

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2022-23

DEPARTMENT OF HUMAN SERVICES (BEHAVIORAL HEALTH ADMINISTRATION)

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

PREPARED BY:
CRAIG HARPER, JBC STAFF
SEPTEMBER 22, 2022

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>

CONTENTS

Waitlist Prevention for Children’s Behavioral Health Services.....1

INTERIM SUPPLEMENTAL REQUESTS

WAITLIST PREVENTION FOR CHILDREN’S BEHAVIORAL HEALTH SERVICES

	REQUEST	RECOMMENDATION
TOTAL	\$3,000,000	\$3,000,000
General Fund	3,000,000	3,000,000

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 the request is based on data that was not available when the appropriation was made and is responding to unforeseen circumstances (primarily the increasing caseload) arising while the General Assembly is not in session. Given recent increases in utilization and the foreseeable loss of one-time funds in FY 2022-23, staff suggests that at least a portion of the need for an increase for the program could have been foreseeable during the 2022 Session. However, the Department reports that much of the increase in FY 2021-22 came late in the fiscal year and was not anticipated in time to adjust the FY 2022-23 appropriation.

DEPARTMENT REQUEST: The Department¹ requests an increase of \$3,000,000 General Fund for the Children and Youth Mental Health Treatment Act (CYMHTA) line item for FY 2022-23 to respond to an increasing number of youth served through the program as well as increasing costs. The request seeks to avoid the need to create a waitlist for the program in the current year.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the request.

STAFF ANALYSIS:

CHILDREN AND YOUTH MENTAL HEALTH SERVICES ACT (H.B. 99-1116 AND H.B. 18-1094)

The Children and Youth Mental Health Treatment Act (CYMHTA), as amended by H.B. 18-1094, provides funding for mental health treatment services for children and youth under age 21². The program is designed to make services available for children and youth who are at risk of out-of-home placement, but a dependency and neglect action is neither appropriate nor warranted. Services may include mental health treatment services and care management, including any residential treatment, community-based care, or any post-residential follow-up services that may be appropriate. Local and state-level appeal processes are available if services are denied, and for local interagency disputes.

¹ In this document, “Department” refers to the Behavioral Health Administration in any discussion of FY 2022-23.

² An individual must be under the age of 18 to become eligible for services through this program. However, once an individual becomes eligible, he or she may remain eligible until his or her 21st birthday.

The CYMHTA applies to two groups of children, with different application and payment processes for each group.

- *Children who are categorically Medicaid-eligible and have a covered mental health diagnosis.* A parent or guardian of a Medicaid-eligible child may apply for residential treatment through the local regional accountable entity (RAE). If the child is determined to require a residential level of care, the RAE is responsible for covering the residential treatment costs.
- *Children Who Are NOT Categorically Eligible for Medicaid.* If a child is at risk of being placed out of the home because they have a mental illness and they require a residential treatment level of care or equivalent community-based services, the parent or guardian may apply for such services through the local community mental health center (Center) or another mental health agency. The Center or mental health agency is required to evaluate the child or youth and clinically assess their need for mental health services.

When a child or youth is approved for funding through this program and the child or youth requires residential treatment, the child or youth may become eligible for Medicaid funding through the federal supplemental security income (SSI) eligibility process. If a child has been in residential services for more than 30 days, or is expected to remain in residential services for more than 30 days, the child can qualify for SSI due to being considered a “household of one” per the federal Social Security Administration. Once a child obtains SSI, the child automatically acquires fee-for-service Medicaid. Medicaid funding pays for the treatment costs of residential services, but does not fund room and board costs.

Due to federal regulations, the SSI benefit is paid directly to the child or payee (typically the parent) to fund a portion of the residential room and board rate. The parent will then give all but \$30 of the SSI award to the residential provider. SSI awards vary based on the child’s treatment location and family income, ranging from \$30 to \$700 per month.

Private insurance benefits must be exhausted prior to accessing any public benefits. In addition, the parents are responsible for paying a portion of the cost of services that is not covered by private insurance or by Medicaid funding; the parent share is based on a sliding fee scale that is based on child support guidelines.

When and if the child is in residential care and funded by the CYMHTA, expenses are covered by parental fees, SSI benefits (if benefits are approved), and CYMHTA funds. If the child or youth is placed in a psychiatric residential treatment facility, treatment expenses are covered by a Medicaid per diem rate and “room and board” expenses are covered by parental fees and CYMHTA funds. If the child is in non-residential care, expenses are covered by SSI benefits, parental fees, and CYMHTA funds.

Expenditures for services covered by this line item are subject to available appropriations. Please note, however, that House Bill 18-1094 struck existing statutory language stating that, “It is the intent of the General Assembly that the portion of such expenses paid from general fund moneys shall not exceed the general fund appropriations made for such purpose in any given fiscal year”. However, it is staff’s understanding that expenditures for services covered by this line item are still subject to available appropriations because the Department does not have statutory authority to incur expenditures that exceed the appropriations from the General Fund or the Marijuana Tax Cash Fund.

The appropriation from Medicaid funds, however, may be over expended pursuant to Section 24-75-109 (1)(a), C.R.S. In addition, the two departments have the authority to transfer General Fund appropriations between the two agencies when required by changes in the amount of federal Medicaid funds earned based on the services provided through this program [see Section 24-75-106 (1), C.R.S.].

Finally, current law provides guidance for the Department in prioritizing which children and youth should receive services through the program based on available funding:

“It is the intent of the general assembly that subsidies provided by the state through general fund money must be used to assist the lowest income families to ensure the maximum use of appropriate least restrictive treatment services and to provide access to the greatest number of children and youth.”³

RECENT FUNDING AND UTILIZATION

In recent years, three fund sources have supported *appropriations* for this line item: (1) General Fund, (2) Marijuana Tax Cash Fund, and (3) transfers from HCPF that originate as General Fund and federal Medicaid funds (which have been relatively low in recent years). As shown in the following table, *appropriations* for the program have increased from \$1.6 million total funds (\$1.2 million General Fund) in FY 2017-28 to \$3.2 million total funds (\$2.6 million General Fund) in FY 2022-23. The largest increase in appropriations was in FY 2018-19 and was associated with the expansion of eligibility in H.B. 18-1094.

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23
Total	\$1,618,833	\$3,014,675	\$3,089,001	\$3,054,427	\$3,129,788	\$3,193,404
General Fund	1,189,272	2,480,818	2,544,664	2,516,052	2,578,953	2,630,532
Cash Funds (MTCF)	304,205	407,247	417,727	413,031	423,357	431,824
Reappropriated from HCPF	125,356	126,610	126,610	125,344	127,478	131,048

Since FY 2018-19, however, the program has only received appropriated increases associated with the common policy community provider rate which would imply a relatively steady caseload. However, as shown in the graph on the following page, utilization (shown as the annual census of individual youth served) has increased significantly in that period, and the Department (now the BHA as of FY 2022-23) has supplemented the program’s appropriations with significant funding from other federal and state sources in order to cover the increasing costs associated with that caseload.

- In FY 2019-20, the Department “repurposed” \$511,689 General Fund to support the program, using funds appropriated to the Mental Health Community Programs and Behavioral Health Crisis Response System Services line items. The Department’s budget documents reflect those expenditures in the original line items, although the Department has determined that the expenditures were associated with services provided under the CYMHTA.
- In FY 2020-21, the Department shifted \$2.1 million in federal Mental Health Block Grant Funds from other line items to this program. The Department has indicated that the large balance was available that year because of decreased utilization and expenditures for other programs and services, most likely because of reduced availability during the first full fiscal year of the pandemic. The Department also reports that it added \$648,708 that year from one-time stimulus funds.

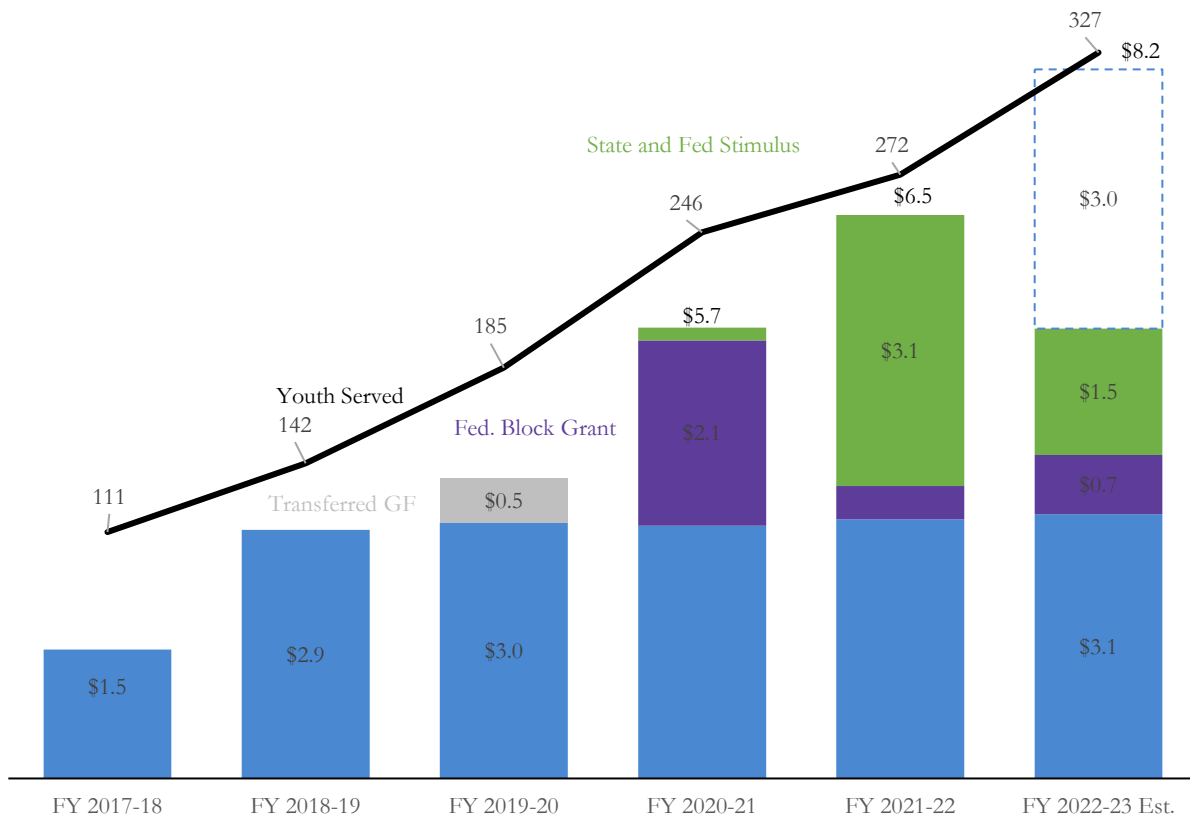
³ See Sec. 27-67-106 (3), C.R.S.

Combined with the appropriated funds, the Department spent a total of \$5.7 million on the program in FY 202-21 (\$2.7 million more than reflected in the appropriation).

- In FY 2021-22, the Department dedicated \$3.1 million in federal and state stimulus funds in addition to continuing to use to use \$386,114 in standard block grant funds for the CYMHTA, for a total of \$6.5 million in expenditures (more than double the program’s appropriation).
- For the current year, the Department reports that it is using \$1.5 million in state and federal stimulus funds and \$683,114 from the standard block grant, making a total of \$5.2 million available for expenditure when combined with the \$3.2 million appropriation. However, the Department is currently estimating that avoiding a waitlist for the program in FY 2022-23 would require a total of \$8.2 million, resulting in the supplemental request for \$3.0 million General Fund.

The Committee should note that the majority of the stimulus funding is from the federal COVID-19 Community Mental Health Block Grant. Those funds expire March 14, 2023.

State appropriations (\$ in millions) for the CYMHTA have remained relatively flat since FY 2018-19. Increasing utilization (line) has driven up costs, with the Department supporting those costs with other funds.



As a result, while the program has looked like a roughly \$3.0 million program for the Committee’s purposes, it has actually grown to \$6.5 million in expenditures in FY 2021-22 and the Department estimates that it will require a total of \$8.2 million in the current year to avoid implementing a waitlist.

DRIVERS OF INCREASING UTILIZATION AND COSTS

Based on discussions with BHA staff and external stakeholders, it appears that increasing utilization (from 111 youth served in FY 2018-19 to 272 in FY 2021-22 and an estimated 327 in FY 2022-23) is the primary driver of the increase in cost, although the cost per client is also increasing. Those discussions have highlighted several factors that appear to have contributed to increasing utilization of the program. Staff does not have information to analyze the relative impacts of the factors.

- *Eligibility Expansion in FY 2018-19:* As noted above, H.B. 18-1094 expanded eligibility for the program to include clients between 18 and 21 years of age, as long as they were enrolled before the age of 18. That change drove much of the increase in funding from FY 2017-18 to FY 2018-19. However, the number of clients over the age of 18 actually decreased from 38 in FY 2020-21 to 36 in FY 2021-22, and this population does not appear to account for the ongoing increases in participation.
- *COVID-19 Impact:* All parties appear to agree that the COVID-19 pandemic has affected youth behavioral health, including demand for this program. The Department saw a large increase in participation in FY 2020-21, which aligns with the initial impacts of the pandemic. As noted above, in that year COVID-19 also appears to have played a role in making additional block grant funds available to support the program. If the pandemic were the major driver of the increasing use of the program then the Committee might expect to see decreasing use in future years. However, staff notes that the Department currently expects use to continue to increase.
- *Shift to Administrative Service Organizations to Manage the Program:* In FY 2019-20, the Department transitioned the contract to operate the CYMHTA from direct contracts with the community mental health centers (CMHCs) to contracts with the regional administrative service organizations (ASOs). The ASOs then contract for services in their regions, either with the CMHCs or with other providers. It is staff's understanding that the Department made the change in part because some CMHCs elected not to support the program and also in an effort to raise awareness and utilization of the program. Those efforts appear to have worked, as participation has increased significantly since then.
- *Family Systems Navigator:* House Bill 18-1094 also provided funding for an additional family systems navigator to assist families under the Act. As with the shift to the ASOs, the Department has indicated that the added support may also have increased utilization.

In addition to increasing utilization, the Department reports that costs per client have also increased as a result of increased length of treatment across the continuum (drive by acuity) and increasing rates (as set by the Board of Human Services for Room and Board and the Department of Health Care Policy and Financing for treatment). As a result, the increase in total cost (35 percent from FY 2021-22 to the projection for FY 2022-23) exceeds the anticipated 20.0 percent increase in utilization. Average annual cost per client increased from roughly \$20,000 in FY 2018-19 to more than \$23,000 in FY 2020-21. The Department currently estimates costs of approximately \$25,000 per client in FY 2022-23.

FY 2022-23 INTERIM SUPPLEMENTAL REQUEST

In response to the increasing costs of the program and the loss of availability of additional funding, in August 2022 the Department asked the ASOs for financial projections of the cost to serve children and youth in their current caseloads. Based on that survey, the Department estimates a need for \$8.2 million to support the program in FY 2022-23 and avoid the need for a waitlist. As shown in the graphic on the previous page, that would require an additional \$3.0 million General Fund based on the amounts that the Department has dedicated to the program in the current year.

The request anticipates that denying the funding would require a waitlist of 37 children and youth in September 2022. The Department also estimates that the waitlist would grow to approximately 40 individuals by the end of December 2022 and 70 by the end of the fiscal year.

KEY QUESTIONS FOR CONSIDERATION

Staff offers two questions for the Committee's consideration.

Is a waitlist for this program acceptable? Staff's recommendation to approve the request is based on an assumption that the Committee and the General Assembly intend to avoid creating a waitlist for this program. That assumption is based on three factors:

- The General Assembly approved a supplemental increase of \$524,864 General Fund in FY 2017-18 in order to reduce the need for a waitlist in that year.
- The program serves a vulnerable population of children and families. Instituting a waitlist would delay services, increasing the risk of child welfare involvement as well as other (potentially costlier) services.
- The General Assembly has taken steps in recent years to improve access to behavioral health services, including the creation of the BHA. Avoiding a waitlist for this program appears to be consistent with those goals.

However, staff notes that CYMHTA is not an entitlement program and, as noted above, statute does provide guidance on the prioritization of clients if there is not sufficient funding to cover all participants. Thus, the Committee could deny some or all of the request and remain consistent with statute.

Is the request necessary as an interim supplemental? The Committee may also wish to consider whether an interim supplemental is necessary or if the request could wait for the "regular" supplemental process in January. Staff and the Department agree that the available funding would likely allow the Department to avoid creating a waitlist while waiting for a regular supplemental bill in the 2023 Session. However, the Department could not serve the anticipated caseload for the remainder of the fiscal year and would risk having to terminate services for many clients when the funding was depleted. According to the Department, it is important for the CYMHTA to serve clients from admission to discharge and to avoid breaks in services that may be unsafe for children and families. In addition, the Department notes that terminating payment for services that are underway could have ethical implications, forcing providers to choose between providing services free of charge, charging the family out of pocket, or potentially contacting child welfare services to report medical neglect if the family stops treatment due to the termination of funding. Based on those concerns, a prioritized waitlist would appear to be preferable to breaks in services. If the Committee intends to avoid implementing a waitlist, then staff agrees that an interim supplemental is warranted.

LOOKING FORWARD

Staff notes that the supplemental request anticipates continued growth in the CYMHTA caseload. Thus, if the General Assembly intends to continue to avoid a waitlist then that will require additional increases in funding. The data provided in the request project an increase from 327 clients in FY 2022-23 to 360 in FY 2023-24 and 396 in FY 2024-25, with estimated costs growing from \$8.2 million in FY 2022-23 to \$9.3 million in FY 2023-24 and \$10.3 million in FY 2024-25.

- The Department has indicated that it will continue to allocate federal block grant dollars to this program but staff and the Department agree that additional state funding would be necessary both

to cover the increase in costs and to backfill the one-time funding that the Department has used to support the program since FY 2020-21.

- Staff also notes that the Department's projections assume a flat cost per client (\$26,000 per client per year) through FY 2024-25. Staff suspects that this assumption is overly optimistic. If caseload continues to grow then staff anticipates that total costs will exceed the Department's estimates.

Finally, staff will work with the Department to improve the process for appropriations for this program going forward. Staff understands the unique circumstances of the past several years, including the combination of factors that have increased utilization of the CYMHTA and the availability of significant one-time funds to support increases in cost. The Department has used those one-time funds to reduce the need for additional appropriations since FY 2019-20. However, it puts the Committee and the General Assembly in an unfortunate position to suddenly find out that a program with \$3.1 million in appropriations actually cost more than \$6.0 million last year and that costs continue to rise.

Staff notes that the CYMHTA annual legislative reports have reflected expenditures above the appropriated amounts in FY 2019-20 and FY 2020-21.⁴ However, the actual expenditures reported through the annual budget documents have not shown the additional expenditures under this line item. As a result, neither have the JBC Staff documents.

Staff agrees that, at least for the foreseeable future, avoiding a waitlist for this program (should the General Assembly decide to do so) would require additional funding. Avoiding significant and foreseeable midyear increases will require changes in the budgeting process to align appropriations with updated caseload projections. Given the increasing costs anticipated in the interim supplemental request, staff assumes that the FY 2023-24 request will include updated projections, and presumably a decision item if the Department seeks to fund the entire caseload. Staff will work with the Department to update estimates of anticipated costs for FY 2023-24 for figure setting and to improve the transparency of funding for CYMHTA to align with actual expenditures under the program.

⁴ The annual legislative reports are available at: <https://bha.colorado.gov/behavioral-health/cymhta>