

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUEST FOR FY 2018-19

DEPARTMENT OF HEALTH CARE
POLICY AND FINANCING
(Department of Human Services Medicaid-funded Programs,
Mental Health Institutes)

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

PREPARED BY:
CAROLYN KAMPMAN, JBC STAFF
SEPTEMBER 20, 2018

JOINT BUDGET COMMITTEE STAFF
200 E. 14TH AVENUE, 3RD FLOOR • DENVER • COLORADO • 80203
TELEPHONE: (303) 866-2061 • TDD: (303) 866-3472
<https://leg.colorado.gov/agencies/joint-budget-committee>

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INTERIM SUPPLEMENTAL REQUEST

MENTAL HEALTH INSTITUTES FY 2017-18 MEDICAID OVEREXPENDITURE

	REQUEST	RECOMMENDATION
TOTAL	\$7,387,850	\$7,387,850
FTE	0.0	0.0
General Fund	3,694,541	3,694,541
Cash Funds	0	0
Reappropriated Funds	0	0
Federal Funds	3,693,309	3,693,309

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.] **YES**

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.] **YES**

Explanation: JBC staff and the Department agree that (1) this request meets the interim supplemental criteria of Section 24-75-111, C.R.S., and (2) this request is the result of data that was not available when the original appropriation was made.

DEPARTMENT REQUEST: The Department of Health Care Policy and Financing (HCPF) requests an increase in FY 2018-19 appropriations totaling \$7,387,850 (including \$3,694,541 General Fund). This amount reflects the amount HCPF overexpended for this line item in FY 2017-18. The following table details the requested adjustment.

SUMMARY OF REQUEST FOR MENTAL HEALTH INSTITUTES MEDICAID OVEREXPENDITURE (FY 2018-19 APPROPRIATIONS)			
DESCRIPTION	CURRENT APPROPRIATION	INTERIM SUPPLEMENTAL REQUEST	PROPOSED ADJUSTED APPROPRIATION
Department of Health Care Policy and Financing			
<i>(7) Department of Human Services Medicaid-funded Programs</i>			
<i>(F) Behavioral Health Services – Medicaid Funding</i>			
Mental Health Institutes	<u>\$7,709,992</u>	<u>\$7,387,850</u>	<u>\$15,097,842</u>
General Fund	3,854,996	3,694,541	7,549,537
Federal Funds	3,854,996	3,693,309	7,548,305

HCPF has used its statutory authority¹ to overexpend its FY 2017-18 appropriation for the Mental Health Institutes line item by a total of \$7,387,850 to pay all existing claims associated with Medicaid-

¹ See Section 24-75-109 (1)(a), C.R.S.

eligible patients. As required by statute², the State Controller has restricted HCPF's corresponding appropriation for FY 2018-19 by the amount of the overexpenditure. As the FY 2018-19 appropriation is only \$7,709,992 total funds, this restriction leaves HCPF with only \$322,142 in spending authority for the current fiscal year.

In order to ensure that it is able to make timely payments to the Department of Human Services (DHS) for the mental health institutes and other Medicaid-funded programs over the next several months, HCPF has submitted an interim supplemental request to increase its FY 2018-19 appropriation.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the request to ensure that HCPF is able to make timely payments to DHS for the mental health institutes and other Medicaid-funded programs over the next several months.

STAFF ANALYSIS:

Medicaid Funding for the Mental Health Institutes

Federal law does not allow Medicaid to reimburse the mental health institutes for care provided to Medicaid-eligible patients who are ages 21 through 64. Thus, the State must cover the full cost of care for these patients. Further, Medicaid will only reimburse the State for up to 45 days of inpatient psychiatric hospitalization for Medicaid-eligible patients who are under age 21 or over age 64. If a Medicaid-eligible patient within one of these two age ranges remains at a mental health institute beyond 45 days, the State must cover the full cost of ongoing care.

DHS collects Medicaid revenues by submitting claims to HCPF. Annual appropriations to DHS for the mental health institutes include a relatively small amount of reappropriated funds (currently \$7.7 million, or 6.3 percent of direct appropriations for the institutes) to reflect the amount of funds anticipated to be transferred from HCPF for Medicaid-eligible expenses. There is a corresponding appropriation of the same amount to HCPF, which consists of 50 percent General Fund and 50 percent federal funds.

Medicaid Claims Payable at Fiscal Year-end

Current law³ requires HCPF to record Medicaid program expenditures for budget purposes based on a cash, rather than an accrual, basis. At the end of the state fiscal year there are claims for services that were provided within the state fiscal year that have not yet been paid; these amounts are paid in the following state fiscal year. The amount paid in the following fiscal year is called “incurred but not reported” (IBNR). Consistent with other Medicaid programs, the mental health institutes are expected to record expenditures for claims that have been paid by HCPF within the state fiscal year; amounts that remain payable at the end of the state fiscal year are then paid out of the appropriation for the next state fiscal year.

HCPF indicates that a normal IBNR equals four to five weeks of payables. For the institutes, one would thus expect an IBNR of \$800,000 to \$950,000. The IBNR recorded by DHS for the mental health institutes has increased annually over the last four fiscal years. Of the amount of Medicaid funds

² See Section 24-75-109 (3), C.R.S.

³ See Section 25.5-4-201, C.R.S.

appropriated for the institutes for FY 2017-18, the IBNR for prior year claims totaled \$5.9 million -- requiring all by \$1.8 million of the \$7.7 million appropriation for FY 2017-18. Claims billed for services provided in FY 2017-18 totaled \$9.2 million, leaving DHS short by a total of \$7.4 million.

HCPF indicates that the IBNR grew over time for two primary reasons:

- The annual appropriations reflecting Medicaid funds earned by the institutes did not keep pace with increases in the number of eligible patient-days and increases in the rates charged per patient per day; and
- The implementation of HCPF's new system for processing claims (interChange) in March 2017 caused claims for the institutes to be rejected or processed incorrectly, which increased the amount of unpaid claims at the end of FY 2016-17.

FY 2017-18 Overexpenditure and Impact on FY 2018-19 Claims Payments

In order to resolve this issue, HCPF used its statutory authority⁴ to overexpend its FY 2017-18 appropriation for the Mental Health Institutes line item by a total of \$7,387,850 to pay all existing institute claims associated with Medicaid-eligible patients. As required by statute⁵, the State Controller has restricted HCPF's corresponding appropriation for FY 2018-19 by the amount of the overexpenditure. As the FY 2018-19 appropriation is only \$7,709,992 total funds, this restriction leaves HCPF with only \$322,142 in spending authority for the current fiscal year. This amount is not sufficient to cover monthly institute expenditures of approximately \$800,000.

In addition, HCPF notes that the State's accounting system (CORE) requires that HCPF use a single transaction to transfer Medicaid funds to DHS. If HCPF's spending authority related to the mental health institutes is insufficient to cover the amount payable to the institutes, CORE rejects the entire amount transferred. Thus, the significant restriction on HCPF's FY 2018-19 appropriation for the mental health institutes is preventing HCPF from being able to pay Medicaid claims for other DHS programs (e.g., the Regional Centers for People with Developmental Disabilities and the Veterans Community Living Centers).

Staff Recommendation Concerning Interim Supplemental Request

In order to ensure that HCPF is able to make timely payments to DHS for the mental health institutes and other Medicaid-funded programs over the next several months, staff recommends approving this interim supplemental request to increase HCPF's FY 2018-19 appropriation.

Interim Action by JBC and 2019 Supplemental Bill

The statutory provisions⁶ that authorize the Joint Budget Committee (JBC) to approve increases in spending authority during the legislative interim do not allow the JBC to direct the State Controller to release a restriction. It appears that the only action the JBC can take at this time to address the immediate problem is to authorize the State Controller to allow an overexpenditure of up to \$7,387,850 total funds in FY 2018-19. Given the current situation, this would result in \$7,709,992 of available spending authority for FY 2018-19 because the increase authorized by the JBC would be equally offset by the existing restriction.

⁴ See Section 24-75-109 (1)(a), C.R.S.

⁵ See Section 24-75-109 (3), C.R.S.

⁶ Section 24-75-111, C.R.S.

The interim supplemental process contemplates the JBC introducing a bill to enact the appropriation change that was authorized during the interim. However, in this case, the correct way to address this situation legislatively is for the JBC to introduce a bill that increases the FY 2017-18 appropriation to HCPF by the amount of the overexpenditure that has already occurred. If such a bill were to pass, the State Controller would then release the restriction on the existing FY 2018-19 appropriation.

Thus, while staff recommends that the Committee approve this request for FY 2018-19 and send a corresponding letter to the State Controller, staff anticipates recommending next January that the JBC introduce a supplemental bill in the 2019 session to adjust the FY 2017-18 appropriation in order to make the supplemental appropriation for the fiscal year in which the overexpenditure occurred. A separate adjustment to the FY 2018-19 appropriation for the mental health institutes may be required to more accurately reflect Medicaid's share of the costs of serving Medicaid-eligible patients at the institutes in FY 2018-19.

Staff has discussed this issue with staff at the Office of State Planning and Budgeting, the Office of Legislative Legal Services, the State Controller's Office, HCPF, and DHS, and all parties agree that this is an appropriate path forward.

Background Information

Colorado Mental Health Institutes

The Department of Human Services (DHS) administers and operates two mental health institutes that provide inpatient hospitalization for individuals with serious mental health disorders. One institute is located in Pueblo and the other is located on the Fort Logan campus in southwest Denver. The institutes serve three populations:

- Individuals with pending criminal charges who require evaluations of competency to stand trial and services to restore competency;
- Individuals who have been found not guilty by reason of insanity; and
- Adults and adolescents who are referred for admission by community mental health centers, local hospitals, or the DHS Division of Youth Services.

The resources for the first two populations are referred to as "forensic" beds, and the resources for the third population are referred to as "civil" beds. Forensic patients currently represent about two-thirds of the total population served. The FY 2018-19 appropriation supports 543 institute beds, including 94 beds at Fort Logan and 449 at Pueblo. While most beds are used to serve adult patients, the Pueblo facility has 20 beds for adolescents and 40 beds for geriatric patients.

The FY 2018-19 appropriation also provides funding for DHS to contract for an additional 124 psychiatric beds outside of the institutes:

- 114 beds within one or more local jails for individuals requiring competency evaluations or competency restoration services; and
- 10 beds in one or more private hospitals.

The institutes are: licensed by the Department of Public Health and Environment; certified by the federal Center for Medicare and Medicaid Services to participate in those federal two programs; and accredited by the Joint Commission, an independent, not-for-profit organization that accredits and certifies more than 20,500 health care organizations and programs in the United States.

Funding for the Institutes and Restrictions on Medicaid Funding for Psychiatric Care

The mental health institutes are primarily supported by General Fund appropriations. Other sources of revenue include:

- “patient revenues”, which include federal Medicaid funds transferred from HCPF, and payments from commercial insurance, the federal Medicare program, and individuals;
- funds transferred from the Department of Corrections (DOC) for food services provided to DOC facilities on the Pueblo campus;
- and marijuana tax revenues that support certified addiction counselors at both institutes.

Funding for the institutes is affected by capacity, personnel costs, and operational costs (including medication expenses and the cost of purchasing medical services from local hospitals and medical providers).

The institutes serve as the state "safety net" provider of inpatient psychiatric services, predominately treating indigent, Medicaid-eligible, and Medicare-eligible individuals. However, both institutes are considered an "institutions for mental disease" (IMD) under federal law because they have more than 16 beds and are primarily engaged in providing diagnosis, treatment, or care of persons with mental health disorders, including medical attention, nursing care, and related services. Under the "IMD exclusion", Medicaid will not reimburse the State for the inpatient hospitalization of adults ages 21 through 64 at the institutes. While Medicaid will pay for community mental health treatment services for an eligible adult within this age range, when the same adult is admitted to an institute the State must cover the full cost of his or her care. In addition, for Medicaid-eligible patients outside this age range (i.e., under age 21 or over age 64), there is a 45-day Medicaid inpatient psychiatric benefit limit. If a Medicaid-eligible patient within one of these two age ranges remains at a mental health institute beyond 45 days, the State must cover the full cost of ongoing care. The institutes are thus primarily supported by General Fund appropriations (e.g., 87.8 percent of direct appropriations for the institutes for FY 2018-19 are from the General Fund).

	FY 2017-18	FY 2018-19	Fiscal Year 2018-19 Interim Supplemental		
	Appropriation	Appropriation	Requested Change	Recommended Change	New Total with Recommendation

**DEPARTMENT OF HEALTH CARE
POLICY AND FINANCING**
Executive Director - Kim Bimestefer

Interim Supplemental Request: Mental Health Institutes Medicaid Over Expenditure

(7) Department of Human Services Medicaid-funded Programs

(F) Office of Behavioral Health - Medicaid Funding

Mental Health Institutes	<u>\$7,709,992</u>	<u>\$7,709,992</u>	<u>\$7,387,850</u>	<u>\$7,387,850</u>	<u>\$15,097,842</u>
General Fund	3,854,996	3,854,996	3,694,541	3,694,541	7,549,537
Federal Funds	3,854,996	3,854,996	3,693,309	3,693,309	7,548,305

Totals					
DEPARTMENT OF HEALTH CARE POLICY AND FINANCING					
TOTALS for ALL Departmental line items	\$9,896,328,729	\$10,156,536,635	\$7,387,850	\$7,387,850	\$10,163,924,485
FTE	<u>459.3</u>	<u>506.3</u>	<u>0.0</u>	<u>0.0</u>	<u>506.3</u>
General Fund	2,810,881,032	2,904,579,002	3,694,541	3,694,541	2,908,273,543
Cash Funds	1,212,347,879	1,292,022,699	0	0	1,292,022,699
Reappropriated Funds	77,491,711	84,557,891	0	0	84,557,891
Federal Funds	5,795,608,107	5,875,377,043	3,693,309	3,693,309	5,879,070,352

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JOINT BUDGET COMMITTEE
200 EAST 14TH AVENUE, 3RD FLOOR
LEGISLATIVE SERVICES BUILDING
DENVER, CO 80203
TELEPHONE 303-866-2061
<http://leg.colorado.gov/agencies/joint-budget-committee>

September 20, 2018

Mr. Robert Jaros
State Controller
Department of Personnel
1525 Sherman Street
Denver, CO 80203

Dear Mr. Jaros:

The Joint Budget Committee has considered an interim supplemental request submitted by the Department of Health Care Policy and Financing under the provisions of H.B. 98-1331. This request concerns the “Mental Health Institutes FY 2017-18 Medicaid Overexpenditure”. This request was previously approved by the Office of State Planning and Budgeting. Pursuant to Section 24-75-111 (1), C.R.S., the Committee authorizes the expenditures listed below, and will sponsor a supplemental appropriation bill during the 2019 legislative session that reflects these adjustments for the fiscal year in which the overexpenditure occurred.

JBC APPROVED ADJUSTMENTS TO FY 2018-19 APPROPRIATION				
DEPARTMENT, DIVISION, LINE ITEM	TOTAL FUNDS	FTE	GENERAL FUND	FEDERAL FUNDS
Department of Health Care Policy and Financing				
<i>(7) Department of Human Services Medicaid-funded Programs</i>				
<i>(F) Office of Behavioral Health - Medicaid Funding</i>				
Mental Health Institutes	\$7,387,850	0.0	\$3,694,541	\$3,693,309
Total FY 2018-19 Adjustment	\$7,387,850	0.0	\$3,694,541	\$3,693,309

If you have any questions or concerns, please contact Carolyn Kampman of our staff at 303-866-4959.

Sincerely,

Representative Millie Hamner, Chair
Joint Budget Committee

JBC Letter to Mr. Jaros re HCPF supplemental request
September 20, 2018
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cc:

Mr. John Ziegler, Staff Director, Joint Budget Committee

Ms. Lauren Larson, Director, Office of State Planning and Budgeting

Mr. Josh Block, Budget Director, Department of Health Care Policy and Financing

Ms. Sarah DeVore, Director, Division of Budget and Policy, Department of Human Services