax Cash Fund instead of MSA revenue.

TOBACCO MASTER SETTLEMENT AGREEMENT REVENUE ALLOCATIONS				
	FY 2015-16 Actual Revenue	FY 2016-17 Allocation prior to H.B. 16-1408	FY 2016-17 Allocation as amended by H.B. 16-1408	FY 2016-17 Change from FY 2015-16 with H.B. 16-1408
Education - Early Literacy Grant Program	$4,403,961	$4,378,678	$0	Refinanced with MTCF
Health Care Policy and Financing				
Children's Basic Health Plan Trust	27,459,195	25,548,832	15,763,241	(11,695,954)
Children with Autism	1,000,000	1,000,000	1,751,471	751,471
Subtotal - Health Care Policy and Financing	*28,459,195*	*26,548,832*	*17,514,712*	*(10,944,483)*
Higher Education -				
University of Colorado Health Sciences Center	12,428,440	12,352,869	13,573,902	1,145,462
Cancer Program	0	0	1,751,471	1,751,471
Subtotal - Higher Education	*12,428,440*	*12,352,869*	*15,325,373*	*2,896,933*
Human Services				
Nurse Home Visitor Program	15,735,053	16,638,977	23,382,141	7,647,088
Tony Grampsas Youth Services Program	3,523,169	3,502,942	6,568,017	3,044,848
Offender Mental Health Services	3,043,700	3,025,192	0	Refinanced with MTCF
Treatment, Detoxification, and Prevention	760,925	756,298	0	Refinanced with MTCF
Residential Mental Health Treatment for Youth	300,000	300,000	0	Refinanced with MTCF
Subtotal - Human Services	*23,362,847*	*24,223,409*	*29,950,158*	*6,587,311*
Law - Tobacco Settlement Defense Account	1,000,000	1,751,471	2,189,339	1,189,339
Legislature - Office of the State Auditor	89,000	89,000	0	Removed from formula
Military and Veterans Affairs - State Veterans Trust Fund	880,792	875,736	875,736	(5,056)
Personnel - Supplemental State Contribution Fund	1,141,387	1,134,447	2,014,192	872,805
Public Health and Environment				
Drug Assistance Program	3,082,773	3,065,075	4,378,678	1,295,905
Local Public Health Agencies	1,775,491	1,764,696	0	Refinanced with MTCF
AIDS and HIV Prevention Grants (CHAPP)	1,761,585	1,751,471	3,065,075	1,303,490
Immunizations	1,014,567	1,008,397	2,189,339	1,174,772
Health Services Corps Fund	250,000	250,000	875,736	625,736
Dental Loan Repayment Program	200,000	200,000	875,736	675,736
Subtotal Public Health and Environment	*8,084,416*	*8,039,639*	*11,384,564*	*3,300,148*
Capital Construction - Department of Higher Education - Fitzsimons Lease Purchase Payments	7,046,338	7,005,885	7,005,885	(40,453)
Amount not allocated - used to reduce accelerated payments	1,182,850	1,173,596	1,313,603	130,753
TOTAL	**$88,079,226**	**$87,573,562**	**$87,573,562**	**$0**

Points to Consider for Figure Setting:

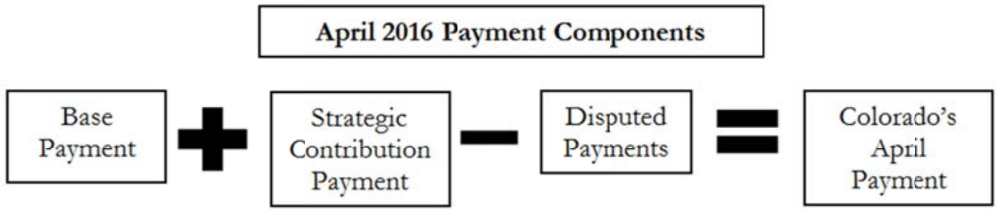
The Process

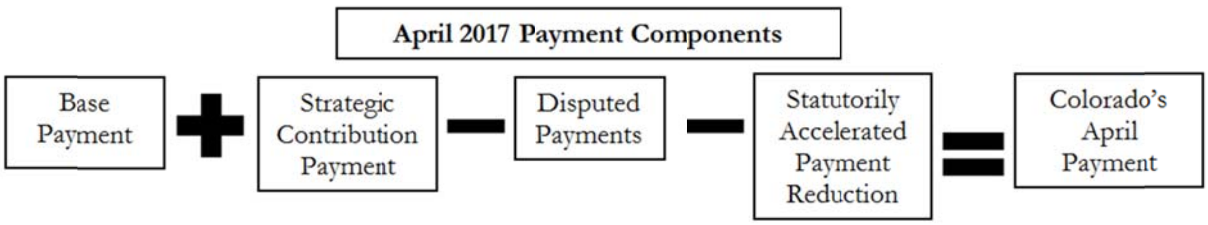
The figure setting process for Tobacco Master Settlement Agreement money is similar to the process for other common policy areas of the budget. Early in the figure setting process, typically the end of January or beginning of February, staff will make recommendations for the Committee's consideration on the amount of Tobacco Master Settlement money available for distribution to programs based on the forecast done by Legislative Council economists. Individual staff analysts will incorporate these amounts for programs in their budget areas that are supported by Tobacco Master Settlement funds. Individual staff will also take into consideration cash fund balances used to support programs. It is possible that there will be available fund balances for appropriation in FY 2017-18 due in part to revenue exceeding the forecast used to make the FY 2016-17 appropriations, thus resulting in more revenue than was appropriated. The following graphic explains how the figure setting decisions align with the receipt of revenues.

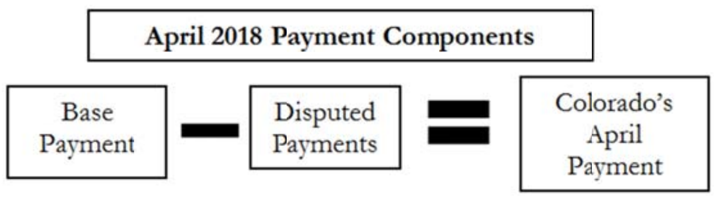


Statutory FY 2017-18 Reduction

Section 24-75-1104.5 (1.3) (a.5) (II), C.R.S., requires the amount of money received in April 2017 and allocated to programs be reduced by $15.0 million in order to reduce the accelerated payment prior to the reduction of the April 2018 payment due to the elimination of the strategic contribution payment. It does not appear that any department, as part of their November 1 request, accounts for the reduction in revenues available for appropriation in FY 2017-18. The following three charts demonstrate the components of the payment in April 2016, April 2017, and April 2018 based on current law.







The programs funded with Tobacco Master Settlement Agreement money received substantial increases in the appropriation clause for H.B. 16-1408 for FY 2016-17. Since the programs have received additional funds intended to help offset the reduction, staff is hopeful program staff is responsibly monitoring and budgeting their funds in anticipation of the FY 2017-18 reduction.

APPENDIX A
RECENT LEGISLATION

2015 SESSION BILLS

S.B 15-188 (TIER 1 TOBACCO SETTLEMENT MONEY ALLOCATION): Makes a new annual statutory allocation of 2.0 percent of tobacco litigation settlement money to the Tobacco Settlement Defense Account (Account) of the Litigation Settlement Cash Fund and an offsetting 2.0 percent reduction in the annual statutory allocation of such money to the Children's Basic Health Plan Trust. Authorizes the Department of Revenue to also use money in the Account to help administer, coordinate, and support the activities of the Departments of Revenue and Law, including the investigation of and response to settlement agreement manufacturer and distribution reporting irregularities identified by the Department of Law. Appropriates $69,453 cash funds and 1.0 FTE to the Department of Revenue for FY 2015-16.

S.B. 15-189 (REPEAL CONSOLIDATED TOBACCO PROGRAM REPORTING REQUIREMENTS): Repeals requirements that the State Board of Health and the Department of Public Health and Environment annually report on the operation and effectiveness of tobacco settlement programs. Reduces the Department's FY 2015-16 appropriation by $25,000 reappropriated funds from various Tobacco Master Settlement Agreement-supported programs.

2016 SESSION BILLS

H.B. 16-1408 (CASH FUND ALLOCATIONS FOR HEALTH-RELATED PROGRAMS): Establishes a new formula for the allocation of the annual payment received by the state as part of the Tobacco Master Settlement Agreement (Tobacco MSA). The new formula allocates all Tobacco MSA revenue by percentage shares, rather than the hybrid scheme of fixed dollar amounts and capped percentage shares in multiple tiers. The formula increases annual allocations to most programs receiving funding under the current distribution, while eliminating dedicated funding for the six purposes:

- Early Literacy Fund in the Department of Education;
- Public Health Services Support Fund in the Department of Public Health and Environment;
- Offender Mental Health Services Program in the Department of Human Services;
- Alcohol and Drug Abuse Prevention Program in the Department of Human Services;
- Children's Mental Health Treatment Program in the Department of Human Services; and
- The annual audit of Tobacco MSA-funded programs by the Office of the State Auditor.

For the purposes listed above except the audit, the bill makes FY 2016-17 appropriations from the Marijuana Tax Cash Fund in the amounts that the programs are expected to receive under the current law allocation formula. Repeals the Public Health Services Support Fund and the Tobacco Litigation Settlement Trust Fund. Requires the State Treasurer to transfer any remaining balance in the Public Health Services Support Fund and the Offender Mental Health Services Fund to the Tobacco Litigation Settlement Cash Fund at the end of FY 2015-16.

Creates a new Primary Care Provider Sustainability Fund in the Department of Health Care Policy and Financing to fund increased access to primary care office visits, immunization administration, health screening services, and newborn care, including neonatal critical care. Transfers $20.0 million on July 1, 2016 from the Children's Basic Health Plan Trust to this new fund. Modifies statute concerning higher education fee-for-service contracts paid to the University of Colorado for specialty education services, specifying that these contracts include care provided by faculty of the University of Colorado Health Sciences Center and are eligible for payment under the State's Medicaid provider reimbursement. Makes the following appropriation changes related to funds from the Tobacco Master Settlement revenues and Marijuana Tax Cash Fund dollars.

SUMMARY OF TOBACCO MASTER SETTLEMENT AGREEMENT DISTRIBUTION FORMULA APPROPRIATION CHANGES

BILL SECTION	PROGRAM	GENERAL FUND	TOBACCO MASTER SETTLEMENT CASH FUNDS	MARIJUANA TAX CASH FUND
27	Early Literacy	$0	($4,378,678)	$4,378,678
28	Mental Health Services for Juvenile and Adult Offenders	0	(3,025,192)	3,025,192
28	Mental Health Services for Youth (H.B. 99-1116)	0	(300,000)	300,000
28	Community Prevention Treatment - Alcohol and Drug Abuse	0	(756,298)	756,298
29	Local Public Health Agencies	0	(1,767,584)	1,767,584
30	Tony Grampsas Youth Services	0	2,626,328	(2,626,328)
31	Autism Treatment Fund	(6,451,471)	6,451,471	0
32a	Higher Education - Cancer Program	0	1,751,471	0
32b	Higher Education - Health Sciences Center Programs	0	1,221,033	0
333	Nurse Home Visitor Program	0	6,743,164	0
34	Supplemental State Contribution Fund	0	879,745	0
35	Drug Assistance Program	0	1,313,603	0
36	AIDS and HIV Prevention Grants	0	1,313,604	0
37	Immunization Program	0	1,180,942	0
38	Oral Health Programs	0	675,736	0
39	Health Service Corps within the Primary Care Office	0	625,736	0

Appropriates $55,694,236 total funds, of which $20,000,000 is cash funds from the Primary Care Provider Sustainability Fund, $556,859 is cash funds from the Hospital Provider Fee Cash Fund, and $35,137,377 is federal funds to the Department of Health Care Policy and Financing for FY 2016-17 rate enhancements.

APPENDIX B
INFORMATION REQUESTS

UPDATE ON REQUESTS FOR INFORMATION

Department of **Health Care Policy and Financing**, Medical Services Premiums; Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs; Department of **Higher Education**, Colorado Commission on Higher Education, Special Purpose, University of Colorado, Lease Purchase of Academic Facilities at Fitzsimons; Governing Boards, Regents of the University of Colorado; Department of **Human Services**, Division of Child Welfare, Tony Grampsas Youth Services Program; Office of Early Childhood, Division of Community and Family Support, Nurse Home Visitor Program; Department of **Military and Veterans Affairs**, Division of Veterans Affairs, Colorado State Veterans Trust Fund Expenditures; Department of **Personnel**, Division of Human Resources, Employee Benefits Services, H.B. 07-1335 Supplemental State Contribution Fund; Department of **Public Health and Environment**, Disease Control and Environmental Epidemiology Division, Administration, General Disease Control, and Surveillance, Immunization Operating Expenses; Special Purpose Disease Control Programs, Sexually Transmitted Infections, HIV and AIDS Operating Expenses, and Ryan White Act Operating Expenses; Prevention Services Division, Chronic Disease Prevention Programs, Oral Health Programs; Primary Care Office -- Each Department is requested to provide the following information to the Joint Budget Committee by November 1, 2016, for each program funded with Tobacco Master Settlement moneys: the name of the program; the amount of Tobacco Master Settlement moneys received for the program for the preceding fiscal year; a description of the program including the actual number of persons served and the services provided through the program; information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals; and a recommendation regarding the amount of Tobacco Master Settlement funds the program requires for FY 2017-18 and why.

COMMENT: The following are summaries of Department responses for each program that will continue to receive Tobacco Master Settlement money in FY 2016-17 and beyond pursuant to H.B. 16-1408. The summaries are separate by Department and by program if there is more than one program within that Department which receives Tobacco Master Settlement Agreement money.

Health Care Policy and Financing

Children's Basic Health Plan

The Department recommends the continuation of 18.0 percent of Tobacco Master Settlement Agreement money for FY 2017-18. As a result of the one-time transfer of $20.0 million out of the Children's Basic Health Plan Trust Fund in H.B. 16-1408, the Department expects the need for the full allocation each fiscal year. The Department noted that the future of the Children's Basic Health Plan is uncertain and federal funding has not been reauthorized past September 30, 2017 and stated in the response "In the event that the Children's Basic Health Plan program is not reauthorized at the federal level beyond September 30, 2017, the Department will explore options of using the funds for children's and pregnant women's health care costs in the Medicaid Program."

Children with Autism Treatment Cash Fund
The Department recommends the continuation of 2.0 percent for this purpose. Since H.B. 16-1408 allowed the Children with Autism Treatment Cash Fund to be used for Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) the cash fund should not develop a significant balance has it has in prior years. The Department will continue to use the cash fund for both waiver services and EPSDT services.

Department of Higher Education
University of Colorado Anschutz Medical Campus
The Department recommends continuing the level of Tobacco Master Settlement Agreement money for the University of Colorado Anschutz Medical Campus. Tobacco Master Settlement Agreement money is used by the University of Colorado Anschutz Medical Campus in a number of ways outlined in the table below. The Department recommends continuing the level of Tobacco Master Settlement Agreement money for the University of Colorado Anschutz Medical Campus.

Tobacco Master Settlement Funding Areas FY 2015-16		
Component	**Page #**	**Amount**
Graduate School Stipend	3	$ 1,434,714
Colorado School of Public Health and Environment	4 - 5	$ 186,749
School of Medicine	5 - 6	$ 2,427,798
School of Dental Medicine	6 - 7	$ 670,459
College of Nursing	8 - 9	$ 489,438
Skaggs School of Pharmacy and Pharmaceutical Sciences	9 - 10	$ 661,067
Area Health Education Centers	10 - 12	$ 300,822
Classroom, Library and Student Services	12	$ 833,675
Mandatory Education Operating Costs	12	$ 5,423,718
Total Expenditures FY 2015-16		*$ 12,428,440*

Human Services
Tony Grampsas
The Department recommends a continuation level of funding based on the statutory distribution. The Tony Grampsas Youth Services Program provides funding to community-based organizations that serve children, youth, and their families with programs designed to reduce youth crime and violence, youth marijuana use, and prevent child abuse and neglect. Eligible TOYS applicants include local governments, schools, nonprofit organizations, state agencies, and institutions of higher education. TGYS- funded agencies serve target populations including children and youth ages 0-24, as well as parents, caregivers, and community members. Overall 78,030 individuals in 49 counties and one tribe, the Ute Mountain Ute Tribe, in Fiscal Year (FY) 2015-16 were served. Of those served: 21,086 (27 percent) were children (ages 0-8), 42,457 (55 percent) were youth (ages 9-18), 2,257 (3 percent) were young adults (ages 19-24), 8,788 (11 percent) were parents or caregivers, 3,442 (4 percent) were adult caregivers and community members.

Nurse Home Visitor

The Department recommends a continuation level of funding based on the statutory distribution. The Nurse Home Visitor Program (NHVP) was created in statute in FY 1999-2000. The NHVP utilizes the Nurse-Family Pa11nership (NFP), an evidenced-based, voluntary, community health nursing program aimed at improving the lives of vulnerable families expecting their first child. Clients are partnered with a registered nurse early in their pregnancy and receive home visits until the child turns two. All nurses delivering NFP are trained on the model by the NFP National Service Office (NFPNSO) and receive nursing consultation and continuing education from Invest in Kids (IIK). IIK, the NFPNSO, and the University of Colorado monitor the data to ensure the program is being implemented with fidelity to the model as tested in the original randomized controlled trials. The program is open to all first-time, low-income parents (individuals below 200% of federal poverty level). The cumulative median age of clients in Colorado is 20. NFP is available in all 64 counties in Colorado. For FY 2015-16 3,718 women and 2,851 children were served by the Nurse Home Visitor Program through 39,536 home visits.

For FY 2016-17 the Program has identified the following areas for improvement:

- Expand the recruitment and retention of the nursing workforce.
- Increase early enrollment from the current level of 66.9 percent by 28 weeks of pregnancy.
- Increase the retention rate in all three phases of service delive1y. Current rates are: 79.4 percent in pregnancy, 68.9 percent in infancy and 78.9 percent in toddler. Goals are: 90.0 percent retention in pregnancy, 80.0 percent in infancy, and 90.0 percent in toddler.
- Expand services in Fremont and Custer Counties in order to provide services in all counties.

Military and Veterans Affairs

Colorado State Veterans Trust Fund

The Department recommends a continuation level of funding for the Colorado State Veterans Trust Fund. The Department uses the Trust Fund for the following purposes: capital improvements or needed amenities for exist or future State Veterans' Community Living Centers, operation and maintenance costs of existing or future state veterans' cemeteries, costs incurred by the Division of Veterans Affairs, and veterans programs operated by nonprofit veterans' organizations. The Department expended 96.3 percent ($753,236) of funds for services and 3.7 percent of funds on administration. There were 4,966 veterans who benefited from services supported by Tobacco Master Settlement Agreement money. The Department is working on process improvements for grantees included additional trainings and the provision of a grantee handbook to provide grantees with details on policies, procedures and processes.

Personnel

Supplemental State Contribution Program

Pursuant to Section 24-50-609, C.R.S. (2016), the General Assembly established the Supplemental State Contribution Program for eligible state employees to provide access to affordable and adequate health insurance offered by the state to as many children of lower-income state employees as possible, and to encourage lower-income employees with dependent children to enroll in health insurance plans by supplementing the plan premiums. The Department must first use funds to provide each eligible state employee who has an annual household income of less than 200 percent FPL (Level I) with a supplement in the amount needed to reduce the employee contribution to all qualifying group benefit plans lo zero. Next, remaining funds shall be used to provide an eligible state employee who has an annual income of 200-249 percent FPL (Level 2) a supplement. Remaining funds shall be used for an eligible state employee who has an annual income of 250-299 percent FPL (Level 3). Supplements are provided to eligible employees at each Level in priority order if funds are available. All supplement contributions arc paid from the supplemental state contribution fund created in Section 24-50-609 (5), C.R.S. (2016).For FY 2015-16 with the amount of Tobacco Master Settlement money allocated to this program, the Department was able to serve 439 employees out of 479 eligible applications. A total of 306 employees were approved for Level I and 142 were approved for Level 2 and 49 employees were rejected for Level 3 because of limited funds. The following table summarizes the average assistance provided to the 439 employees.

Number of eligible state employees receiving the supplemental contribution	Total amount of supplements paid	Average monthly amount of the individual supplements	Average yearly amount of individual supplements	Number of dependent children of eligible state employees	Amount of increased non-supplemental slate contributions
439	$1,263,185	$239.78	$2,877	1,208	$56,581

The Department anticipates for FY 2017-18 there will be sufficient funding for all three levels based on the increase the program received in H.B. 16-1408. This will be the first year that all three levels of applicants will be funded since the original year of the program in FY 2008-09.

Public Health and Environment

Drug Assistance Program

The Department recommends a continuation level of funds for the Colorado HIV and AIDS Prevention Program (CHAPP). For FY 2015-16 CHAPP grantees performed a total of 2,329 HIV tests during, 9 of which were positive. 1,220 people received health education/risk reduction services during the contractual year, and 1,652,249 risk reduction items were distributed. These items included sterile syringes to prevent HIV transmission through unsafe injection practices and condoms to prevent HIV transmission through unsafe sexual practices. In light of growing demand, the new funding cycle beginning July 1, 2017 will expand support for syringe access programs, both in terms of number of funded sites and the comprehensive range of services available at the sites (e.g., health care navigation, treatment readiness counseling, and active linkage to substance use treatment).

Immunization Program

The Program provides financial resources to increase the awareness of immunizations improve vaccination rates and decrease the morbidity of vaccine preventable diseases among all Colorado citizens. The following services were provided with these funds during FY 2015-16:

- Continued support of the Colorado Children's Immunization Coalition (CCIC) to convene the Vaccine Advisory Committee of Colorado (VACC), and mobilize diverse partners and Colorado families to advance children's health through immunizations.
- Enhancement of Immunization Services Grants focusing on Rates Assessments in Child Care and Kindergarten, improve the up-to-date immunization rates of kindergarten students in Colorado schools and children attending child care centers through the assessment of immunization status and determination of rates of required immunizations.

- Enhancement of Immunization Core Services: Support ongoing immunization program infrastructure needs and core immunization service activities for local public health agencies (LPHAs.)

The Program plans to continue collecting and distributing county level immunization data, identifying immunization trends, and utilizing this information for determination of future MSA funded programs. Additionally the Program will use stakeholder meetings for identifying priorities and programmatic activities.

Drug Assistance Program
The Department recommends a continuing level of funding. The total FY 2015-16 appropriation was $3,477,488 but the Program only expended $1,528,652. The underexpenditure of Tobacco Master Settlement Agreement money is due to the expansion of services available to individuals with preexisting conditions meaning many of the individuals accessing services through the Drug Assistance Program are not covered by Medicaid or private insurance. The General Assembly passed S.B. 15-247 which modified the uses of Tobacco Master Settlement money allocated to the Drug Assistance Program. The changes allowed the Program to provide biological interventions intended to prevent HIV indirection or treat individuals who have a sexually transmitted infection or viral hepatitis. The Program is continuing the work to implement the changes made possible by S.B. 15-247 which will increase the number of individuals who require the services offered by the Program. Additionally the Program is expanding services to provide an evidence-based biomedical intervention for people who have been exposed to HIV and can prevent them from becoming HIV infected.

State Dental Loan Repayment Fund
The Program recommends a continuation level of funding noting that Tobacco Master Settlement Agreement money is the sole funding source for the program. Over the last two fiscal years the program has seen a significant increase in the number of Medicaid visits and continuing funding will ensure there is available community access to oral health clinicians participating in the state's Medicaid program. The following table summarizes the insurance coverage for individuals who access services through providers supported by the State Dental Loan Repayment Program.

Fiscal Year	Medicaid Patient Visits	CHP+ Patient Visits	Uninsured Patient Visits
FY 2011-12	9,987	168	5,347
FY 2012-13	12,716	592	3,715
FY 2013-14	14,191	1,119	8,859
FY 2014-15	23,712	973	9,650
FY 2015-16	36,222	1,109	5,159

The State Dental Loan Repayment Program, also known as the Expanded Dental Loan Option of the Colorado Health Service Corps, provides an educational loan repayment incentive for dental professionals who provide dental services to underserved populations including the uninsured and those insured by Medicaid and the Child Health Plan+. The program pays all or part of the principal interest and related expenses of the educational loan of each eligible dental professional. The program is open to both dentists and dental hygienists.

Thirty-four (34) obligated health professionals participated in the Dental Loan Repayment Program in FY 2015-16 including twenty nine (29) Dentists and five (5) Registered Dental Hygienists. Five (5) dental professionals practiced in rural or frontier counties and twenty nine (29) dental professionals practiced in an urban practice that serves the state's medically vulnerable, publicly insured and uninsured population. During the state fiscal year, a total of 41,722 medically vulnerable, publicly insured or uninsured Coloradans (unduplicated patient visits) received care from State Dental Loan Repayment Programs clinicians.

Colorado Health Service Corps Loan Repayment Program
The program seeks to improve the health of Colorado's medically underserved and vulnerable populations by alleviating health disparities resulting from poor access to primary, mental and oral health care. Health professionals that participate include: primary care physicians (Family Medicine, Internal Medicine, Pediatrics, Obstetrics and Gynecology, and Psychiatry), physician's assistants, dentists (general and pediatric), dental hygienists, nurse practitioners, certified nurse midwives, licensed clinical social workers, licensed professional counselors, psychologists, psychiatric nurse specialists, marriage and family therapists, and clinical pharmacists.

Eligible providers must practice in a designated Health Professional Shortage Area (HPSA) for a period of not less than three years, spend at least 32 hours per week in direct patient care for a full time contract or at least 16 hours per week in direct patient care for a part time contract, serve individuals who are uninsured or publicly insured, offer a sliding fee scale for payment to those below 200 percent of the federal poverty level, and work for a public or nonprofit organization.

The Primary Care Office is embarking on a large-scale evaluation study of the Colorado Health Service Corps. The evaluation methodology will address two questions. First, in light of the individual, community and organizational satisfiers known to influence clinician retention, does the Colorado Health Service Corps application process result in the selection of clinicians who are likely to stay at their practice once their service obligation is complete? Second, does loan repayment result in the long-term retention of safety net clinicians? The first question will be assessed through site visits of Colorado Health Service Corps clinicians awarded loan repayment between March 2014 and September 2015. Site visits occur during the first and third year of service obligation. To date, 51 first year site visits have been completed, with 55 first year site visits remaining. The second question will match Colorado Health Service Corps alumni with clinicians of similar education, training, and practice backgrounds to determine the effect of loan repayment on long term retention. This component of the program evaluation will be completed by the end of FY 2016-17.our dentists.