

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2022-23

DEPARTMENT OF HUMAN SERVICES

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

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INTERIM SUPPLEMENTAL REQUESTS

OVEREXPENDITURE AT CMHIP

	REQUEST	RECOMMENDATION
TOTAL	\$13,067,628	\$13,067,628
General Fund	13,067,628	13,067,628

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 this request is the result of unforeseen circumstances arising when the General Assembly was not in Session. The Department reports that it was optimistic that measures taken to improve recruitment and retention of nurses in FY 2022-23 would mitigate the need for the overexpenditure and that the Executive Branch pursued other options for funding throughout the 2023 Session. According to the Department, the magnitude of the overexpenditure and the amount of General Fund required (rather than other sources) was not known in time for action during the Session.

DEPARTMENT REQUEST: The Department requests an increase of \$13,067,628 General Fund for the Colorado Mental Health Institute at Pueblo (CMHIP) personal services line item (representing 13.1 percent of that line item's total FY 2022-23 appropriation and 14.8 percent of the General Fund appropriation). The requested increase represents the Department's estimate of the FY 2022-23 overexpenditure driven by elevated utilization of contract/temporary nurses because of ongoing challenges recruiting and retaining nursing staff at the state hospitals.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the requested overexpenditure for FY 2022-23. As the overexpenditure is already happening, denial of the request would result in a \$13.1 million restriction on the hospital's FY 2023-24 appropriation. The Department estimates that such a restriction would likely force the closure of two additional units, or approximately 44 beds, at the hospital for FY 2023-24 and further undermine the State's efforts to reduce the competency waitlist and comply with the Consent Decree. In addition to implications for individuals that are waiting in jail for competency services, the Department is concerned that those changes could expose the State to significant additional fines associated with the consent decree litigation.

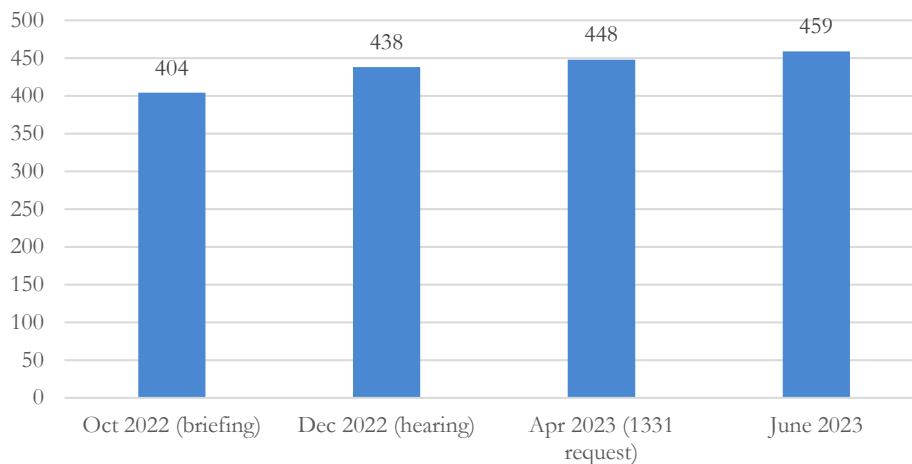
The timing of the request is less than ideal. Staff would have preferred for the Department to submit a related request during the 2023 Session rather than having the Committee see this issue for the first time as an interim supplemental request in June. However, staff also recognizes that the situation was in flux throughout the 2023 Session and understands that the Department was working to avoid the need for an overexpenditure by securing other funds. Given the ongoing dynamics, staff expects the Committee to receive a similar (regular) supplemental request for FY 2023-24 and likely a related decision item for FY 2024-25.

STAFF ANALYSIS:

BACKGROUND: The Department of Human Services (DHS) is responsible for evaluating the competency of individuals charged with a crime and for providing competency restoration services when an individual is determined to be incompetent to proceed to trial. The Colorado Mental Health Institute at Pueblo (CMHIP) generally provides these services unless the Court authorizes the provision of services in another setting such as in jail or in the community. As a result, CMHIP is essential to the State’s current competency system and ongoing efforts to achieve compliance with the 2019 Consent Decree with Disability Law Colorado.

As discussed in the FY 2023-24 JBC Staff Briefing Document for Human Services Behavioral Health Programs, the waitlist reached a low point of 52 people in July 2020, although that number was probably artificially low because of the impacts of COVID-19 on the judicial process.¹ The waitlist has grown since that time, and it is important to note that despite the efforts of the General Assembly and the Department, the competency waitlist has continued to grow during the FY 2023-24 budget cycle (see chart below).²

The competency waitlist has continued to grow throughout the FY 2023-24 budget process.



INTERIM SUPPLEMENTAL REQUEST: With that context, the Department’s supplemental budget request seeks authorization for an overexpenditure of \$13,067,628 General Fund in the CMHIP personal services line item for FY 2022-23. According to the Department, the overexpenditure is the result of increased reliance on contract nursing staff (contracted through temporary agencies) to sustain the hospital’s operations in the current year. The request represents the Department’s estimate of the overexpenditure based on actual spending through April 2023 (the most recent time for which expenditures and invoices are available) and the Department’s projections through the end of the fiscal year – after accounting for the Department’s efforts to constrain other expenses to reduce the magnitude of the overexpenditure (see table below).

¹ See the briefing issue beginning on page 21 of the FY 2023-12 JBC Staff Briefing Document for the Department of Human Services Behavioral Health Programs, available at: https://leg.colorado.gov/sites/default/files/fy2023-24_humbrf3_1.pdf

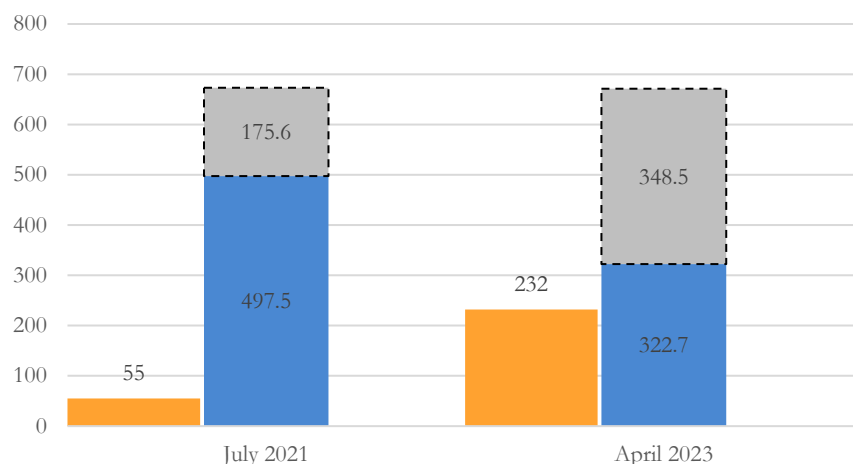
² The discussion of competency begins on page 30 of the Department’s FY 2023-24 hearing responses, available at: https://leg.colorado.gov/sites/default/files/fy2023-24_humhrg.pdf

FY 2022-23 CMHIP OVEREXPENDITURE ESTIMATE	
	TOTAL FUNDS
Total CMHIP Appropriation	\$116,225,283
Additional Funding (primarily centrally appropriated items)	33,348,841
Transfers from Other Programs	1,446,838
Total Available	\$151,020,962
Projected Total Expenditures	(164,088,590)
Projected Deficit/Overexpenditure	(\$13,067,628)

CONTRACT NURSING DYNAMIC: As the Committee has discussed at several junctures during the FY 2023-24 budget cycle, CMHIP has been increasingly reliant on the use of contract nursing staff because of the hospital’s recruiting and retention challenges for those personnel.³ Staffing CMHIP presented challenges before the impacts of the COVID-19 pandemic. Since 2020, a national workforce shortage of medical personnel has only added to the difficulty of recruiting and retaining direct care staff at the state hospitals.

The hospital in Pueblo is already operating at 94 beds below capacity (with 422 out of 516 beds open) as a result of staffing challenges. However, maintaining that (reduced) capacity has required much greater reliance on contract nursing staff, with the major change since July 2021 (see chart below). According to the Department, 39.4 percent of the CMHIP nursing FTE left between July 2021 and April 2023 (195.8 of the 497.5 FTE filled as of July 2021). While the Department has been able to fill a small portion (approximately 20) of those vacancies with permanent FTE, sustaining the hospital’s operations has required more than four times as many contract nurses in April 2023 as were present in July 2021.

CMHIP's nursing staffing challenges increased from July 2021 to April 2023, with fewer FTE filled, more vacancies, and more reliance on contract staff.



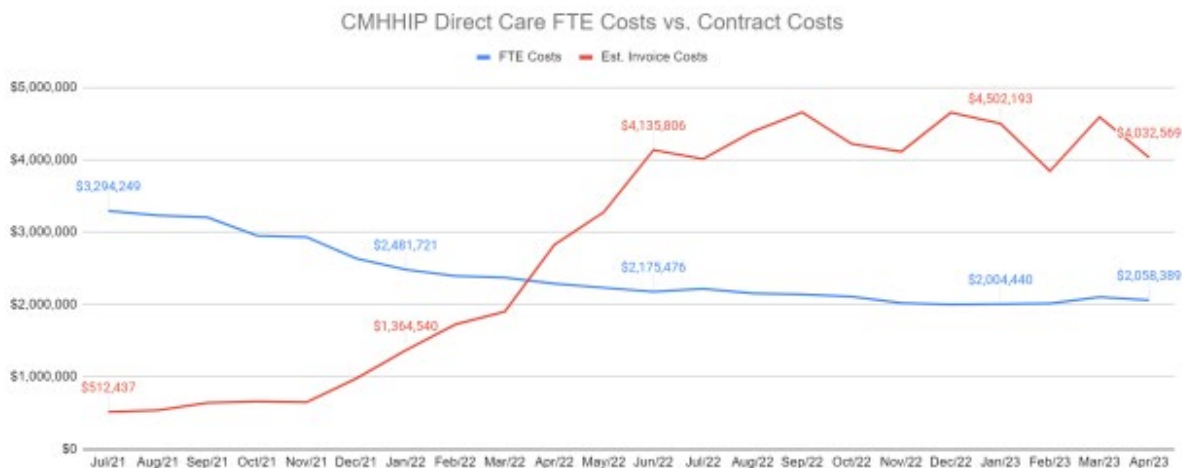
If fully staffed, CMHIP would have approximately 675 nursing FTE. The 175.6 vacancies in July 2021 represented a 26.1 percent vacancy rate at that time, meaning the hospital could not operate at capacity

³ Includes registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants, although the Department reports that nurses are the primary driver of cost.

even with 55 contract nurses. With 348.5 vacancies in April 2023, the vacancy rate had risen to 51.9 percent. Unable to hire and retain permanent FTE, the hospital turned increasingly to contract nurses in order to avoid closing additional units. As a result, contract nurses increased from 10.0 percent of nursing staff present in July 2021 to 41.8 percent of the nursing staff on site in April 2023.

The increased reliance on contract staff has both fiscal and operational consequences.

- Higher Cost:* Directly related to the overexpenditure, contract nurses are far more expensive than permanent FTE. The Department reports that the pay for a Nurse I FTE at CMHIP in FY 2022-23 has equated to \$38.93 per hour in wages (or \$50.61 with benefits). In contrast, the Hospital is paying roughly \$120 per hour for contract nurses in the current year.⁴ As a result, the hourly cost for a contract nurse is more than double, even without overtime considerations. The following chart (provided by the Department) shows the growth in monthly contract expenses from July 2021 through April 2023. As shown in the chart, the personnel costs for state FTE declined as vacancies increased – but the cost difference makes the contract staff far more expensive than the vacancy savings would support. Monthly expenses for FTE decreased by \$1.2 million between July 2021 and April 2023 while monthly contract costs increased by \$3.5 million.



- Operations:* Less relevant to the request itself, the Department reports that contract staff are able to dictate their own schedules and block out undesirable days/shifts. That requires the smaller pool of permanent FTE (at lower pay) to take those shifts. It is logical that this dynamic may impact morale and increase turnover (and it is JBC Staff’s understanding that a number of CMHIP nurses have left state employment and then returned to the hospital on contract).

TIMING CONCERNS: As noted above, the timing of the request is problematic. Ideally, the Department would have recognized the need for additional funds in time to avoid an interim supplemental.

- Based on the Department’s chart above, staff understands why the Department did not anticipate the need in the initial FY 2022-23 request (in November 2021 and January 2022), as the contract expenditures did not really start to increase before November 2021. There would have been no

⁴ The cost varies by agency and the Department has negotiated a decrease of approximately \$20 per hour with at least one agency beginning in April 2023.

reason to request additional funds in the November 1, 2021, request (which was developed well before November) and not enough evidence to support a January 2022 budget amendment.

- However, based on the Department's chart above, staff believes a January 2023 supplemental request would have been warranted, as the elevated contract expenditures had been relatively stable since June or July 2022. Given the cost difference between permanent and contract staff, and that the FY 2022-23 budget was set when contract expenditures were far lower, staff believes a request would have been reasonable and warranted in January 2023. While the Department did highlight the costs of contract staff in discussions with JBC Staff and the Committee, staff was not aware of the likely overexpenditure until the end of the Session.

In response to questions about the timing of the request, the Department has referred to the measures taken to increase recruitment and retention of direct care staff in the fall of 2022 and the Spring of 2023. In the fall of 2022, the Department instituted \$1,000 quarterly retention bonuses for existing staff and \$7,000 signing bonuses for new nursing FTE. Facing a lack of results from those policies, the Department utilized federal ARPA funds to increase the signing bonus to \$14,000 in March 2023. At the same time that the Department was working to improve recruitment (to reduce the need for contract staff) it was also implementing temporary measures to reduce other expenditures at the hospital, including:

- Adding contract staff (individuals) to reduce overtime payments made to existing contract staff.
- Using vacancy savings to pay the contract staff.
- Negotiating with contract agencies to reduce contract costs, including a reduction of \$20 per hour as of April 2023 with at least one agency.
- Further delaying the re-opening of closed units.
- Freezing non-critical operating expenditures for the last quarter of the fiscal year.
- Delaying hiring of non-medical positions until FY 2023-24.

Finally, the Department and the Governor's Office have said that they hoped to find sufficient federal stimulus funds (from the Governor's flexible funds) to cover the potential overexpenditure and avoid the overexpenditure of General Fund. While the effort to secure alternative funds did not succeed, it did further delay the request for additional General Fund. According to the Department, it wasn't clear until the end of the legislative session that the overexpenditure would still be required.

Staff continues to believe that a regular supplemental (during the 2023 Session) would have been warranted – and definitely preferable to an interim supplemental. However, staff does recognize that the elevated need for contract staff was a new variable and that the Department was optimistic that it would be temporary. While staff would strongly discourage any subsequent interim supplementals for this issue, staff does not see denying the supplemental as a reasonable option given the likely consequences of doing so (discussed below).

CONSEQUENCES OF DENIAL: If the Committee were to deny the request then the State Controller would restrict the hospital's FY 2023-24 personal services appropriation by \$13.1 million (a reduction of 12.3 percent from the current FY 2023-24 personal services appropriation of \$106.0 million). The Department has stated that the restriction in FY 2023-24 would force the closure of additional units/beds at the start of the next fiscal year. While the exact impact is uncertain, the Department has provided a preliminary estimate that the reduction would force the closure of approximately 44 beds (2 units), reducing capacity at the hospital and further threatening the State's efforts to comply with the consent decree.

In addition to the impact on capacity, which would mean longer waits in jail for patients in need of inpatient services, the Department has noted that the current cap on fines under the consent decree (approximately \$12.0 million for FY 2023-24) is at the discretion of the court. If the plaintiffs or the Special Masters in the case were to petition the court with concerns about the State's lack of progress or lack of prioritization of the consent decree, then the court could remove the cap on fines. The Department estimates that the total (uncapped) fines for FY 2022-23 would be \$62.8 million.

Given the potential consequences of denying the request, staff recommends that the Committee approve the request for FY 2022-23 and avoid the restriction on the FY 2023-24 appropriation. Staff anticipates that a similar supplemental request may be necessary for FY 2023-24 – and suggests that any such supplemental request should be submitted in January 2024. The Department remains hopeful that ongoing measures (planned extension of the current incentives through the fall as well as pay increases coming on line for direct care staff in FY 2023-24) will allow for more progress in recruiting and retention. Given the experience of the past two years and the fact that there will still be large gaps in pay between the state FTE and contract staff, however, JBC Staff is skeptical that this situation will improve quickly and expects the staffing challenges at both state hospitals to continue.
