JOINT
BUDGET
COMMITTEE

STAFF BUDGET BRIEFING
FY 2018-19

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 MSA 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

Tobacco Master Settlement Agreement payments are driven by the following three factors:

- Number of units sold[1] nationwide;
- Amount of withheld disputed payments; and
- The inflation adjustment.

Payments received in April are based on sales and adjustments from the prior year. For example, the payment received by Colorado in April 2017 was based on the number of units sold in 2016.

Participating Manufacturers may withhold, or reduce, payments to states if there is a dispute that arises based on the calculations. These withholdings are called "disputed payments." Participating Manufacturers determine the amount of disputed payments they are not going to pay, which are then subject to arbitration proceedings. Funds received as a result of successful arbitrations are one-time. Colorado was successful in arbitration of 2003 disputed payments, receiving $11.4 million in withheld funds in 2013.

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. 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 2017 payment was 2.1 percent.

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[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 AND ARBITRATION 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 the components that comprise the annual MSA 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 limits 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.

- Beginning in FY 2008-09, the General Assembly enacted a legislative change to the allocation of Tobacco Master Settlement Agreement revenues, making appropriations 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, asserting 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.

- Twenty states, including Colorado, are currently participating in the 2004 NPM Adjustment arbitration. Specific state hearings began in November 2017, with Colorado scheduled for January 2018. Rulings are expected in Spring 2019.

DISCUSSION

History

In 1995, Colorado and six other states sued major tobacco companies to recover, among other things, healthcare 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

Currently, there are fifty-three manufacturers who have agreed to the terms of the MSA. Manufacturers who signed the MSA after the original three manufacturers are called Subsequent Participating Manufacturers (for the purpose of this briefing, all manufacturers subject to the terms of the MSA are called Participating Manufacturers, regardless of when they entered the agreement). 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 an inflation adjustment and disputed payment withholdings.

The MSA added approximately $6.55 to the cost of a carton (10 packs) 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 accessed if states sue Non-Participating Manufacturers and win. Twenty-five years from the date of each escrow payment, in the absence of a suit by the state, 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.

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

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. The arbitration is a multi-state arbitration, with all arbitrating states participating in common hearings. After the common hearings conclude, each participating state has a state specific hearing to determine if that state diligently enforced its escrow statute for Non-Participating Manufacturers selling it its state. At the outset, each state is liable for its allocable share of the market share loss. As states are found to have diligently enforced their statutes, those diligent states' allocable shares are reallocated to the states that are found to be non-diligent, increasing the amounts those states are responsible for. 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. However, 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.

Components

There are three components of state 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 2017 base payment (prior to withholding of disputed payments described below) was $104.8 million.

The 10 year strategic contribution payments were allocated among states (including Colorado) based on their level of participation in the original lawsuit. The final strategic contribution payment was made in April 2017, 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	Base Payment + Strategic Contribution	Disputed Payment	Released Disputed Payments
2007	2008	$103,640,385	($11,413,328)	$0
2008	2009	105,419,647	(13,995,449)	7,411,531
2009	2010	94,587,045	(13,081,760)	0
2010	2011	89,065,763	(12,781,879)	0
2011	2012	90,809,964	(10,665,021)	0
2012	2013	90,769,997	(11,609,878)	0
2013	2014	89,037,054	(12,072,478)	11,367,403
2014	2015	88,079,225	(11,977,943)	0
2015	2016	92,200,153	(11,692,998)	0
2016	2017	91,116,849	(13,639,276)	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.

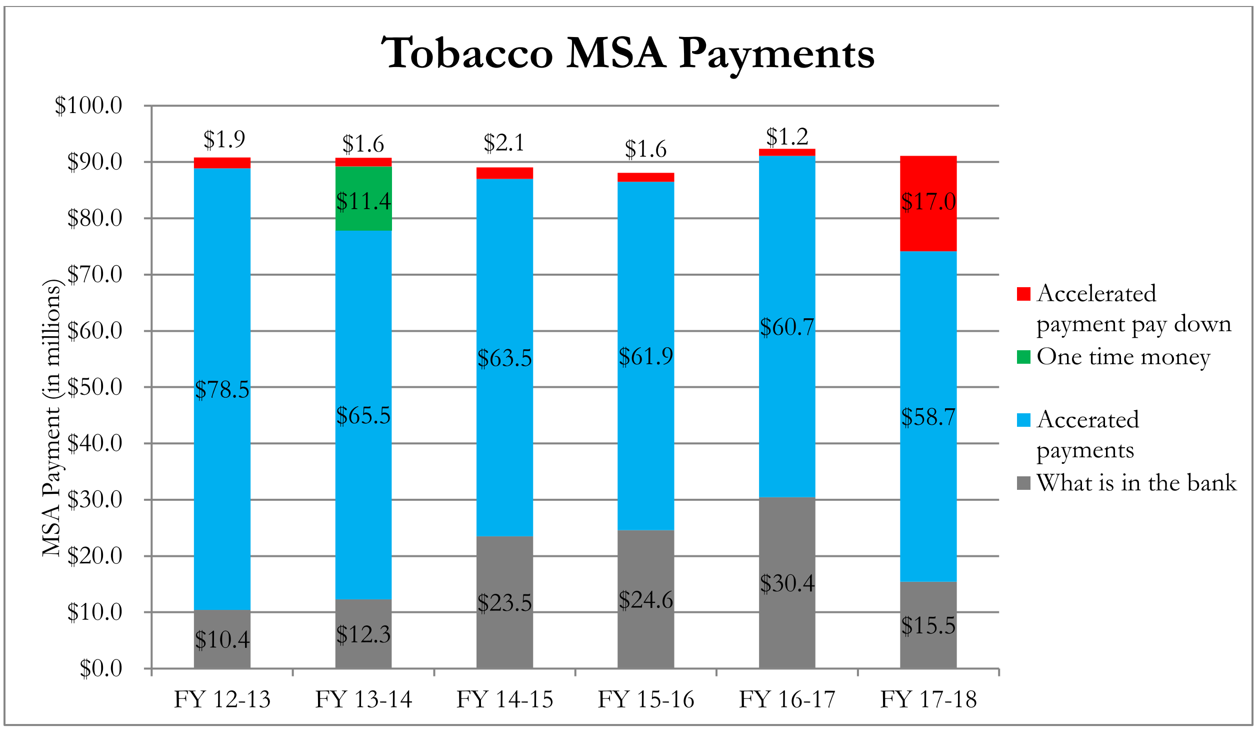
- Starting in FY 2008-09, statute was changed to rely on the current year strategic contribution payments to support current year allocations, allowing for a one-time redirect of $15.4 million to other purposes without reducing support for MSA-funded programs.
- Starting in FY 2010-11, the General Assembly 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.

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

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.

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.



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.

April 2016 Payment Components

Base Payment + Strategic Contribution Payment − Disputed Payments = Colorado's April Payment

April 2017 Payment Components

Base Payment + Strategic Contribution Payment − Disputed Payments − Statutorily Accelerated Payment Reduction = Colorado's April Payment

April 2018 Payment Components

Base Payment − Disputed Payments = Colorado's April Payment

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 NPM Adjustment Payments

Colorado and 51 MSA jurisdictions began the NPM Adjustment arbitration based on 2003 disputed payments in June 2010. Before the beginning of state specific hearings, 16 states were released from the arbitration and not required to defend their diligent enforcement of the NPM statutes. The three-member arbitration panel began state-specific hearings in June 2012. Prior to the end of the arbitration, 22 states entered into a settlement with the Participating Manufacturers, ending the arbitration for those states, and settling their future NPM adjustments through 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. At the end of the arbitration, nine states, including Colorado, were found to be diligent, while five states were ruled non-diligent.

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

Colorado and 19 other states entered arbitration on the 2004 disputed payments beginning with hearings on common issues in February 2016. Several more hearings were held leading up to the Common Case – a hearing similar to opening arguments in a trial – in June 2017. State specific hearings began in November 2017. Prior to the commencement of state specific hearings, two states were released from the arbitration and are not required to defend their diligent enforcement of the NPM statutes. Colorado's individual hearing will occur in January 2018, with final panel rulings expected in Spring 2019.

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

Tobacco Master Settlement Agreement (MSA) revenues are distributed according to statutory formula. In anticipation of the final Strategic Contribution Payment in April 2017, H.B. 16-1408 redesigned how MSA revenues would be distributed, refinancing some programs with cash funds from the Marijuana Tax Cash Fund. Fiscal Year 2016-17 and FY 2017-18 allocations are included in this issue briefing.

SUMMARY

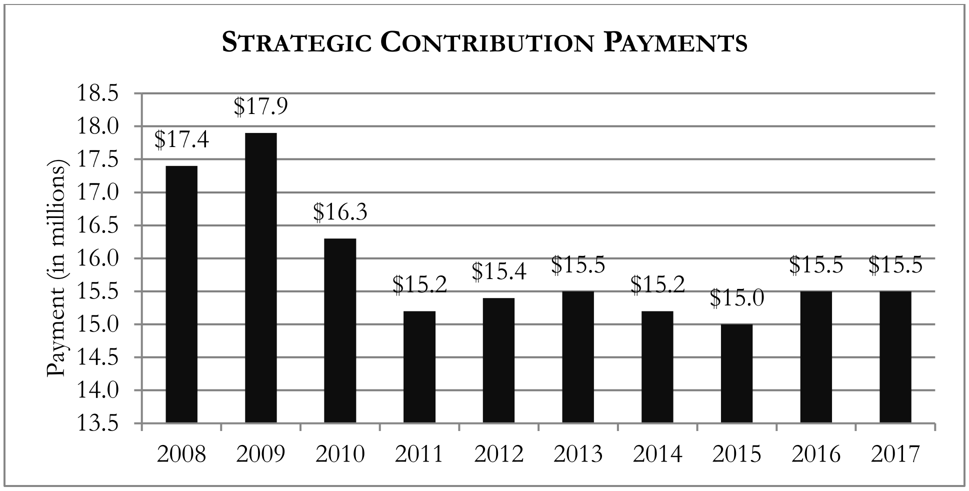
- Through the April 2017 payment, MSA revenue to Colorado included strategic contribution payments, which began in April 2008 and continued through the April 2017 payment. The amount of the strategic contribution payment was based on each state's contribution to the initial MSA litigation.

- 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 are allocated on a percentage basis.

- Section 24-75-1104.5 (1.3) (a.5) (II), C.R.S., required 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.

DISCUSSION

Through April 2017, the Tobacco Master Settlement Agreement (MSA) payments to Colorado included a strategic contribution payment, which began in April 2008 and lasted through the April 2017 payment. The amount of the strategic contribution payment was based on each state's contribution to the initial MSA litigation. Colorado received a disproportionate share of the strategic contribution payments because of the state's significant contribution to the original litigation effort. Following the final payment this past April, there will be an ongoing reduction in the amount of Tobacco Master Settlement Agreement revenues Colorado receives that can be used to support programs. An overview of Strategic Contribution Payments received by Colorado is included in the table below.



Distribution Changes Resulting from H.B. 16-1408

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. Prior to FY 2016-17, revenues were distributed according to a two-tier system. With the enactment of H.B. 16-1408, revenues are 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		
	PREVIOUS TIERED DISTRIBUTION	NEW DISTRIBUTION
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%	MTCF
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	MTCF
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%	MTCF
Alcohol & Drug Abuse	3.00%	MTCF
Local Public Health Agencies	7.00%	MTCF
Supplemental State Contribution	4.50%	2.3%

SUMMARY OF DISTRIBUTION CHANGES		
	PREVIOUS TIERED DISTRIBUTION	NEW DISTRIBUTION
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%

The following table provides expected and actual distributions of MSA revenues in FYs 2016-17 and 2017-18, pursuant to the statutory formula.

TOBACCO MASTER SETTLEMENT AGREEMENT REVENUE ALLOCATIONS	STATUTORY DISTRIBUTION	FY 2016-17 BUDGETED ALLOCATION	FY 2016-17 ACTUAL ALLOCATION	FY 2017-18 BUDGETED ALLOCATION	FY 2017-18 EXPECTED ALLOCATION
Health Care Policy and Financing					
Children's Basic Health Plan Trust	18.0%	$15,763,241	$16,617,777	$14,468,096	$13,701,033
Children with Autism	2.0%	1,751,471	1,846,420	1,607,566	1,522,337
Subtotal - HCPF	20.0%	*$17,514,712*	*$18,464,197*	*$16,075,662*	*$15,223,370*
Higher Education -					
University of Colorado Health Sciences Center	15.5%	$13,573,902	$14,309,752	$12,458,638	$11,798,112
Cancer Program	2.0%	1,751,471	1,846,420	1,607,566	1,522,337
Subtotal - Higher Education	17.5%	*$15,325,373*	*$16,156,172*	*$14,066,204*	*$13,320,449*
Human Services					
Nurse Home Visitor Program	26.7%	$23,382,141	$24,649,702	$21,461,009	$20,323,199
Tony Grampsas Youth Services Program	7.5%	6,568,017	6,924,074	6,028,373	5,708,764
Subtotal - Human Services	34.2%	*$29,950,158*	*$31,573,776*	*$27,489,382*	*$26,031,963*
Law - Tobacco Settlement Defense Account	2.5%	$2,189,339	$2,308,025	$2,009,458	$1,902,921
Military and Veterans Affairs - State Veterans Trust Fund	1.0%	$875,736	$923,210	$803,783	$761,168
Personnel - Supplemental State Contribution Fund	2.3%	$2,014,192	$2,123,383	$1,848,701	$1,750,688
Public Health and Environment					
Drug Assistance Program (ADAP; Ryan White)	5.0%	$4,378,678	$4,616,049	$4,018,916	$3,805,842
AIDS and HIV Prevention Grants (CHAPP)	3.5%	$3,065,075	$3,231,234	$2,813,241	$2,664,090
Immunizations	2.5%	2,189,339	2,308,025	2,009,458	1,902,921
Health Services Corps Fund	1.0%	875,736	923,210	803,783	761,168
Dental Loan Repayment Program	1.0%	875,736	923,210	803,783	761,168
Subtotal Public Health and Environment	13.0%	*$11,384,564*	*$12,001,728*	*$10,449,181*	*$9,895,189*
Capital Construction - Department of Higher Education - Fitzsimons Lease Purchase Payments	8.0%	$7,005,885	$7,385,679	$6,430,265	$6,089,348

Tobacco Master Settlement Agreement Revenue Allocations					
	Statutory Distribution	FY 2016-17 Budgeted Allocation	FY 2016-17 Actual Allocation	FY 2017-18 Budgeted Allocation	FY 2017-18 Expected Allocation
Amount not allocated - used to reduce accelerated payments	1.5%	$1,313,603	$1,384,812	$1,205,676	$1,141,753
TOTAL	**100.0%**	**$87,573,562**	**$92,320,982**	**$80,378,312**	**$76,116,849**
Amounts shown represent actual and anticipated allocations to program cash funds supported with Tobacco Settlement Revenue based on statutory formulas and settlement payments received in April 2017. Appropriations for individual programs from program cash funds typically differ from these amounts for various reasons. Program spending is limited by the lesser of total funds available in program cash funds or appropriated amounts. However, with limited exceptions, programs are authorized to carry forward revenue that exceeds their appropriation into the next fiscal year.					

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 estimated 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 existing cash fund balances, which could result in an appropriation higher than the expected MSA revenue projections.

APPENDIX A
RECENT LEGISLATION

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

Summary of Tobacco Master Settlement Agreement Distribution Formula Appropriation Changes				
Bill Section	Program	General Fund	Tobacco Master Settlement Cash Funds	Marijuana Tax Cash Fund
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.

2017 SESSION BILLS

No bills related to the Tobacco Master Settlement Agreement were enacted during the 2017 session.

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, 2017, for each program funded with Tobacco Master Settlement Agreement money: the name of the program; the amount of Tobacco Master Settlement Agreement money received and expended by 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.

COMMENT: The following are summaries of Department responses for each program that will continue to receive Tobacco Master Settlement money in FY 2017-18 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 Children's Basic Health Plan (CHP+) provides affordable health insurance to children under the age of 19 and pregnant women in low-income families, up to 260 percent of the Federal Poverty Level who do not qualify for Medicaid and do not have private insurance. In FY 2016-17, the program received $16,617,777 of Tobacco Master Settlement funds and served an average monthly caseload of 65,978 children and pregnant adults. This represents a 27.6 percent increase over FY 2015-16. The Department recommends a continuing allocation of 18.0 percent of MSA funds.

Children with Autism Treatment Cash Fund

The Children with Autism Waiver (CWA) provides behavioral intervention and treatment to Medicaid children ages 0-5 that have an autism diagnosis. The waiver is capped at 75 clients, with an annual expenditure cap of $25,000 per year, per client. In FY 2016-17, the program received $1,911,426 of MSA funds, and served 75 clients. The program seeks to improve the child's expressive and receptive communication, adaptive skills, see a reduction in the child's maladaptive behavior through the use of standardized and norm-referenced assessments, and keep children out of institutions. The Department is currently awaiting approval from the Centers for Medicare and Medicaid Services (CMS) to transition CWA waivers to the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program in 2018. The Department recommends continuation of the current 2.0 percent allocation, pending approval from CMS, as the CWA waiver is continuing to enroll clients and provides services until CMS approves the transition.

Department of Higher Education

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.

Tobacco Master Settlement Funding Areas FY 2016-17		
Component	**Page #**	**Amount**
Graduate School Stipend	3	$1,484,139
Colorado School of Public Health and Environment	3-4	250,627
School of Medicine	4-6	2,920,551
School of Dental Medicine	7-8	1,132,972
College of Nursing	8-10	608,483
Skaggs School of Pharmacy and Pharmaceutical Sciences	10-11	835,848
Area Health Education Centers	11-12	300,822
Cancer Center	12-14	1,303,023
Classroom, Library and Student Services	14	833,675
Mandatory Education Operating Costs	15	5,655,233
Total Expenditures FY 2016-17		*$15,325,373*

Specifically, MSA funds support:

- Competitive stipends for Ph.D. students in biomedical and biological sciences.
- Evaluation of the Colorado School of Public Health's educational programs.
- School of Medicine block directors, who focus on providing basic science curriculum for first and second year students, and well-rounded rotations for third year medical students.
- School of Medicine longitudinal curriculum program, which focuses on skills beyond the lab or clinic, such as teamwork, communication, and ethics, and includes courses such as "Culture, Health, Equity, and Society."
- Educational and clinical training opportunities for School of Dental Medicine faculty.
- Faculty support in the School of Nursing.
- Student scholarships and faculty compensation for the School of Pharmacy.
- Program support for Area Health Education Centers, which work to build statewide network capacity and strengthen academic-community partnerships around career pathways to health professions, recruitment and continuing education in rural and urban medically underserved areas, and increased access to health education for rural/urban communities.
- Projects by the Cancer Center to enhance clinical trial enrollment across the state.
- Increased access to electronic education and research materials, such as online journals and databases.

- Utilities, building maintenance, IT infrastructure, and other basic operating needs of the 3.2 million square feet of buildings that support the academic program missions on the Anschutz Medical Campus.

Human Services

Tony Grampsas

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 TGYS 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 77,767 individuals in 51 counties and one tribe, the Ute Mountain Ute Tribe, in FY 2016-17 were served. Of those served: 21,246 (27 percent) were children (ages 0-8), 39,900 (51 percent) were youth (ages 9- 18), 1,619 (2 percent) were young adults (ages 19-24), 10,488 (14 percent) were parents or caregivers, and 4,514 (6 percent) were adult caregivers and community members.

Total FY 2016-17 Program Appropriation & Expenditures			
Funding Source	**Appropriation**	**Total Appropriation**	**Total Expenditures**
Total GF		$1,457,278	$1,457,278
Total MTCF		$1,373,672	$1,373,672
MSA	$6,130,328		
MSA Carry Forward from FY2015-16	$177,125		
Total MSA		$6,307,453	$6,136,831
TOTALS		$9,138,403	$8,967,781

For FY 2016-17, TGYS has identified the following measures of success:

- TGYS funded 79 lead agencies, representing 173 local providers through multi-agency and intermediary agency partnerships.
- Most youth (71.0 percent) in grades 6-12 reported they have never tried marijuana, and overall, youth in a Restorative Justice program were more likely to talk to a parent about marijuana, increased their perceived harm of regular marijuana use, and showed favorable changes on how wrong it was for them to use marijuana.
- TGYS leveraged opportunities for agencies to participate in other youth prevention activities and training, include Mentor Colorado's Annual Conference, the Colorado Department of Public Health and Environment's (CDPHE) Positive Youth Development training, and CDPHE's Shared Risk and Protective Factor Conference.
- Most (77.0 percent) of young adults ages 18-25 reported that they have tried marijuana in the past. However, at post-test, nearly 86 percent of participants reported they had not used marijuana in the past 30 days, and significant decrease in use overall were reported from pre-test to post-test.
- Significant changes were seen in the following areas: lower tolerance of deviant behaviors (e.g. stealing, vandalism, lying, skipping school); improvement in alcohol, tobacco, and other drug use attitudes (e.g. higher perceived harm of substance use); and increase in life skills such as resilience and social competence.

Nurse Home Visitor

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. In FY 2016-17, 4,662 clients and 3,754 children were served by the Nurse Home Visitor Program through 49,703 home visits. Of these total visits, 85.0 percent were funded with Tobacco Master Settlement Agreement funds, with the rest supported by federal funds.

Financial Overview:

FY 2016-17 Master Settlement Agreement Appropriation	$16,638,977
Increase MSA Appropriation HB 16-1408	$6,743,164
Total FY 2016-17 MSA Appropriation	$23,382,141
Carry forward from FY 2015-16 MSA Appropriation	$776,997
Total FY 2016-17 MSA Allocation	$24,159,138
FY 2016-17 MSA Expenditures	$16,350,233*

Total Actual Administrative Expenditures	$790,815
Administrative Expenditures as a percent of the Total MSA Allocation	3.3%
Maximum % of Administrative Expenditures Allowable	5%

In an effort to ensure adequate funding in future years, the Department will roll forward unspent funds from FY 2016-17 to FY 2017-18, pursuant to H.B. 16-1408.

For FY 2016-17, the Program has identified the following measures of success:

- 22.6 percent reduction in smoking during pregnancy.
- 8.7 percent preterm birth rate among all NHVP clients.
- 11.1 percent low birth weight rate.
- 94.8 percent of clients initiate breastfeeding.
- 95.5 percent immunization rate of NHVP 24 month old infants.
- 74 percent of NHVP infants received a development screening at 4 months and 70.0 percent at 10 months.
- 2.6 percent had subsequent pregnancies at 6 months postpartum, 7.6 percent at 12 months, and 18.3 percent at 18 months.
- 49.2 percent of clients age 18 or older at intake were working at 6 months postpartum.
- 8,886 total referralst o NHVP

- 68.2 percent of clients enrolled by 28 weeks gestation.
- Successful Nurse Residency Program implementation with the University of Colorado College of Nursing.
- The average turnover rate for NHVP nurses was 22.0 percent.

Military and Veterans Affairs

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 Trust Fund received an appropriation of $845,588 for FY 2016-17, of which $803,391 was provided for grants to the State Veterans Cemetery in Grand Junction, the Division of Veterans Affairs, nonprofit organizations across the state, and Veterans Community Living Centers. 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. The Department recommends a continuation of 1.0 percent of MSA revenues.

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 are paid from the supplemental state contribution fund created in Section 24-50-609 (5), C.R.S. (2016).

For FY 2016-17, the Department was able to serve 416 employees out of 462 eligible applications. A total of 251 employees were approved for Level I and 165 were approved for Level 2. An additional 46 applications were rejected for Level 3 because of limited funds. The following table summarizes the average assistance provided to the 416 employees.

Number of eligible state employees receiving the supplemental contribution	Total amount of supplements paid	Average monthly amount of the individual	Average yearly amount of individual supplements	Number of dependent children of eligible state employees	Amount of increased non-supplemental state
416	$1,272,965	$258.73	$3,105	1,147	$7,149

Public Health and Environment

HIV and AIDS Prevention Program (CHAPP)

The CHAPP sponsors a statewide competitive grants program for HIV and AIDS prevention and education in Colorado. In FY 2016-17, CHAPP reached 3,878 person in Colorado with HIV testing or risk reduction counseling. CHAPP grantees performed a total of 2,428 HIV tests, 15 of which were positive. 1,450 people received health education/risk reduction services during the contractual year, and 1,417,429 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, 2018 will continue to 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). The Department recommends a continuation level of funding from MSA revenues.

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 2016-17:

- Enhancement of Immunization Core Services: Support ongoing immunization program infrastructure needs and core immunization service activities for local public health agencies (LPHAs.) 49 LPHA projects were funded, serving 163,007 clients and administering 325,686 vaccinations.
- Enhances Vaccines for Children (VFC) Compliance Site Visit Training: Support compliance with VFC program requirements and infrastructure, including proper VFC eligibility screening, vaccine storage and handling practices, and appropriate management of VFC resources. Seven LPHA VFC projects were funded, with 16 LPHA staff attending the mandatory VFC Compliance Site Visit Training.

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.

Drug Assistance Program

The State Drug Assistance Program (SDAP) provides formulary medications on an outpatient basis, free of charge, to Colorado residents who have HIV and who meet the financial eligibility criteria. SDAP also provides support for the payment of premiums, deductibles, coinsurance, and copays for insured Colorado residents living with HIV on Medicare, private insurance, and Medicaid. In FY 2016-17, 97 percent of enrolled SDAP individuals were "in care," which is 20.0 percent higher than that of all persons living with HIV in the state. 80 percent of enrolled individuals had reached viral suppression, which is the ultimate goal of HIV medical care. 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 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.

Over the past few 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
FY2016-17	60,878	2,431	14,361

57 obligated health professionals participated in the Dental Loan Repayment Program in FY 2016-17, including 46 Dentists and 11 Registered Dental Hygienists. 15 dental professionals practiced in rural or frontier counties and 42 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 76,229 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.

MSA funds supported 10 loan repayment awards in FY 2016-17. Across the program there are 364 individual certified Colorado Health Service Corps sites with 279 obligated health professionals. During FY 2016-17, CHSC clinicians provided health care services to 188,988 Health First Colorado (Medicaid), 50,071 Medicare, 4,957 CHP+, and 62,458 uninsured/slid fee scale patients.

The Primary Care Office is nearing the completion of a project to integrate clinician, practice, facilities, health plan, and select claims data from multiple public and governmental data sources in order to support policy and financing decisions of CDPHE, HCPF, DHS, and DORA. The program recommends continued MSA funding in FY 2018-19.