

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2013-14 AND FY 2014-15  
STAFF RECOMMENDATIONS**

**Governor's Proposal for Allocation of  
New State Resources Available from the  
Passage of Proposition AA and the Sales Taxes from  
Medical Marijuana**

**JBC Working Document - Subject to Change  
Staff Recommendation Does Not Represent Committee Decision**

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**Governor's Proposal for Allocation of  
New State Resources Available from the  
Passage of Proposition AA and the Sales Taxes from  
Medical Marijuana**

**FY 2013-14 AND FY 2014-15  
JBC STAFF RECOMMENDATIONS**

**Overview of Request and Recommendations**

On February 18, 2014, the Governor submitted a request for allocation of new revenues as a result of the taxation of medical and retail marijuana pursuant to Amendment 64 and Proposition AA. The request is for \$4.5 million cash funds from the Marijuana Cash Fund (MCF) and 3.2 FTE in FY 2013-14 and \$117.0 million total funds, including \$16.9 million General Fund, \$75.0 million MCF, \$25.3 million federal funds, and 21.3 FTE for FY 2014-15. The request includes an \$18.0 million MCF transfer to the General Fund in FY 2014-15.

Except for request BA18, all of the Governor's requests summarized in this package require statutory changes to authorize the use of funds from the Marijuana Cash Fund.

**Table 1** below summarizes the Governor's request by Department.

**Table 2** below summarizes the JBC Staff recommendations by Department.

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**Table 1**

FY 2013-14 Amendment 64 and Proposition AA Request								
Agency	Code	Total	General Fund	Marijuana Cash Fund	HPFCF*	Federal Funds	FTE	Purpose
GOV	S1	500,000	0	500,000	0	0	0.0	Youth marijuana education public awareness campaign
PBH	S2/BA12	3,664,277	0	3,664,277	0	0	0.9	Public awareness campaign
PBS	S3/BA17	373,667	0	373,667	0	0	2.3	Data analysis on illegal marijuana activities
<b>Total FY 14</b>		<b>\$4,537,944</b>	<b>\$0</b>	<b>\$4,537,944</b>	<b>\$0</b>	<b>\$0</b>	<b>3.2</b>	
FY 2014-15 Amendment 64 and Proposition AA Request								
Agency	Code	Total	General Fund	Marijuana Cash Fund	HPFCF*	Federal Funds	FTE	Request Title
EDU	BA1	5,000,000	0	5,000,000	0	0	1.0	Behavioral health issues in public schools
EDU	BA2	6,000,000	0	6,000,000	0	0	1.0	Additional school resource officers
GOV	BA3	190,097	0	190,097	0	0	0.0	Drug Policy Office creation
HCP	BA4	29,260,038	10,906,372	0	61,261	18,292,405	0.0	Enhanced Medicaid substance use disorder benefit
HCP	BA5	13,000,000	5,958,100	0	0	7,041,900	0.0	School-based prevention and intervention services
HUM	BA6	10,032,069	0	10,032,069	0	0	2.5	Youth substance use disorder prevention services
HUM	BA7	7,018,646	0	7,018,646	0	0	1.4	Intensive residential treatment for substance use disorders
HUM	BA8	6,000,000	0	6,000,000	0	0	0.0	Collaborative Management Program
HUM	BA9	5,000,000	0	5,000,000	0	0	0.0	Tony Gramscas program grants for prevention
HUM	BA10	4,122,617	0	4,122,617	0	0	1.2	Colorado Access to Recovery Program
LAW	BA11	456,760	0	456,760	0	0	2.0	Development of in-house expertise on regulations
PBH	BA12	5,833,608	0	5,833,608	0	0	3.7	Public awareness campaign
PBH	BA13	918,560	0	918,560	0	0	0.0	Marijuana DUI registry
PBH	BA14	903,561	0	903,561	0	0	1.5	Health Kids Colorado survey
PBH	BA15	859,000	0	859,000	0	0	0.0	Monitor marijuana-related health issues
PBH	BA16	211,080	0	211,080	0	0	0.0	Pilot project on marijuana use during pregnancy
PBS	BA17	473,228	0	473,228	0	0	7.0	Data analysis on illegal marijuana activities
REV	BA18	1,840,000	0	1,840,000	0	0	0.0	Required programming for taxes
TRA	BA19	1,875,000	0	1,875,000	0	0	0.0	Marijuana DUI campaign
<b>Sub-Total</b>		<b>\$98,994,264</b>	<b>\$16,864,472</b>	<b>\$56,734,226</b>	<b>\$61,261</b>	<b>\$25,334,305</b>	<b>21.3</b>	
Transfer to General Fund		17,960,663	0	17,960,663	0	0	0.0	Transfer from MCF to General Fund. Includes funding for BA4 and BA5 as well as a 6.5 percent (\$1,096,191) General Fund reserve.
<b>Total FY 15</b>		<b>\$116,954,927</b>	<b>\$16,864,472</b>	<b>\$74,694,889</b>	<b>\$61,261</b>	<b>\$25,334,305</b>	<b>21.3</b>	

\* Hospital Provider Fee Cash Fund (HPFCF).

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Table 2								
FY 2013-14 Amendment 64 and Proposition AA <u>JBC Staff Recommendations</u>								
Agency	Code	Total	General Fund	Marijuana Cash Fund	HPFCF	Federal Funds	FTE	Purpose
GOV	S1	0	0	0	0	0	0.0	Youth marijuana education public awareness campaign
PBH	S2/BA12	0	0	0	0	0	0.0	Public awareness campaign
PBS	S3/BA17	0	0	0	0	0	0.0	Data analysis on illegal marijuana activities
REV	BA18	(1,840,000)	(280,000)	(1,560,000)	0	0	0.0	Required programming for taxes
<b>Total FY 14</b>		<b>(\$1,840,000)</b>	<b>(\$280,000)</b>	<b>(\$1,560,000)</b>	<b>\$0</b>	<b>\$0</b>	<b>0.0</b>	
FY 2014-15 Amendment 64 and Proposition AA Request								
Agency	Code	Total	General Fund	Marijuana Cash Fund	HPFCF	Federal Funds	FTE	Request Title
EDU	BA1	0	0	0	0	0	0.0	Behavioral health issues in public schools
EDU	BA2	0	0	0	0	0	0.0	Additional school resource officers
GOV	BA3	0	0	0	0	0	0.0	Drug policy office creation
HCP	BA4	0	0	0	0	0	0.0	Enhanced Medicaid substance use disorder benefit
HCP	BA5	0	0	0	0	0	0.0	School-based prevention and intervention services
HUM	BA6	10,007,764	0	10,007,764	0	0	2.5	Youth substance use disorder prevention services
HUM	BA7	0	0	0	0	0	0.0	Intensive residential treatment for substance use disorders
HUM	BA8	0	0	0	0	0	0.0	Collaborative Management Program
HUM	BA9	0	0	0	0	0	0.0	Tony Gramsas program grants for prevention
HUM	BA10	0	0	0	0	0	0.0	Colorado Access to Recovery Program
LAW	BA11	413,903	0	413,903	0	0	2.0	Development of in-house expertise on regulations
PBH	BA12	996,060	0	996,060	0	0	0.0	Public awareness campaign
PBH	BA13	0	0	0	0	0	0.0	Marijuana DUI registry
PBH	BA14	0	0	0	0	0	0.0	Health Kids Colorado survey
PBH	BA15	0	0	0	0	0	0.0	Monitor marijuana-related health issues
PBH	BA16	0	0	0	0	0	0.0	Pilot project on marijuana use during pregnancy
PBS	BA17	0	0	0	0	0	0.0	Data analysis on illegal marijuana activities
REV	BA18	1,840,000	0	1,840,000	0	0	0.0	Required programming for taxes
TRA	BA19	1,875,000	0	1,875,000	0	0	0.0	Marijuana DUI campaign
<b>Sub-Total</b>		<b>\$15,132,727</b>	<b>\$0</b>	<b>\$15,132,727</b>	<b>\$0</b>	<b>\$0</b>	<b>4.5</b>	
Transfer to General Fund		0	0	0	0	0	0.0	Transfer from MCF to General Fund. Includes funding for BA4 and BA5, as well as a 6.5 percent (\$1,096,191) General Fund reserve.
<b>Total FY 15</b>		<b>\$15,132,727</b>	<b>\$0</b>	<b>\$15,132,727</b>	<b>\$0</b>	<b>\$0</b>	<b>4.5</b>	

## **Marijuana Taxes and Fees Overview**

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### **Medical Marijuana**

In 2000, Colorado voters adopted Section 14 of Article XVIII of the state Constitution (Amendment 20) legalizing the use of medical marijuana by a patient with a debilitating medical condition. During the 2001 legislative session, the General Assembly adopted the two provisions that the constitutional amendment required. The first codified medical marijuana unlawful acts. The second created the medical marijuana program in the Department of Public Health and Environment. The issue was dormant until 2010, when the general assembly adopted legislation standardizing the medical marijuana patient-physician relationship, creating a medical marijuana business regulatory structure, and imposing a sales tax on medical marijuana pursuant to a November 16, 2009 opinion of the Attorney General.

The first \$2.0 million of sales tax revenue generated by the sale of medical marijuana that has been credited to the Medical Marijuana Cash fund is transferred to the state general fund to be used as follows: half of the money is appropriated to the circle program at the Colorado mental health institute at Pueblo; and the other half is appropriated to the department of health care policy and financing for substance abuse treatment screening and referral.

The Department of Revenue housed the medical marijuana state licensing authority. The state licensing authority conducted the licensee background checks, licensed medical marijuana businesses, and enforced medical marijuana laws and regulations. Many of the functions and duties of the state licensing authority were similar to the state licensing authority for alcoholic beverages. The licensing authority set the fees for the licenses it issued.

### **Retail Marijuana**

In 2012, Colorado voters adopted Section 16 of Article XVIII of the state Constitution (Amendment 64) regulating the sale and use of marijuana by persons 21 years of age and older in the same manner as the sale and use of alcohol. The constitutional amendment permits persons 21 years of age and older to possess up to one ounce of marijuana and up to six plants, only three of which may be flowering.

The Medical Marijuana Enforcement Division in the Department of Revenue was changed to the Marijuana Enforcement Division and now regulates both medical marijuana and retail marijuana. The Division is supported by application and licensing fees; sales, excise, and special marijuana sales taxes from retail and medical marijuana; and any necessary supplementary general fund appropriations. The division may set the fee amounts for the various types of licenses it issues.

In November 2013, Colorado voters approved Proposition AA for a 10.0 percent sales tax and a 15.0 percent excise tax on the sale of retail marijuana in order to raise \$70.0 million in additional retail marijuana tax revenues. The 10.0 percent sales tax approved in November 2013 is in addition to the 2.9 percent state sales tax and any local government sales tax. The taxes do not apply to medical marijuana. In future years, the General Assembly may lower the rate below the respective 10.0 percent and 15.0 percent tax rates and then may subsequently raise the rate to 15.0 percent for either the sales or excise tax or both without further voter approval, so long as the rate does not go above 15.0 percent. Proposition AA also required, as laid out in the

Constitution, that the first \$40 million received and collected in excise tax revenue be transferred to the Public School Capital Construction Assistance Fund. Any amount remaining after the transfer is deposited in the Marijuana Cash Fund.

Section 39-28.8-203, C.R.S. provides that, of the 10.0 percent additional retail marijuana sales tax collected, 15.0 percent will be distributed to each local government that is home to one or more retail marijuana stores. Each local government's share is apportioned according to the percentage of retail marijuana sales tax revenues collected in the local jurisdiction compared to the total retail marijuana sales tax collections in the state. The remaining revenues are deposited in the Marijuana Cash Fund for regulatory enforcement and other purposes determined by the General Assembly.

### **Estimated Distributions of Marijuana Revenues**

**Table 3** below summarizes total revenues estimated to be raised from taxing marijuana pursuant to Amendment 64 and Proposition AA based on a revenue estimate provided by the Department of Revenue in January 2014. The table breaks down revenues estimated to be generated by the additional 10.0 percent sales tax and the 15.0 percent excise tax. As the table shows, Proposition AA is estimated to raise \$107.2 million in the first full fiscal year (FY 2014-15) of imposing an additional sales tax and an excise tax on retail marijuana. The estimate included in Proposition AA was prepared by Legislative Council Staff and assumed that the first full fiscal year of the additional sales and excise taxes would raise a combined \$67.0 million.

<b>Table 3</b>				
<b>Total Retail and Medical Marijuana Revenues (State and Local Shares)</b>				
	<b>Actual</b>	<b>Appropriation</b>	<b>Request</b>	<b>Estimate</b>
	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
<b>Total Retail and Medical Marijuana Revenues (State and Local Shares)</b>	<b>\$4,116,153</b>	<b>\$53,586,774</b>	<b>\$142,835,908</b>	<b>\$161,189,864</b>
<b>Total Retail Marijuana Revenues</b>	<b>\$0</b>	<b>\$38,186,682</b>	<b>\$127,039,419</b>	<b>\$143,068,047</b>
<b><i>Sub-Total Retail Marijuana Revenues (10% Sales and 15% Excise Taxes Credited to Locals; B.E.S.T.; and the MCF) - Proposition AA</i></b>	<b>\$0</b>	<b>\$30,818,978</b>	<b>\$107,237,517</b>	<b>\$120,914,680</b>
<i>10% Additional Sales Tax (15 % local share)</i>	<i>0</i>	<i>2,909,431</i>	<i>9,191,787</i>	<i>10,364,115</i>
<i>10% Additional Sales Tax (85 % state share to MCF)</i>	<i>0</i>	<i>16,486,777</i>	<i>52,086,794</i>	<i>58,729,988</i>
<i>15% Excise Tax (first \$40 million to B.E.S.T.)</i>	<i>0</i>	<i>11,422,770</i>	<i>40,000,000</i>	<i>40,000,000</i>
<i>15% Excise Tax (in excess of \$40 million to MCF)</i>	<i>0</i>	<i>0</i>	<i>5,958,936</i>	<i>11,820,577</i>
<b><i>Sub-Total Retail Marijuana Revenues (2.9% Sales, Fees, Other)</i></b>	<b><i>\$0</i></b>	<b><i>\$7,367,704</i></b>	<b><i>\$19,801,902</i></b>	<b><i>\$22,153,367</i></b>
<b>Total Medical Marijuana Revenues</b>	<b>\$4,116,153</b>	<b>\$15,400,092</b>	<b>\$15,796,489</b>	<b>\$18,121,817</b>

As described above, the first \$40.0 million of the excise tax received and collected annually is to be transferred to the Public School Capital Construction Assistance Fund (for the B.E.S.T.

program) pursuant to Section 39-28.8-305, C.R.S., any amounts above \$40.0 million are transferred to the Marijuana Cash Fund.

Similarly, the first 15.0 percent of the gross retail marijuana sales tax revenues (of the 10.0 percent sales tax) collected by the Department of Revenue are to be apportioned to local governments pursuant to Section 39-28.8-203, (1) (a) (I), C.R.S. Following apportionment of the local government share, the remainder of sales tax revenues collected are transferred from the General Fund to the Marijuana Cash Fund for the enforcement of regulations on the retail marijuana industry and for other purposes of the fund as determined by the General Assembly.

### **Marijuana Cash Fund**

Section 39-28.8-203 (1) (b), C.R.S., states:

Following apportionment of local government shares pursuant to paragraph (a) of this subsection (1), an amount equal to all remaining revenues collected shall be transferred from the general fund to the marijuana cash fund created in section 12-43.3-501, C.R.S., to be used for the enforcement of regulations on the retail marijuana industry and for the other purposes of the fund as determined by the general assembly. The general assembly shall make appropriations from the marijuana cash fund for the expenses of the administration of this section.

Pursuant to Section 12-43.3-501, C.R.S., the Marijuana Cash Fund (MCF) consists of the following:

1. Moneys collected by the state licensing authority;
2. Retail marijuana excise taxes (over and above the first \$40.0 million raised for B.E.S.T.), transferred pursuant to Section 39-28.8-306 (1) (b), C.R.S.;
3. Retail marijuana sales taxes (over and above the distribution to local governments), transferred pursuant to Section 39-28.8-203 (1) (b), C.R.S.;
4. Sales taxes imposed pursuant to Section 39-26-106, C.R.S., on the sale of medical and retail marijuana;
5. Additional General Fund appropriated to the fund that are necessary for the operation of the state licensing authority.

Moneys in the fund are subject to annual appropriation by the General Assembly for the following:

1. The Department of Revenue for the direct and indirect costs associated with implementing the Colorado Medical Marijuana Code, the Colorado Retail Marijuana Code, as well as the imposition of taxes on marijuana and marijuana products;
2. The Division of Criminal Justice in the Department of Public Safety for the study of marijuana implementation pursuant to Section 24-33.5-516, C.R.S.<sup>1</sup>;

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<sup>1</sup> Section 12-43.3-501 (1) (b) (II), C.R.S., references the Division of Criminal Justice in the Department of Public Safety for the study of marijuana implementation pursuant to Section 24-33.5-514, C.R.S. The reference should instead point to Section 24-33.5-516, C.R.S. This is a technical error due to several bills creating the same section during the 2013 Legislative Session. This error will be fixed in the 2014 Revisor's Bill.



3. The Department of Public Health and Environment for the monitoring of the health effects of marijuana implementation pursuant to Section 25-1.5-111, C.R.S.;
4. The Department of Law for training concerning abuse and exploitation of at-risk elders pursuant to Section 24-31-313, C.R.S.; and
5. The General Fund to repay \$2.0 million for the appropriations required by Section 39-26-123 (6), C.R.S., (circle program at DHS and substance abuse treatment screening and referral at HCPF).
6. The repayment of any General Fund moneys used to initially support the spending authority of the State Licensing Authority. No General Fund moneys were used to support the State Licensing Authority. The Department of Public Health and Environment Medical Marijuana Cash Fund had loaned \$1.0 million dollars to the State Licensing Authority on July 1, 2010, the loan was paid back in 2010.

Based on current statute and appropriations out of the Marijuana Cash Fund, and a January 2014 Department of Revenue estimate of FY 2014-15 revenues to the fund, **Table 4** and **Table 5** show the Department estimate of FY 2014-15 fund balance to the MCF totaling \$109.1 million.

<b>Table 4</b>				
<b>Marijuana Cash Fund (MCF)</b>				
<b>Fund Balance Report</b>				
	<b>Actual FY 2012-13</b>	<b>Appropriation FY 2013-14</b>	<b>Request FY 2014-15</b>	<b>Estimate FY 2015-16</b>
Year Beginning Fund Balance	\$2,370,508	\$4,383,320	\$28,188,667	\$109,065,488
Total Changes to Fund Balance	2,012,812	23,805,347	80,876,821	98,044,485
Ending Fund Balance/ Uncommitted Reserve	\$4,383,320	\$28,188,667	\$109,065,488	\$207,109,973
<b>Target Reserve at 16.5 Percent of Expenditures</b>	<b>\$347,051</b>	<b>\$2,549,122</b>	<b>\$2,106,605</b>	<b>\$2,108,909</b>
<i>Excess Uncommitted Reserve</i>	<i>\$4,036,269</i>	<i>\$25,639,545</i>	<i>\$106,958,884</i>	<i>\$205,001,064</i>

**Table 5** below shows an analysis of revenues to and expenditures from the Marijuana Cash Fund. The revenues shown in **Table 5** are based on projections provided by the Department of Revenue. *The Department states that these projections are preliminary and rely on published surveys and reports; the Department acknowledges the difficulty in obtaining accurate data due to the product's prior illegal nature.* Pursuant to Section 12-43.4-104 (6), C.R.S., the Department is required to provide a report on or before April 1, 2014, that will, among other things, include a market study of medical and retail marijuana and revenues generated by medical and retail marijuana.

<b>Table 5</b>				
<b>Marijuana Cash Fund (MCF)</b>				
<b>Cash Flow Summary</b>				
	<b>Actual</b>	<b>Appropriation</b>	<b>Request</b>	<b>Estimate</b>
	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
<b>Marijuana Revenues Total</b>	<b>\$4,116,153</b>	<b>\$39,254,573</b>	<b>\$93,644,121</b>	<b>\$110,825,749</b>
Retail Marijuana Revenues Sub-total	<u>\$0</u>	<u>\$23,854,481</u>	<u>\$77,847,632</u>	<u>\$92,703,932</u>
2.9% Sales Tax	0	5,624,900	17,770,793	20,037,290
10% Additional Sales Tax (does not include 15% local share)	0	16,486,777	52,086,794	58,729,988
15% Excise Tax (in excess of \$40 million credited to B.E.S.T.)	0	0	5,958,936	11,820,577
Fees	0	1,688,663	1,962,413	2,060,533
Other	0	54,141	68,696	55,544
Medical Marijuana Revenues Sub-total	<u>\$4,116,153</u>	<u>\$15,400,092</u>	<u>\$15,796,489</u>	<u>\$18,121,817</u>
2.9% Sales Tax	0	10,344,290	10,001,306	11,663,483
Fees	4,056,906	4,977,926	5,682,787	6,321,811
Other	59,247	77,876	112,396	136,523
<b>Expenses Total</b>	<b><u>\$2,103,341</u></b>	<b><u>\$15,449,226</u></b>	<b><u>\$12,767,300</u></b>	<b><u>\$12,781,264</u></b>
Department of Revenue	2,103,341	12,505,949	9,801,959	9,815,923
DHS and HCPF for substance abuse programs	0	2,000,000	2,000,000	2,000,000
DPHE research on health effects of marijuana	0	307,542	320,342	320,342
DPS background checks and study law enforcement activities	0	559,735	568,999	568,999
Department of Law support to DOR	0	76,000	76,000	76,000
<b>Net Cash Flow (Revenues - Expenses)</b>	<b>\$2,012,812</b>	<b>\$23,805,347</b>	<b>\$80,876,821</b>	<b>\$98,044,485</b>

## **Marijuana Cash Fund and Governor's February 18, 2014 Request**

On February 18, 2014, the Governor submitted a request for allocation of new revenues as a result of the taxation of medical and retail marijuana pursuant to Amendment 64 and Proposition AA. The request is for \$4.5 million cash funds from the Marijuana Cash Fund (MCF) and 3.2 FTE in FY 2013-14 and \$117.0 million total funds, including \$16.9 million General Fund, \$75.0 million MCF, \$25.3 million federal funds, and 21.3 FTE for FY 2014-15. The request includes an \$18.0 million MCF transfer to the General Fund in FY 2014-15.

**Table 6** and **Table 7** below show that, with the Governor's request and the Department of Revenue January 2014 estimate of revenues, the MCF is estimated to have a \$29.8 million fund balance at the end of FY 2014-15.

<b>Table 6</b>				
<b>Marijuana Cash Fund (MCF)</b>				
<b>Fund Balance Report (with Governor February 18, 2014 Request)</b>				
	<b>Actual FY 2012-13</b>	<b>Appropriation FY 2013-14</b>	<b>Request FY 2014-15</b>	<b>Estimate FY 2015-16</b>
Year Beginning Fund Balance	\$2,370,508	\$4,383,320	\$23,650,723	\$29,832,655
Total Changes to Fund Balance	2,012,812	19,267,403	6,181,932	23,349,596
Ending Fund Balance/ Uncommitted Reserve	\$4,383,320	\$23,650,723	\$29,832,655	\$53,182,251
<b>Target Reserve at 16.5 Percent of Expenditures</b>	<b>\$347,051</b>	<b>\$3,297,883</b>	<b>\$14,431,261</b>	<b>\$14,433,565</b>
<i>Excess Uncommitted Reserve</i>	<i>\$4,036,269</i>	<i>\$20,352,840</i>	<i>\$15,401,394</i>	<i>\$38,748,685</i>

<b>Table 7</b>				
<b>Marijuana Cash Fund (MCF)</b>				
<b>Cash Flow Summary (with Governor February 18, 2014 Request)</b>				
	<b>Actual FY 2012-13</b>	<b>Appropriation FY 2013-14</b>	<b>Request* FY 2014-15</b>	<b>Estimate FY 2015-16</b>
<b>Marijuana Revenues Total</b>	<b>\$4,116,153</b>	<b>\$39,254,573</b>	<b>\$93,644,121</b>	<b>\$110,825,749</b>
Retail Marijuana Revenues Sub-total	\$0	\$23,854,481	\$77,847,632	\$92,703,932
2.9% Sales Tax	0	5,624,900	17,770,793	20,037,290
10% Additional Sales Tax (does not include 15% local share)	0	16,486,777	52,086,794	58,729,988
15% Excise Tax (in excess of \$40 million credited to B.E.S.T.)	0	0	5,958,936	11,820,577
Fees	0	1,688,663	1,962,413	2,060,533
Other	0	54,141	68,696	55,544
Medical Marijuana Revenues Sub-total	\$4,116,153	\$15,400,092	\$15,796,489	\$18,121,817
2.9% Sales Tax	0	10,344,290	10,001,306	11,663,483
Fees	4,056,906	4,977,926	5,682,787	6,321,811
Other	59,247	77,876	112,396	136,523
<b>Expenses Total</b>	<b>\$2,103,341</b>	<b>\$19,987,170</b>	<b>\$87,462,189</b>	<b>\$87,476,153</b>
Department of Revenue	2,103,341	12,505,949	9,801,959	9,815,923
DHS and HCPF for substance abuse programs	0	2,000,000	2,000,000	2,000,000
DPHE research on health effects of marijuana	0	307,542	320,342	320,342
DPS background checks and study law enforcement activities	0	559,735	568,999	568,999
Department of Law support to DOR	0	76,000	76,000	76,000
<b>Governor February 18, 2014 Request</b>	<b>0</b>	<b>4,537,944</b>	<b>74,694,889</b>	<b>74,694,889</b>
<b>Net Cash Flow (Revenues - Expenses)</b>	<b>\$2,012,812</b>	<b>\$19,267,403</b>	<b>\$6,181,932</b>	<b>\$23,349,596</b>

\* Includes \$56.7 million in requested appropriations out of the MCF and an \$18.0 million transfer to the General Fund.

## **Comparison of Proposition AA Revenue Estimates Prepared by Legislative Council Staff (LCS) and the Department of Revenue**

This section of the staff analysis is limited to analyzing Proposition AA tax revenues.

### **Legislative Council Staff Revenue Estimate**

The LCS FY 2014-15 assumptions for revenues raised from Proposition AA provided for the 2013 Blue Book are based on the following:

Retail marijuana is projected to have wholesale sales totaling \$183,500,000 in FY 2014-15. This estimate assumes that the projected amount of retail marijuana consumed in FY 2014-15 is 1,957,333 ounces. The estimate also assumes that the wholesale market price is \$93.75 an ounce. Based on these assumptions a 15.0 percent excise tax is projected to generate \$27,525,000 in FY 2014-15.

Retail marijuana is projected to have retail sales totaling \$394,520,130 in FY 2014-15. This estimate assumes that the projected amount of retail marijuana consumed in FY 2014-15 is 1,957,333 ounces. The estimate also assumes that the retail market price is \$201.56. Based on these assumptions a 10% sales tax on retail marijuana is projected to generate \$39,452,013 in FY 2014-15.

### **Department of Revenue Estimate**

The Department of Revenue FY 2014-15 assumptions for revenues raised from Proposition AA provided in January, 2014, are based on the following:

Retail marijuana is projected to have wholesale sales totaling \$306,392,906 in FY 2014-15. This estimate assumes that the projected amount of retail marijuana consumed in FY 2014-15 is 3,268,191 ounces. The estimate also assumes that the wholesale market price is \$93.75 an ounce. Based on these assumptions a 15.0 percent excise tax is projected to generate \$45,958,936 in FY 2014-15.

Retail marijuana is projected to have retail sales totaling \$612,785,813 in FY 2014-15. This estimate assumes that the projected amount of retail marijuana consumed in FY 2014-15 is 3,268,191 ounces. The estimate also assumes that the

retail market price is \$187.50<sup>2</sup>. Based on these assumptions a 10% sales tax on retail marijuana is projected to generate \$61,278,518 in FY 2014-15.

If excise tax revenue is to generate \$40 million for the Public School Construction Fund, the excise tax rate would decrease from 15% to 13.05. If the 10% sales tax revenue is to generate \$27 million, the sales tax rate would decrease from 10% to 4.4%.

**Table 8** below shows a comparison of the LCS estimate used for the 2013 Blue Book and the Department of Revenue January 2014 estimate. The table also provides estimates of the level the excise and sales taxes would need to be set at to generate \$67.0 million in FY 2014-15 based on holding constant the Department of Revenue projections for other factors. **Please note that the other elements of the projection (population, out-of-state visitors, consumption, price, etc.) will also influence the level of revenue generated from the taxes.**

As **table 8** shows, **the primary difference between the two forecasts is the rate of consumption.** Based on an assumption relying on the Department of Revenue January 2014 projections on the rate of consumption, in order to generate a total of \$67.0 million in Proposition AA revenues in FY 2014-15, including \$40.0 million of excise taxes for the B.E.S.T. program, the excise tax would need to be set at 13.05 percent and the sales tax would need to be set at 4.4 percent. For a detailed description of the assumptions that went into the two forecasts please see *Appendix A*.

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<sup>2</sup> The Department of Revenue states that their January 2014 revenue estimate had a technical error that artificially decreased the retail sale price per ounce from \$201.56 to \$187.50. The Department did not add the impact of the excise tax on the wholesale price to the retail price. The Department estimates that an ounce of wholesale marijuana costs \$93.75. A 15.0 percent excise tax on the wholesale price totals \$14.06. The Department estimates that an ounce of retail sale marijuana will cost \$187.50 without the impact of the excise tax. Adding \$14.06 to \$187.50 equals \$201.56 per ounce of retail marijuana. The Department states that they will adjust their retail sale price in their April 2014 revenue estimate.

<b>Table 8</b>		
<b>Retail Marijuana Revenues (15% Excise Tax and 10% Sales Tax) - Proposition AA</b>		
	<b>Proposition AA</b>	<b>DOR</b>
	<b>FY 2014-15</b>	<b>FY 2014-15</b>
Projected Amount of Retail Marijuana Consumed (ounces)	1,957,333	3,268,191
Wholesale Market Price for Excise Tax Calculation (per ounce)	<u>\$93.75</u>	<u>\$93.75</u>
Total Wholesale Sales	\$183,500,000	\$306,392,906
Projected Amount of Retail Marijuana Consumed (ounces)	1,957,333	3,268,191
Retail Market Price for Retail Tax Calculation (per ounce)	<u>\$201.56</u>	<u>\$187.50</u>
Total Retail Sales	\$394,520,130	\$612,785,813
15% Excise Tax	27,525,000	45,958,936
10% Additional Sales Tax	<u>39,452,013</u>	<u>61,278,581</u>
Total Revenues	\$66,977,013	\$107,237,517
<b>Total Retail Marijuana Revenues - Proposition AA*</b>	<b>\$66,977,013</b>	<b>\$107,237,517</b>
10% Additional Sales Tax (15 % local share)	5,917,802	9,191,787
10% Additional Sales Tax (85 % state share to MCF)	33,534,211	52,086,794
15% Excise Tax (first \$40 million to B.E.S.T.)	27,525,000	40,000,000
15% Excise Tax (in excess of \$40 million to MCF)	0	5,958,936
<b>Proposition AA Revenues Up to \$67.0 Million</b>		
13.055% Excise Tax		40,000,000
4.44% Additional Sales Tax		<u>26,999,833</u>
Total Revenues		\$66,999,834
<b>Total Retail Marijuana Revenues - Proposition AA (Up to \$67.0 million in FY 2014-15)</b>		<b>\$66,999,834</b>
4.41% Additional Sales Tax (15 % local share)		4,049,975
4.41% Additional Sales Tax (85 % state share to MCF)		22,949,858
13.055% Excise Tax (first \$40 million to B.E.S.T.)		40,000,000
13.055% Excise Tax (in excess of \$40 million to MCF)		0

\*Please note that the numbers above do not add to the Blue Book estimate due to rounding and were calculated by JBC staff for illustrative purposes only.

**Table 9** and **Table 10** below are **calculated by JBC staff for illustrative purposes only**. The tables show that if the Department of Revenue January 2014 consumption estimates were used to generate up to \$67.0 million in revenues, of which \$23.0 million flowed to the MCF based on the assumptions in Table 8 above, the MCF would be \$5.3 million short in funding the Governor's February 18, 2014 proposal.

<b>Table 9</b>				
<b>Marijuana Cash Fund (MCF)</b>				
<b>Fund Balance Report</b>				
<b>(Governor February 18, 2014 Request with an Assumption Limiting Proposition AA FY 2014-15 Revenues to \$67.0 million)</b>				
	<b>Actual</b>	<b>Appropriation</b>	<b>Request</b>	<b>Estimate</b>
	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Ending Fund Balance/ Uncommitted Reserve	\$4,383,320	\$23,650,723	(\$5,263,216)	\$18,086,379
<b>Target Reserve at 16.5 Percent of Expenditures</b>	<b>\$347,051</b>	<b>\$3,297,883</b>	<b>\$14,431,261</b>	<b>\$14,433,565</b>
<i>Excess Uncommitted Reserve</i>	<i>\$4,036,269</i>	<i>\$20,352,840</i>	<i>(\$19,694,478)</i>	<i>\$3,652,814</i>

<b>Table 10</b>				
<b>Marijuana Cash Fund (MCF)</b>				
<b>Cash Flow Summary (Governor February 18, 2014 Request with an Assumption Limiting Proposition AA FY 2014-15 Revenues to \$67.0 million)</b>				
	<b>Actual</b>	<b>Appropriation</b>	<b>Request</b>	<b>Estimate</b>
	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
<b>Marijuana Revenues Total</b>	<b>\$4,116,153</b>	<b>\$39,254,573</b>	<b>\$58,548,250</b>	<b>\$110,825,749</b>
Retail Marijuana Revenue Total	\$0	\$23,854,481	\$42,751,761	\$92,703,932
2.9% Sales Tax	0	5,624,900	17,770,793	20,037,290
10% Additional Sales Tax (does not include 15% local share)	0	16,486,777	22,949,858	58,729,988
15% Excise Tax (in excess of \$40 million credited to B.E.S.T.)	0	0	0	11,820,577
Fees	0	1,688,663	1,962,413	2,060,533
Other	0	54,141	68,696	55,544
Medical Marijuana Revenue Total	\$4,116,153	\$15,400,092	\$15,796,489	\$18,121,817
2.9% Sales Tax	0	10,344,290	10,001,306	11,663,483
Fees	4,056,906	4,977,926	5,682,787	6,321,811
Other	59,247	77,876	112,396	136,523
<b>Expenses Total</b>	<b>\$2,103,341</b>	<b>\$19,987,170</b>	<b>\$87,462,189</b>	<b>\$87,476,153</b>
Department of Revenue	2,103,341	12,505,949	9,801,959	9,815,923
DHS and HCPF for substance abuse programs	0	2,000,000	2,000,000	2,000,000
DPHE research on health effects of marijuana	0	307,542	320,342	320,342
DPS background checks and study law enforcement activities	0	559,735	568,999	568,999
Department of Law support to DOR	0	76,000	76,000	76,000
<b>Governor February 18, 2014 Request</b>	<b>0</b>	<b>4,537,944</b>	<b>74,694,889</b>	<b>74,694,889</b>
<b>Net Cash Flow (Revenues - Expenses)</b>	<b>\$2,012,812</b>	<b>\$19,267,403</b>	<b>(\$28,913,939)</b>	<b>\$23,349,596</b>



## Office of Legislative Legal Services Advice on Proposition AA Revenues and the Taxpayer's Bill of Rights (TABOR) Limitations

The Office of Legislative Legal Services (OLLS) Staff have raised issues regarding the potential legal consequences if actual state fiscal year spending (SFYS) and/or new tax revenue (NTR) raised by Proposition AA exceed the estimates provided in the 2013 State Ballot Information Booklet (2013 Blue Book). OLLS staff have indicated that a potential refund may be required if certain conditions are met based on estimates that were included in the 2013 Blue Book. **However, it is important to note that OLLS staff has indicated that this process is a new process as, to their knowledge, it has never occurred in the past. Therefore, much of what is being discussed is still subject to change if interpretations change over time. What is included in this document is the JBC staff interpretation of the process based on the advice from OLLS as of the time of the writing of this document.**

**Table 11** shows the estimates for FY 2014-15 that were included in the 2013 Blue Book.

<b>Table 11</b>	
<b>2013 Blue Book Estimate</b>	
	<b>FY 2014-15 Estimate</b>
State Spending Without the New Taxes	\$12.08 billion
State Revenue from New Excise and Sales Taxes	<u>\$67.0 million</u>
State Spending Plus the New Taxes	\$12.15 billion

JBC Staff interpretation of the advice provided by OLLS staff indicates there is a three step process to determine the amount of a potential refund if the actual amounts for the year exceed either estimate. The three steps are as follows:

**Step 1 – State Fiscal Year Spending Considerations:** According to the OLLS advice, if the actual SFYS is greater than the SFYS as estimated in the 2013 Blue Book a potential refund may be required based on a TABOR requirement (Section 20 (3) (c) of Article X). The 2013 Blue Book provided an estimate of \$12.08 billion for FY 2014-15 SFYS as shown in Table 8. Therefore, if the actual SFYS for FY 2014-15 exceeds the estimated SFYS amount in the 2013 Blue Book, a potential refund may be required.

**Step 2 – New Tax Revenue Considerations:** Likewise, if the actual NTR is greater than the NTR as estimated in the 2013 Blue Book a potential refund may be required based on a TABOR requirement (Section 20 (3) (c) of Article X). The 2013 Blue Book provided an estimate of \$67.0 million for FY 2014-15 NTR as shown in Table 8. Therefore, if the

actual NTR for FY 2014-15 exceeds the estimated NTR amount in the 2013 Blue Book, a potential refund may be required.

**Step 3 – Comparison of Combined Excess to Total New Tax Revenue Collected:** If the comparison made in steps 1 and 2 result in an excess above the estimated amounts reflected in the 2013 Blue Book, the amounts are combined. This combined excess is then compared to the actual total NTR collected for FY 2014-15 and a refund is required up to the total amount of NTR collected.

Pursuant to the advice received by OLLS, there is one additional element to the implications of TABOR with regard to Proposition AA revenues. Section 20 (3) (c) of Article X of the Constitution also indicates that a tax rate reduction occur if the combined revenues exceed the level estimated in the 2013 Blue Book. OLLS was still researching the impacts of this portion of the constitution at the time this document was written. Staff believes that the Committee will need to discuss this issue with the OLLS to decide if any action needs to be taken on the part of the General Assembly with regard to this issue. This tax rate adjustment, if necessary would need to occur in FY 2015-16.

According to JBC Staff's interpretation of the OLLS staff advice, a FY 2014-15 TABOR refund will be triggered if either SFYS and/or NTR actual FY 2014-15 are higher than the amounts estimated in the 2013 Blue Book for FY 2014-15 SFYS and NTR. If there are excesses, the excess amounts are combined and compared to the total NTR collected to determine the amount of a refund. The refund, based on OLLS advice, is limited to the total amount of NTR collected. Therefore, for planning purposes, it may be beneficial for the General Assembly to utilize existing forecasts to understand the potential impacts based on various assumptions.

JBC staff utilized six sets of assumptions to provide the Committee examples of what could occur based on various assumptions. It is important to note, the outcome that matters is the actual outcome as compared to the original 2013 Blue Book estimates. All the assumptions showed in these examples are still based on interim estimates. The level of both the FY 2014-15 SFYS and the FY 2014-15 NTR are based on estimates. The FY 2014-15 NTR is highly speculative as very little history of the legal retail marijuana industry exists as yet. The following are the assumptions the JBC staff used to perform the comparisons:

**Assumption 1** – SFYS equals the amount estimated in the 2013 Blue Book, NTR equals the amount estimated in the 2013 Blue Book.

**Assumption 2** – SFYS equals the amount estimated in the OSPB December 2013 Forecast, NTR equals the amount estimated in the 2013 Blue Book.

**Assumption 3** – SFYS equals the amount estimated in the LCS December 2013 Forecast, NTR equals the amount estimated in the 2013 Blue Book.

**Assumption 4** – SFYS equals the amount estimated in the OSPB 2013 Forecast, NTR equals the amount estimated in the January 2014 Department of Revenue estimate.

**Assumption 5** – SFYS equals the amount estimated in the LCS December 2013 Forecast, NTR equals the amount estimated in the January 2013 Department of Revenue estimate.

**Assumption 6** – SFYS equals the amount estimated in the LCS December 2013 Forecast, no NTR is collected for FY 2014-15. **Please note this assumption would require a statutory change to lower the excise and sale tax on retail marijuana to zero for FY 2014-15.** JBC staff is showing this assumption for informational purposes.

The outcome for what could potentially occur is unlimited. The potential outcomes are contingent on the assumptions that are used in making the estimate. JBC staff chose these six sets of assumptions for illustrative purposes. Many of these factors will change as more information becomes available. They will certainly change as more revenue projections are released in the coming months. The next revenue forecast from both OSPB and LCS will be released on March 18, 2014. That forecast will likely change the potential outcome. Ultimately, it is the actual result at the end of FY 2014-15 that will matter.

**Table 12** provides a comparison of the various assumptions for marijuana tax collections.

Table 12 Comparison of Various Assumptions for Marijuana Tax Collections							
State Fiscal Year Spending Estimate New Marijuana Tax Revenue Estimate		Assumption 1 Blue Book Blue Book	Assumption 2 OSPB Dec Fcst Blue Book	Assumption 3 LCS Dec Fcst Blue Book	Assumption 4 OSPB Dec Fcst DOR	Assumption 5 LCS Dec Fcst DOR	Assumption 6 LCS Dec Fcst None
<b>Prop AA Blue Book Estimates:</b>							
A	State Fiscal Year Spending	12,080,000,000	12,080,000,000	12,080,000,000	12,080,000,000	12,080,000,000	12,080,000,000
B	New Marijuana Tax	<u>67,000,000</u>	<u>67,000,000</u>	<u>67,000,000</u>	<u>67,000,000</u>	<u>67,000,000</u>	<u>67,000,000</u>
C	Total	12,147,000,000	12,147,000,000	12,147,000,000	12,147,000,000	12,147,000,000	12,147,000,000
<b>Various Assumption Estimates:</b>							
D	State Fiscal Year Spending	12,080,000,000	11,981,400,000	12,167,000,000	11,981,400,000	12,167,000,000	12,167,000,000
E	New Marijuana Tax	<u>67,000,000</u>	<u>67,000,000</u>	<u>67,000,000</u>	<u>107,000,000</u>	<u>107,000,000</u>	<u>0</u>
F	Total	12,147,000,000	12,048,400,000	12,234,000,000	12,088,400,000	12,274,000,000	12,167,000,000
G	State Fiscal Year Spending Exceeds Prop AA Estimate	0	0	87,000,000	0	87,000,000	87,000,000
H	New Marijuana Tax Exceeds Prop AA Estimate	<u>0</u>	<u>0</u>	<u>0</u>	<u>40,000,000</u>	<u>40,000,000</u>	<u>(67,000,000)</u>
I	Total Amount Exceeds Prop AA	0	0	87,000,000	40,000,000	127,000,000	20,000,000
J	Maximum Refund Per OLLS Advice (E = J, when a refund is required)	0	0	67,000,000	107,000,000	107,000,000	0
K	Amount Retained by State After Maximum Refund (I minus J = K)	0	0	20,000,000	67,000,000	20,000,000	20,000,000
L	Locals Share (15% of New Retail Marijuana Sales Tax)	5,917,802	5,917,802	5,917,802	9,491,787	9,491,787	0
M	BEST Share (First \$40 million of Retail Marijuana Excise Tax)	27,525,000	27,525,000	27,525,000	40,000,000	40,000,000	0
N	Amount Retained by State After Local and BEST Shares (K minus L minus M = N)	33,557,198	33,557,198	(13,442,802)	17,508,213	(29,491,787)	20,000,000
O	Anticipated State Share After Local and BEST Shares Assumed in Prop AA	33,557,198	33,557,198	33,557,198	33,557,198	33,557,198	33,557,198
P	Net TABOR Impact to State Position (N minus O = P)	\$0	\$0	(\$47,000,000)	(\$16,048,985)	(\$63,048,985)	(\$13,557,198)

The General Assembly could follow several courses of action when planning for FY 2014-15 in relation to retail marijuana:

**Course 1.** The General Assembly waits to see what actually happens. If an excess occurs as the result of actual NTR collections, the General Assembly could refer a measure to the voters in order to retain the projected additional revenues under TABOR. If the voters do not approve the measure and the State has to refund excess Proposition AA revenues, the State will also have to refund additional allocations distributed to locals throughout the year.

**Course 2.** Again, the General Assembly waits to see what actually happens. If actual revenues in FY 2014-15 trigger a TABOR refund in FY 2015-16, the General Assembly would implement a TABOR refund in FY 2015-16. Under this option the General Assembly would evaluate a TABOR refund mechanism for FY 2015-16 during the 2015 Session and determine if they wish to use the existing refund mechanisms or establish new ones that temporarily or permanently override the existing mechanisms. A change to the refund mechanisms would require statutory changes.

**Course 3.** The General Assembly could attempt to reduce or eliminate the excise tax and the additional sales tax to try and avoid an excess above the amount of NTR reflected in the 2013 Blue Book. The General Assembly could also put in place temporary tax reductions or credits to try and ensure that SFYS does not exceed the amount indicated in the Blue Book. **Please note, however, that the other elements of the projection for marijuana NTR (population, out-of-state visitors, consumption, price, etc.) will also influence the level of revenue generated from the taxes. Therefore, unless the GA reduces the rates to zero, there is no guarantee that the other elements of the calculation would not result in exceeding the 2013 Blue Book estimate for FY 2014-15 NTR.**

These courses are a matter of policy. There may be other courses of action that are not included in this document. JBC staff believes the Committee should begin considering the potential courses of action to determine which is best to follow but has no recommendation on which the General Assembly should follow.

Please see *Appendix B* for a graphical illustration of the calculations discussed in this section of the document.

## Staff Analysis and Recommendations for Marijuana Cash Fund Revenues and Expenditures

Given the uncertainty of the revenue stream associated with the retail marijuana industry, it is important to decide the structure and methodology associated with the appropriation of revenues from the Marijuana Cash Fund.

### Staff Recommendations on Retail Marijuana Revenues Collected by the State as a Result of the Passage of Proposition AA

Staff recommends the following:

- That the Committee not try to "chase the forecasts" but instead wait for actual data that will more accurately predict the ultimate revenue collections.
- At a later time, the Committee and the General Assembly as a whole will decide what course of action to pursue if revenues exceed the TABOR limit for FY 2014-15.
- Staff recommends that the Committee use the mechanism described in Option 1 below to fund any of the Governor's February 18, 2014, marijuana package requests. Option 1 transfers the revenues from the Marijuana Cash Fund to the General Fund and appropriates money out of the General Fund for programs in the following fiscal year. **Please note that this recommendation excludes request BA18 in the Department of Revenue for programming costs related to H.B. 13-1318 and HB 13-1042. Request BA18 is for direct funding of expenditures in the Department of Revenue for computer programming costs that are already allowed by current statute regulating expenditures out of the Marijuana Cash Fund.**

### Staff Recommendations on the Mechanism for Distributing Marijuana Cash Fund Revenues for Additional Programs

Staff recommends that the Committee consider three options for choosing a mechanism to allocate revenues from the Marijuana Cash Fund for additional programs. The three models are described below. **Staff recommends the Committee use the model described in Option 1.**

Please note that the Governor's request was made assuming a method similar to option 3 and assuming that there are no TABOR implications associated with the receipt of MCF moneys.

#### 1). Option 1.

##### **Transfer Additional Revenues from the Marijuana Cash Fund to the General Fund and Appropriate Out of the General Fund for Programs in the Following Fiscal Year.**

This option envisions paying for Department of Revenue marijuana industry regulatory functions out of the Marijuana Cash Fund and transferring any additional revenues from the MCF to the General Fund. The Committee could consider one transfer per year in the fiscal year following the fiscal year in which the revenues were collected. The revenues transferred into the General Fund can then be appropriated out of the General Fund in the fiscal year in which they are transferred. This method would eliminate the volatility of forecasting marijuana tax revenues and

would allow the General Assembly to appropriate General Fund moneys for programs based on the quarterly forecasts of General Fund revenues provided by Legislative Council Staff (LCS) or Office of State Planning and Budgeting (OSPB). **Staff recommends the Committee adopt this option because it provides the General Assembly with the most flexibility when appropriating funds from marijuana taxes; it is similar to the way liquor taxes are treated, and the least complex to implement from a statutory perspective.**

If the Committee chooses this option, the Committee should consider including conforming language to eliminate the \$2.0 million transfer from the MCF to the General Fund that occurs each year as described in the Marijuana Taxes and Fees Overview section of this report. The Committee should also take into consideration the fact that the actual question put to the voters in Proposition AA included language indicating the additional sales tax rate be used to fund “the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters”. The enabling statutes did not contain this same description. Section 39-28.8-203, (1) (b), C.R.S. states in part: “...to be used for the enforcement and regulations of on the retail marijuana industry and for other purposes of the fund as determined by the general assembly”. While the statute appears to permit the General Assembly to utilize the revenues for any purpose, the Proposition AA language may be interpreted to be more restrictive. Based on advice from OLLS, it is ultimately up to the General Assembly to determine the use of the funds.

## **2). Option 2.**

### **Use a Model Similar to the Limited Gaming Tax Revenue Distributions Model.**

The State's share of tax revenue generated from limited gaming in Black Hawk, Central City, and Cripple Creek is deposited in the Limited Gaming Fund as it is remitted to the Department of Revenue during a fiscal year. On the last day of each fiscal year, moneys are transferred from the Limited Gaming Fund to a series of statutorily-created funds. The General Assembly makes annual appropriations to agencies in the following fiscal year from these statutorily-created funds. For example, limited gaming tax revenue remitted to the Department of Revenue during FY 2013-14 is available for annual appropriations for FY 2014-15. Since limited gaming tax revenue amounts vary from year to year, this timing mechanism is advantageous to the General Assembly because funds are appropriated in amounts based on projections that use eight months of actual remittances rather than projections that use prior year remittances. A similar structure could be created to fund programs out of the Marijuana Cash Fund. Staff is not recommending this option because of the statutory complexity and rigidity that is required in order to establish the cash funding for the various programs that are going to receive marijuana revenues.

## **3). Option 3.**

### **Use a Model Similar to the Severance Tax Operational Fund Revenue Distributions Model.**

Statute deposits 25.0 percent of total severance tax revenues into the Severance Tax Operational Fund. Unlike gaming revenues, which are spent in the following year, the State spends severance tax revenues in the year of collection and generally budgets to the Legislative Council Staff forecast of severance tax revenues for a given year. In prior years, fluctuations in the revenue forecast have required mid-year adjustments in order to balance appropriations with anticipated revenues. More recently, the General Assembly has established a system of proportional reductions that affect a subset of Operational Fund programs (so called Tier 2

programs) in the event that revenues are not sufficient to support statutory authorizations. The use of current year revenues avoids the need to wait to spend the funds in the following year but reduces certainty about the available funds, particularly with a fluctuating revenue source. Therefore, mid-year adjustments, both increases and decreases, may result in the need for numerous supplementals for the various programs funded with this methodology. A similar structure could be created to fund programs out of the Marijuana Cash Fund. Staff is not recommending this option due to the irregularity of the revenue stream, lack of history with regard to marijuana tax collections, and the complexities of the mid-year adjustments that could be experienced with this method.



## **Staff Criteria for Analysis of Individual Requests**

JBC staff will analyze each request based on its merits and will utilize the following questions for that process:

- Is the proposal for a new program or existing program?
- Is the proposal one-time or ongoing?
- Is the proposal connected to marijuana?
- Is the proposal addressed in the Constitution?
- Is the proposal addressed in Proposition AA?
- Is the proposal addressed in current statute?
- How does this proposal relate to what is already being done?
- Why is this proposal urgent now?
- Should the Committee fund the proposal?
- What funding source should be used to fund the proposal?
- What changes, if any, are required to implement the proposal?

## **Individual Requests and Staff Recommendations**

This section addresses the individual requests and contains the associated Joint Budget Committee staff analysis and recommendation for each request.

## **EDU: Behavioral health issues in public schools (BA1)**

### **Request**

The Department of Education requests an increase of \$5,000,000 cash funds from the Marijuana Cash Fund and 1.0 FTE for FY 2014-15 to provide matching grants to school districts, local education authorities, and charter schools to increase the presence of health professionals in schools to provide substance abuse and behavioral health care to students. The Department proposes to focus efforts on secondary schools to provide screenings, referrals to community organizations, and training for staff and students on substance abuse and mental health. The requested funds are ongoing into future fiscal years.

The Department proposes an ongoing program with a four-year grant cycle. According to the Department, there are currently 470 school nurses and various other school health professionals (including school psychologists, social workers, and regional health coordinators) working in Colorado schools. The Department estimates that the requested funding would allow local education authorities to hire at least 80 additional school health professionals statewide (an increase of 17.0 percent).

### **Linkage to Marijuana**

The Department anticipates that legalization of marijuana for adult use will increase minors' access to (and use of) marijuana. The Department reports anecdotal evidence of increased use, as indicated by calls to the Department from school staff seeking advice, reports of increased incidents of use, and increased drug-related suspensions. The Department reports that marijuana is a major driver of student suspensions and expulsions; for example, more than 30.0 percent of students served by the Expelled and At-Risk Student Services (EARSS) grant program in FY 2012-13 were expelled due to marijuana violations. While the linkage to marijuana is clear, staff believes the linkage to marijuana *legalization* is unclear because there has not been enough time to evaluate the impact of legalization on youth use.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not address using tax revenues from the sale of marijuana to support school health professionals.

### **Proposition AA**

As it relates to this proposal, Proposition AA does not address the use of funds to support school health professionals. Proposition AA allows the 10.0 percent sales tax on retail marijuana and related products to be used to fund "other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters." Given the broad nature of this language, supporting school health professionals to improve substance abuse treatment for minors could possibly be considered an "other cost" of implementation although the proposal is not a regulatory program. The less restricted revenues (standard sales tax and the 15.0 percent excise tax) could both presumably support the proposed program.

## **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S., names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The statute does not name the Department of Education as an eligible recipient of appropriations from the Marijuana Cash Fund and does not include increased support for school health professionals as a named purpose for appropriations from the Marijuana Cash Fund.

## **Request's Relationship to Existing Program(s)**

According to the Department, approximately 470 school health professionals are working in Colorado public schools. The State does not currently provide specific funding to support school nurses but does provide *related* funding through at least three programs: (1) Medicaid funds from the Department of Health Care Policy and Financing reimburse schools for certain health care services provided to Medicaid-eligible students; (2) the Department of Public Health and Environment supports School-based Health Centers; and (3) the Department of Education supports health education programs through the Comprehensive Health Education categorical program.

## **Staff Recommendation**

Staff recommends rejecting this proposal for two reasons.

- First, staff believes the proposal is premature. The request is based on assumptions of increased access and use by minors as a result of legalization without data (other than anecdotal evidence) to document such issues. At this point, the impact of legalization of marijuana for adult use is unknown. The Department provides evidence that marijuana use remains an ongoing problem for schools and students but does not yet have data to demonstrate increased use *as a result of legalization*. While additional support for school health professionals may be appropriate and advisable, the linkage to marijuana legalization and the Marijuana Cash Fund is not clear.
- Second, Marijuana Cash Fund revenues are uncertain and may not be available to support the proposed program in FY 2014-15 and beyond. The Department's proposal would create an ongoing program to support additional health professionals. While hiring additional school health professionals may be desirable, staff recommends allowing time to evaluate the actual availability of revenues before creating an ongoing program to hire additional staff using Marijuana Cash Fund revenues.

Based on these two concerns, if the General Assembly wishes to invest an additional \$5.0 million in the Department of Education in FY 2014-15, staff would recommend increasing the state share of districts' total program funding (and reducing the negative factor) by that amount, using either General Fund or the State Education Fund. Doing so would allow the districts and schools to prioritize the use of funding based on local needs. In locations where marijuana use is a particularly pressing priority, the districts could use the additional funding to address that issue through the addition of school health professionals. If districts elected to hire additional health professionals, the use of a fund source other than the Marijuana Cash Fund would also make clear that the positions' responsibilities go beyond marijuana use and related issues.

## **Recommendation Requirements**

Given that staff recommends rejecting the request, the recommendation requires no additional action. However, if the Committee elects to fund the Department's request, doing so would require legislation to amend Section 12-43.3-501 (b), C.R.S., to authorize the Department of Education to receive appropriations from the Marijuana Cash Fund. Under that scenario, staff would recommend using that legislation to create the grant program in statute, identify the goals of the program, establish criteria for the selection of grant recipients, and make the program eligible to receive appropriations from the Marijuana Cash Fund. Finally, staff suggests that any such bill include a corresponding appropriations clause to provide the funding and 1.0 FTE to support the program in FY 2014-15, if the Committee chooses to fund this request.

## **EDU: Additional school resource officers (BA2)**

### **Request**

The Department of Education requests an increase of \$6,000,000 cash funds from the Marijuana Cash Fund and 1.0 FTE for FY 2014-15 to provide matching grants to school districts, local education authorities, and charter schools to increase the presence of school resource officers (SROs) to deter the use, possession, and sale of marijuana on school property and to enhance student safety. The requested funds are ongoing into future fiscal years.

The Department proposes a new program with a four-year grant cycle to support additional SROs. According to the Department, there are currently between 150 and 250 SROs working in Colorado schools at any given time (the Department reports that personnel turnover and budget constraints cause the number to fluctuate). The Department estimates that the requested funding would allow for 60 additional SROs (serving between 70 and 80 additional schools).

### **Linkage to Marijuana**

The Department anticipates that legalization of marijuana for adult use will increase minors' access to (and use of) marijuana. The Department reports anecdotal evidence of increased use, as indicated by calls to the Department from school staff seeking advice, reports of increased incidence of use, and increased drug-related suspensions. The Department reports that marijuana is a major driver of student suspensions and expulsions; for example, more than 30.0 percent of students served by the Expelled and At-Risk Student Services (EARSS) grant program in FY 2012-13 were expelled due to marijuana violations. While the linkage to marijuana is clear, staff believes the linkage to marijuana *legalization* is unclear because there has not been enough time to evaluate the impact of legalization on youth use.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not address using tax revenues from the sale of marijuana to support SROs.

### **Proposition AA**

As it relates to this proposal, Proposition AA does not address the use of funds to support SROs. Proposition AA allows the sales tax of 10.0 percent on the sale of retail marijuana and related products to be used to fund "other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters." Given the broad nature of this language, supporting SROs to deter use by minors could be considered an "other cost" of implementation. The less restricted revenues (standard sales tax and the 15.0 percent excise tax) could both presumably support the proposed program.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S., names the recipients and purposes eligible to receive appropriations from the Marijuana Cash Fund. The statute does not name the Department of Education as an eligible recipient of appropriations from the Marijuana Cash Fund and does not include increased support for SROs as a named purpose for appropriations from the Marijuana Cash Fund.

## **Request's Relationship to Existing Program(s)**

As mentioned above, the Department estimates that there are currently 150 to 250 SROs working in Colorado schools at a given time. The State does not currently provide specific funding to the Department of Education support the hiring and retention of SROs. School districts do, however, work with local law enforcement agencies to support SROs within their existing resources.

## **Staff Recommendation**

Similar to Education BA1, staff recommends rejecting this proposal for two reasons.

- First, staff believes the proposal is premature. The request is based on assumptions of increased access and use by minors as a result of legalization without data (other than anecdotal evidence) to document such issues. At this point, the impact of legalization of marijuana for adult use is unknown. The Department provides evidence that marijuana use remains an ongoing problem for schools and students but does not yet have data to demonstrate increased use as a result of legalization. While additional support for SROs may be appropriate and advisable, the linkage to marijuana legalization and the Marijuana Cash Fund is not clear.
- Second, Marijuana Cash Fund revenues are uncertain and may not be available to support the proposed program in FY 2014-15 and beyond. The Department's proposal would create an ongoing program to support additional SROs. While hiring additional SROs may be desirable, staff recommends allowing time to evaluate the actual availability of revenues before creating an ongoing program to hire additional officers.

Based on these concerns, if the General Assembly wishes to invest an additional \$6.0 million in the Department of Education in FY 2014-15, staff would recommend increasing the state share of districts' total program funding (and reducing the negative factor) by that amount using either General Fund or the State Education Fund. Doing so would allow the districts and schools to prioritize the use of funding based on local needs. In locations where marijuana use was a particularly pressing priority and SROs were a promising tool, the districts could use the additional funding to address that issue through the addition of SROs.

## **Recommendation Requirements**

Given that staff recommends rejecting the request, the recommendation requires no additional action. However, if the Committee elects to fund the Department's request, doing so would require legislation to amend Section 12-43.3-501 (b), C.R.S., to authorize the Department of Education to receive appropriations from the Marijuana Cash Fund. Under that scenario, staff would recommend using that legislation to create the grant program in statute, identify the goals of the program, establish criteria for the selection of grant recipients, and make the program eligible to receive appropriations from the Marijuana Cash Fund. Finally, staff suggests that any such bill include a corresponding appropriations clause to provide the funding and 1.0 FTE to support the program in FY 2014-15, if the Committee chooses to fund this request.

## **GOV: Youth marijuana education public awareness campaign (S1)**

### **Request**

The Office of the Governor requests an increase of \$500,000 cash funds for FY 2013-14 from the Marijuana Cash Fund to create a new program that implements a public awareness campaign to increase youth (12 to 20 years old) understanding of the risks associated with marijuana use. The Office also seeks roll-forward authority to expend the requested funds in FY 2013-14 and FY 2014-15. While the requested funds are not ongoing into future fiscal years, provided documentation indicates that the Department of Public Health and Environment will oversee educational efforts following the completion of this initiative.

### **Linkage to Marijuana**

The requested funding for the development of a youth marijuana education campaign has a direct relationship to the usage of marijuana authorized by Colorado voters. It is hypothesized that the legalization of marijuana use for adults could change youth attitudes on marijuana use toward acceptance. Substance use disorder professionals contend that youth marijuana use should be discouraged because it can have negative physical, psychological, and behavioral impacts.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 indicates that selling, distributing, or transferring marijuana to individuals under the age of 21 shall remain illegal, and consumers of marijuana are stated to be persons 21 years of age or older. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Youth marijuana education could be considered an “other cost” associated with the use of retail marijuana.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Office of the Governor is not named as an eligible recipient of appropriations from the Marijuana Cash Fund and youth education is not a named purpose for appropriations from the Marijuana Cash Fund. Additionally, Section 24-20-112 (5), C.R.S. requires the Governor to designate a State agency to establish educational materials regarding appropriate retail marijuana use and prevention of marijuana use by those less than twenty-one years of age. There is no nexus between this request and the eligible purposes of moneys in the Marijuana Cash Fund.

### **Request’s Relationship to Existing Program(s)**

The Department of Human Services’ Office of Behavioral Health currently administers a variety of substance use disorder prevention programs funded by the federal Substance Abuse Prevention and Treatment Block Grant and the Adolescent Substance Abuse Prevention and



Treatment Fund (surcharge on underage possession or consumption of alcohol). These programs do not include a public awareness campaign to increase youth understanding of the risks associated with marijuana use, as is articulated in this proposal.

### **Analysis of Request**

The National Institute on Drug Abuse states that while marijuana use by adolescents declined from the late 1990s until the mid-to-late 2000s, it has been on the increase since then. In 2013, 7.0 percent of 8th graders, 18.0 percent of 10th graders, and 22.7 percent of 12th graders used marijuana in the past month, up from 2008. Daily use has also increased, with 6.5 percent of 12th graders now using marijuana every day, compared to 5 percent in the mid-2000s. The Institute relays that rising marijuana use reflects changing perceptions and attitudes. Historically, as perception of risks goes down, use goes up (and vice versa). Young people are showing less disapproval of marijuana use and decreased perception that marijuana is dangerous.

According to 2011-12 data from the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), nearly 8 in 10 (78.4 percent) of 12 to 17 year olds in Colorado perceived no great risk from smoking marijuana once a month. While this percentage did not change dramatically in the four years prior to this study, it does represent a rate higher than the national rate of 73.0 percent. These data, however, were collected prior to the legalization of retail marijuana in Colorado and Washington.

Some, including the National Council on Alcoholism and Drug Dependence, Inc. (NCADD), are making predictions about youth marijuana usage and perception in the absence of data. NCADD believes that the legalization of retail marijuana may not drive up overall prevalence of teen marijuana use, but it may lead to increased use among those already using, including teens who are already smoking marijuana almost daily.

### **Staff Recommendation**

Staff believes the requested proposal is pre-mature. No data exist on which to make projections on how marijuana legalization for adult consumption in Colorado will affect youth perception (and associated usage). Staff recommends denying the current request and revisiting the proposal after data are available. If data show that a problem exists that has been exacerbated by the legalization of marijuana for adult consumption, the Committee should investigate the causes (perception, regulatory, and/or enforcement) and fund the tool(s) most appropriate to mitigate the cause(s).

### **Recommendation Requirements**

If the Committee opts to fund the Office's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to authorize the Office of the Governor as eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The legislation must also amend this section of statute to designate youth education as a purpose for appropriations from the Marijuana Cash Fund. Additionally, staff suggests that the bill include a corresponding appropriations clause to provide \$500,000 for a youth marijuana education campaign, if the Committee chooses to fund this request. Staff does not recommend providing roll-forward authority.

## **GOV: Drug Policy Office creation (BA3)**

### **Request**

The Office of the Governor requests an increase of \$190,000 cash funds and 2.0 FTE for FY 2014-15 from the Marijuana Cash Fund to establish a new Drug Policy Office to coordinate the executive branch response to the legalization of recreational marijuana. This response includes strategic planning, coordination of regulations, educational content planning and implementation, community engagement, budget coordination, and data collection and analysis functions. The requested funds are ongoing into future fiscal years.

### **Linkage to Marijuana**

The requested funding to establish a Drug Policy Office to coordinate the executive branch response to the legalization of recreational marijuana has a direct relationship to the usage of marijuana authorized by Colorado voters.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not directly address using tax revenues from the sale of marijuana to establish a Drug Policy Office to coordinate the executive branch response to the legalization of recreational marijuana. Amendment 64, however, does indicate that marijuana “should be regulated in a manner similar to alcohol,” and a policy office for alcohol does not currently exist in State government to coordinate the executive branch response to the legalized sale and consumption of alcohol.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund “other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters.” Given the broad nature of this language, establishing a Drug Policy Office to coordinate the executive branch response to the legalization of recreational marijuana could be considered an “other cost.”

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Office of the Governor is not named as an eligible recipient of appropriations from the Marijuana Cash Fund and the creation of a Drug Policy Office is not a named purpose for appropriations from the Marijuana Cash Fund.

### **Request’s Relationship to Existing Program(s)**

While the Department of Human Services’ Office of Behavioral Health is responsible for policy development, service provision and coordination, program monitoring and evaluation, and administrative oversight for the public behavioral health system, there is not a single agency responsible for coordinating the executive branch response to the legalization of recreational marijuana.

## **Staff Recommendation**

Staff recommends rejecting this proposal for three reasons. First, it creates a new office tasked with coordinating the response to issues that have not been identified. Second, voters approved the regulation and consumption of retail marijuana to remove government from expending funds on influencing the behavior of adults as it relates to the consumption of marijuana. The creation of a Drug Policy Office represents a contrary action may be viewed as inconsistent with the wishes of the voters to treat marijuana similar to alcohol. Third, the implementation of a drug policy office is not an effective strategy for limiting the use of marijuana consumption by adults and youth (assuming that this is one of the goals of this request). For example, the Governor's Office of Drug Control Policy in the State of Iowa reports that the proportion of its residents (both adults and youth) entering substance treatment primarily due to marijuana use has reached its highest point in 20 years (26.7 percent) in 2013 despite its efforts. Additionally, the Iowa Department of Public Health indicates that the proportion of Iowa juveniles entering substance treatment primarily due to marijuana use has reached its highest point in 20 years (69.3 percent) in 2013 despite the presence of a drug policy office.

## **Recommendation Requirements**

If the Committee opts to fund the Office's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to authorize the Office of the Governor as eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The legislation must also amend this section of statute to create a Drug Policy Office (and define the functions of such office) and authorize it as eligible for appropriations from the Marijuana Cash Fund. Additionally, staff suggests that the bill include a corresponding appropriations clause to provide \$190,000 and 2.0 FTE for FY 2014-15 to fund the Office, if the Committee chooses to fund this request.

## HCP: Enhanced Medicaid substance use disorder benefit (BA4)

### Request

The Department of Health Care Policy and Financing (HCPF) requests \$29,260,038 (including \$10,906,372 General Fund, \$61,261 cash funds<sup>1</sup>, and \$18,292,405 federal Medicaid funds) for FY 2014-15 to expand the Medicaid substance use disorder (SUD) benefit. The expanded services would be implemented July 1, 2014, and would include the following:

- intensive outpatient services;
- inpatient/residential treatment; and
- other ancillary SUD services.

As with the existing Medicaid SUD benefit, HCPF would pay a pre-determined monthly amount to behavioral health organizations (BHOs) for each Medicaid client who is eligible for services within each BHO's geographic area. Each BHO would be responsible for providing or arranging for medically necessary services for clients within their geographic region who are eligible for and enrolled in the Medicaid program.

For FY 2015-16, HCPF indicates that it would require \$32,330,216 (including \$11,876,714 General Fund, \$66,620 cash funds, and \$20,386,882 federal Medicaid funds). The amount requested for FY 2014-15 and the estimate for FY 2015-16 are based on HCPF's February 2014 Medicaid caseload forecast and rates that are derived based on information from HCPF's contracted actuary.

The Governor's letter to the Joint Budget Committee, dated February 18, 2014, indicates that **this proposal would require a statutory change to transfer \$11,615,286 from the Marijuana Cash Fund (MCF) to the General Fund** to provide the state match for the federal Medicaid program. The proposed transfer amount includes the \$10,906,372 requested, plus \$708,914 for the associated 6.5 percent General Fund reserve. The letter indicates that the transfer is proposed "to avoid any delay in implementation that could result from federal concerns of matching money from marijuana sales in Colorado". The proposal does not indicate whether this transfer would come from excess excise tax revenues or sales tax revenues. It is also not clear whether the intent is to make similar transfers in subsequent fiscal years.

### Linkage to Marijuana

The Governor's letter to the Joint Budget Committee, dated February 18, 2014, indicates that the Department proposes to enhance the SUD benefit "for Medicaid individuals who use marijuana to produce better health outcomes and lower costs over time." However, the SUD benefit would be available to any Medicaid client who has a covered diagnosis for whom one of these services is medically necessary. The proposed expanded SUD benefit would not be limited to individuals who use marijuana.

<sup>1</sup> The source of cash funds is the Hospital Provider Fee Cash Fund.

The proposal also indicates:

"Residential care plays an important role in the continuum of treatment for patients with substance use disorders. This is particularly true with the recent legalization of marijuana, as it is likely that there will be a greater need for intervention services for individuals who are marijuana regular users."

While it is possible that some individuals who are eligible for Medicaid and who use marijuana regularly may benefit from the proposed expanded SUD benefit, the proposal does not include any information that indicates that those who use marijuana are the clients most likely to need intensive outpatient services or inpatient/residential treatment. In addition, there is no data available to indicate what impact, if any, the implementation of the use and regulation of retail marijuana will have on Medicaid clients' need for intensive outpatient SUD treatment or inpatient/residential SUD treatment.

### **Constitutional Authorization**

The constitution does not address state funding for substance use disorder services. The use of any marijuana excise tax revenues that exceed the first \$40.0 million is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

Proposition AA requires the following to be credited to the Marijuana Cash Fund (MCF): excise tax revenues in excess of \$40.0 million; the state share of retail marijuana sales tax revenues; and sales tax revenues on medical and retail marijuana (from the 2.9 percent state sales tax).

- The ballot question that was submitted to voters regarding the imposition of retail marijuana sales and excise tax (Proposition AA), as codified in Section 39-28.8-401, C.R.S., indicated that revenues from the additional 10.0 percent sales tax on the sale of retail marijuana and retail marijuana products would be used "to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters"<sup>2</sup>.
- The ballot question was silent concerning the use of excise tax revenue in excess of the first \$40 million, as well as the use of revenues from the 2.9 percent state sales tax.

There does not appear to be a direct linkage between this proposal and "other costs related to the implementation of the use and regulation of retail marijuana". The requested transfer could, however, be authorized to come from excess excise tax revenues or the 2.9 percent state sales tax revenues.

<sup>2</sup> Please note, however, that Section 39-28.8-203 (1) (b), C.R.S., states that the additional sales tax revenues that are transferred from the General Fund to the MCF are "to be used for the enforcement of regulations on the retail marijuana industry and for the other purposes of the fund as determined by the general assembly."

## **Statutory Authorization**

This proposal would require a statutory change to authorize the transfer of moneys in the MCF to the General Fund to support the costs of the Medicaid SUD benefit.

## **Request's Relationship to Existing Program(s)**

Most mental health services are provided to Medicaid clients through a statewide managed care or "capitated" program. Under capitation, HCPF contracts with BHOs to provide or arrange for *mental health services* for clients within their geographic region who are eligible for and enrolled in the Medicaid program. In order to receive services through a BHO, a client must have a covered diagnosis, and receive a covered service or procedure that is medically necessary. Services provided include: inpatient hospitalization, psychiatric care, rehabilitation, and outpatient care; clinic services, case management, medication management, and physician care; non-hospital residential care as it pertains to mental health; and alternatives to institutionalization.

Since January 1, 2014, BHOs have also been responsible for providing or arranging for *SUD services* for Medicaid clients. Currently, the covered SUD services are limited to the following:

- alcohol/drug assessment;
- detoxification services;
- individual and group behavioral health therapies;
- targeted case management;
- drug screening and monitoring;
- medication assisted treatment; and
- peer advocate services.

For FY 2014-15, these services are anticipated to cost a total of \$12.4 million. Through this request, the Department proposes adding: inpatient treatment (*i.e.*, in a psychiatric hospital); residential treatment (*i.e.*, 24-hour care in a setting that is not a hospital or nursing home); intensive outpatient services; and other ancillary SUD services (such as laboratory work, emergency room services, and services rendered by federally qualified health centers) in order to provide a full continuum of SUD services for Medicaid clients with varying levels of acuity. HCPF estimates that 5,700 to 8,000 Medicaid clients would access the enhanced SUD benefits; most of these clients are likely to be utilizing the existing SUD benefits. Among Medicaid eligibility categories, low income adults and adults without dependent children are expected to have the highest utilization rates, followed by individuals with disabilities under age 64.

## **Analysis of Request**

During the 2013 legislative session, the General Assembly authorized the expansion of SUD treatment services and a shift from a fee-for-service model to a managed care model for the provision of SUD services. This policy change, which was implemented January 1, 2014, is intended to move away from an acute care model that provides only short-term, episodic treatment to a model that provides a continuum of services to support client wellness and recovery. However, the existing SUD benefit for Medicaid clients is still limited as it excludes inpatient and residential treatment, intensive outpatient services; and other ancillary SUD services such as emergency room services. As noted in the JBC staff briefing dated November

15, 2012, an SUD benefit plan "lacking residential treatment options to address severe SUD needs does not represent a comprehensive strategy for attaining positive patient health outcomes and ultimately decreasing costs".

Through this proposal, HCPF seeks to expand the Medicaid SUD benefit to include more intensive treatment options to provide a full continuum of SUD services. For some clients, this level of treatment is needed and would increase the likelihood of a client's successful recovery. HCPF cites studies that link residential treatment to reductions in criminal activity and fewer emergency room visits.

In addition, HCPF notes that the Department of Human Services (DHS) currently utilizes federal block grant funds to pay for residential treatment services. However, the scope of what they are able to fund does not allow uniform access for Medicaid clients. If the Medicaid SUD benefit is expanded to include inpatient and residential treatment, DHS could spend federal block grant funds on other activities (*e.g.*, expanding the availability of residential treatment for individuals who are not eligible for Medicaid).

### **Staff Recommendation**

Staff agrees that the Medicaid SUD benefit should be expanded to cover more intensive services, thereby providing a full continuum of care. The expanded benefit would increase the likelihood of success for those clients with the most severe disorders, and thus would likely reduce overall Medicaid expenses for these clients over time. In addition, some private inpatient psychiatric hospitals report problems with the behavioral health services currently covered by Medicaid. Specifically, these hospitals report that they receive referrals for Medicaid clients who require inpatient psychiatric care; they admit the patient and begin providing treatment. The hospital later learns that the BHO will not pay for the inpatient care because the patient's need for care is related to a substance use issue. The hospital is legally obligated to continue providing inpatient care to the client as long as it is necessary, but receives no reimbursement from the BHO. These private hospitals believe that the only way to address this billing issue is to expand the Medicaid SUD benefit to include inpatient SUD treatment.

However, staff recommends denying the request for FY 2014-15 for two reasons. First, staff is concerned about the proposed time frame. Every five years the Department uses a competitive bid process to award BHO contracts for each region. Current contracts will expire June 30, 2014, so the Department will award new contracts effective July 1, 2014. Final selection of the BHOs is pending a protest period. Staff is concerned that HCPF and BHOs may not have sufficient time to prepare for the provision of these services by July 1, 2014. The Department indicates that relationships currently exist between BHOs and residential treatment providers, and the BHOs should be able to link clients to these services relatively quickly once it is included within the scope of their contract. HCPF's actuary has already developed rates for the service, so these rates can be incorporated into the new contracts. However, implementation cannot begin until federal approval is obtained. When HCPF submitted a proposal in November 2012 to add the SUD benefit to BHOs, it proposed that services begin January 1, 2014. Given that this proposal was submitted February 18, 2014, a July 1, 2014, start date seems ambitious.

In addition, the General Assembly has made significant investments in the last two years in expanding access to behavioral health services, and it seems prudent to wait at least a year to evaluate the need for and cost of expanding the Medicaid SUD benefit. Based on the Committee's actions on March 5 and assuming that the Committee ultimately votes to fully fund the behavioral health crisis response system in FY 2014-15, the total amount of state and federal funding that the Committee will recommend for behavioral health services provided through the HCPF and DHS will represent a \$285.4 million (56.0 percent) increase compared to FY 2012-13. In addition, based on the Committee's actions to date, state support for community-based substance abuse services that other state agencies provide for offenders will be \$6.2 million higher in FY 2014-15 than it was in FY 2012-13. This increase includes a significant investment in intensive residential treatment beds for high risk/high needs offenders. Thus, the General Assembly has already taken action to expand access to intensive residential treatment for those individuals most likely to engage in criminal activity.

Second, staff is concerned with the proposed funding source (a transfer from the MCF to the General Fund). The proposed services would be an entitlement for Medicaid clients and the costs of such services will fluctuate over time and may increase faster than marijuana tax revenues. Given the uncertainty concerning projections of marijuana tax revenues, as well as the lack of a direct linkage between the recent legalization of retail marijuana and the services proposed through this request, staff believes that the proposed transfer is inappropriate. If the Committee elects to approve the proposed funding mechanism, staff recommends specifying that the transfer is from excess excise tax revenues and/or the 2.9 percent state sales tax revenues (and not from the additional 10.0 percent sales tax).

### **Recommendation Requirements**

If the Committee opts to approve this request, the Committee would need to introduce legislation authorizing the transfer of moneys in the MCF to the General Fund to support the costs of the Medicaid SUD benefit.

Alternatively, the Committee could choose to fund this request through the FY 2014-15 Long Bill, as long as sufficient General Fund revenues are available to implement and sustain the expanded SUD benefit. If the Committee selects this option, staff recommends appropriating half the requested funding and delaying implementation until January 1, 2015.



## **HCP: School-based prevention and intervention services (BA5)**

### **Request**

The Department of Health Care Policy and Financing (HCPF) requests \$13,000,000 (including \$5,958,100 General Fund and \$7,041,900 federal funds<sup>3</sup>) for FY 2014-15 to increase the availability of school-based prevention and early intervention substance use disorder (SUD) services. HCPF would purchase these services by expanding the scope of existing contracts with behavioral health organizations (BHOs) and Child Health Plan Plus (CHP+) managed care organizations (MCOs). The proposal would increase payments to BHOs by \$10.0 million and increase payments to MCOs by \$3.0 million. HCPF anticipates that the funding would continue at the same level in subsequent fiscal years.

The Governor's letter to the Joint Budget Committee, dated February 18, 2014, indicates that **this proposal would require a statutory change to transfer \$6,345,377 from the Marijuana Cash Fund (MCF) to the General Fund** to provide the state match for the federal Medicaid program. The proposed transfer amount includes the \$5,958,100 requested, plus \$387,277 for the associated 6.5 percent General Fund reserve. The letter indicates that the transfer is proposed "to avoid any delay in implementation that could result from federal concerns of matching money from marijuana sales in Colorado". The proposal does not indicate whether this transfer would come from excess excise tax revenues or sales tax revenues. It is also not clear whether the intent is to make similar transfers in subsequent fiscal years.

### **Linkage to Marijuana**

The requested funding for school-based programs to reduce the initiation of or use of marijuana or other drugs has a direct relationship to the usage of marijuana authorized by Colorado voters. Section 16 (6) (b) of Article XVIII of the Colorado Constitution states that: "Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana."

The proposal is based on the assumption that the recent legalization of retail marijuana is likely to increase the number of underage youth who use marijuana and potentially other drugs. HCPF provides data to indicate that school-based prevention and early intervention programs can successfully reduce the use of marijuana and other drugs. HCPF indicates that it would prioritize programs that aim to prevent and reduce alcohol and cannabis use as well as related harms.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 indicates that selling, distributing, or transferring marijuana to individuals under the age of 21 shall remain illegal, and consumers of marijuana are stated to be persons 21 years of age or older. The use of any marijuana excise tax revenues that exceed the first \$40.0 million is not directly addressed in the provisions of Amendment 64.

<sup>3</sup> The sources of federal funds include Title XIX (Medicaid) and Title XXI (State Children's Health Insurance Program).

## **Proposition AA**

Proposition AA requires the following to be credited to the Marijuana Cash Fund (MCF): excise tax revenues in excess of \$40.0 million; the state share of retail marijuana sales tax revenues; and sales tax revenues on medical and retail marijuana (from the 2.9 percent state sales tax).

- The ballot question that was submitted to voters regarding the imposition of retail marijuana sales and excise tax (Proposition AA), as codified in Section 39-28.8-401, C.R.S., indicated that revenues from the additional 10.0 percent sales tax on the sale of retail marijuana and retail marijuana products would be used "to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters"<sup>4</sup>.
- The ballot question was silent concerning the use of excise tax revenue in excess of the first \$40 million, as well as the use of revenues from the 2.9 percent state sales tax.

There is a linkage between this proposal and "other costs related to the implementation of the use and regulation of retail marijuana". The requested transfer could also be authorized to come from excess excise tax revenues or the 2.9 percent state sales tax revenues.

## **Statutory Authorization**

This proposal would require a statutory change to authorize the transfer of moneys in the MCF to the General Fund to support the costs of school-based prevention and early intervention SUD services.

## **Request's Relationship to Existing Program(s)**

HCPF indicates that the BHOs currently provide services in approximately 230 schools (out of a total of 1,792), and the requested funds would allow BHOs to expand services to additional schools. HCPF indicates that it would work with the MCOs to alter their scope of work to include the new services in their contracts. Thus, it appears that the proposal would expand existing BHO services, and authorize new services for MCOs. HCPF also notes that the Department of Education has submitted a request to increase the number of health professionals available to serve youth in schools, and the departments are working together to coordinate these services.

The requested funds would essentially be an add-on to the existing contracts, and would be incorporated into the rates paid to BHOs and MCOs. HCPF indicates that provision of these services is "highly scalable" (up or down), and the contractor scope could be modified accordingly. The amount requested was based on available funds, and is intended to provide an investment that is large enough to achieve meaningful results.

<sup>4</sup> Please note, however, that Section 39-28.8-203 (1) (b), C.R.S., states that the additional sales tax revenues that are transferred from the General Fund to the MCF are "to be used for the enforcement of regulations on the retail marijuana industry and for the other purposes of the fund as determined by the general assembly."

## **Analysis of Request**

HCPF indicates that in a large survey of adolescent health, Colorado ranked in the top 10 for rates of past-month marijuana and other illegal drug use among 12-year-olds and those between ages 18 and 25. HCPF also provides data from a 2009 study by the Department of Public Health and Environment that show that by the 12<sup>th</sup> grade 81 percent of Colorado teens have used alcohol at some point in their life, with almost 19 percent having had their first drink before age 13. HCPF cites a third study, conducted in 2012, which indicates that up to 56.5 percent of Colorado teens have used some form of illegal substance by the 12<sup>th</sup> grade, with up to 6.8 percent having used an illegal substance before age 13. The proposal states, "With the recent legalization of recreational marijuana, there is a clear need to increase the prevalence and availability of targeted outreach programs in schools."

HCPF proposes investing in school-based services because they are situated in a natural environment for children of all ages, may be more accessible to children and adolescents, and may be less stigmatizing than traditional clinic services. HCPF cites several studies that indicate that school-based programs can be successful in reducing the initiation of or use of marijuana or other drugs. Further, effective school-based substance abuse prevention programming would "offer State savings within 2 years in health services, education, and juvenile justice."

## **Staff Recommendation**

Staff recommends denying the request for several reasons. First, HCPF confirms that Medicaid funds can only support expenditures for individuals who are eligible for Medicaid, and CHP+ funds can only support expenditures for individuals who are eligible for CHIP+. Further, HCPF does not have authority to make General Fund-only payments to providers. Thus, the scope of the contractual requirements for BHOs and MCOs will be limited to Medicaid and CHP+ clients, respectively. While this service delivery method allows the State to draw down matching federal funds, staff believes that it would be an inefficient and ineffective way to provide school-based prevention and early intervention services given the eligibility criteria associated with the federal funds.

Second, it is not clear that this is an appropriate financing mechanism or contractual method for providing prevention and early intervention services. The behavioral health capitation program and the CHP+ program are managed care programs. Each BHO and MCO receives a flat rate for each eligible person and is responsible for arranging for or providing medically necessary services and procedures to eligible clients who have a covered diagnosis. The rates are actuarially determined based on utilization and average costs for certain diagnoses. The proposal would incorporate into those rates a discretionary lump sum of money for prevention and early intervention services for all school-aged Medicaid and CHP+ clients. Staff is concerned that by combining these two rate methodologies, it will be challenging to track and analyze utilization and expenditure trends for each respective program.

Third, while the proposal includes state and national data to define the problem (*i.e.*, rates of marijuana, alcohol, and drug use among youth and young adults and when use is initiated), as well as data about the success of some school-based programs, it lacks detail about how the requested funding would be used to effectively address the problem. HCPF indicates that BHOs are currently providing school-based prevention and early intervention SUD services, but does

not include any information about what services are currently provided, what types of schools or students are currently receiving the services, or the effectiveness of these existing services. The proposal states:

"The Department has begun the process of engaging its contractors to determine appropriate implementation strategies; ultimately, the Department anticipates that specific implementations are likely to vary by geographic region and school. Programs would be designed based on programs which have shown success in the past, with a strong focus on early intervention and prevention. The Department would prioritize programs that aim to prevent and reduce alcohol and cannabis use as well as related harms."

Given that the requested funding would be incorporated into the rates paid to BHOs and MCOs, it is unclear what HCPF's role would be in prioritizing which programs would be implemented. Staff assumes that each BHO and MCO would determine how to use the funds they receive, and which programs or strategies to implement. There is no evidence provided to lead one to conclude that HCPF, BHOs, or MCOs currently have the expertise, experience, or community relationships to provide effective school-based prevention and early intervention SUD services.

If the Committee elects to approve the request, staff recommends using a mechanism to fund this proposal from excess excise tax revenues and/or the 2.9 percent state sales tax revenues (and not from the additional 10.0 percent sales tax).

### **Recommendation Requirements**

If the Committee opts to approve this request, the Committee would need to introduce legislation authorizing the transfer of moneys in the MCF to the General Fund to support the costs of the school-based prevention and early intervention services.

## **HUM: Youth substance use disorder prevention services (BA6)**

### **Request**

The Department of Human Services (DHS) requests \$10,032,069 cash funds from the Marijuana Cash Fund (MCF) and 2.5 FTE for FY 2014-15 for a new marijuana, prescription drug, and alcohol misuse program for youth (ages 12 through 20). DHS would use the funding to provide 45 local community grants to implement evidence-based programs that would provide youth with the social, emotional, and educational resources needed to resist the initiation of substance use and other risky behaviors. DHS anticipates requiring ongoing funding of \$10,019,211 cash funds and 2.5 FTE for FY 2015-16.

### **Linkage to Marijuana**

The requested funding for a new marijuana, prescription drug, and alcohol misuse program for youth ages 12 through 20 has a direct relationship to the usage of marijuana authorized by Colorado voters. Section 16 (6) (b) of Article XVIII of the Colorado Constitution states that: "Nothing in this section is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana."

DHS provides data from a 2011 Healthy Kids Colorado Survey indicating that the top three substances that high school students report using at least once in their lifetime include: alcohol (65.5 percent of high school youth); marijuana (42.4 percent); and prescription drugs (19.6 percent). DHS indicates that the approval of medical and retail marijuana has resulted in two factors that increase the risk for youth to use marijuana: (1) decreased perception of harm (*i.e.*, that marijuana is medical and is now legal); and (2) increased availability of marijuana.

Further, DHS cites a 2012 federal Substance Abuse and Mental Health Services Administration (SAMHSA) study indicating that Colorado ranks in the top fifth among all 50 states for individuals aged 12 or older who used marijuana for the first time, as well as for individuals 12 and older who used marijuana in the past month and in the past year. Further, DHS cites data from the National Institute on Drug Abuse indicating that among youth receiving substance abuse treatment, marijuana accounts for the largest percentage of admissions: 63 percent among those ages 12 to 14, and 69 percent among those ages 15 to 17.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 indicates that selling, distributing, or transferring marijuana to individuals under the age of 21 shall remain illegal, and consumers of marijuana are stated to be persons 21 years of age or older. The use of any marijuana excise tax revenues that exceed the first \$40.0 million is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

Proposition AA requires the following to be credited to the Marijuana Cash Fund (MCF): excise tax revenues in excess of \$40.0 million; the state share of retail marijuana sales tax revenues; and sales tax revenues on medical and retail marijuana (from the 2.9 percent state sales tax).

- The ballot question that was submitted to voters regarding the imposition of retail marijuana sales and excise tax (Proposition AA), as codified in Section 39-28.8-401, C.R.S., indicated that revenues from the additional 10.0 percent sales tax on the sale of retail marijuana and retail marijuana products would be used "to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters"<sup>1</sup>.
- The ballot question was silent concerning the use of excise tax revenue in excess of the first \$40 million, as well as the use of revenues from the 2.9 percent state sales tax.

There is a linkage between this proposal and "other costs related to the implementation of the use and regulation of retail marijuana". The requested appropriation could also be authorized to come from excess excise tax revenues or the 2.9 percent state sales tax revenues.

### **Statutory Authorization**

This proposal would require a statutory change to authorize the appropriation of moneys in the MCF for a marijuana, prescription drug, and alcohol misuse program for youth.

### **Request's Relationship to Existing Program(s)**

The DHS' Office of Behavioral Health (OBH) currently administers a variety of substance use treatment and prevention programs. Based on the Committee's actions on March 5, the Committee will recommend a total of \$45.9 million for this purpose for FY 2014-15, including \$6.3 million that is specifically targeted at prevention and intervention efforts. Prevention programs are primarily supported by the federal Substance Abuse Prevention and Treatment block grant and several cash funds<sup>2</sup>.

The OBH currently contracts with a variety of statewide and local organizations to provide these services. However, the OBH does not currently contract with programs that target youth marijuana and prescription drug misuse. The OBH indicates that existing federal grants are inadequate to expand the number of prevention programs in order to address the increased risk of youth using marijuana because of legalization. In addition, the OBH has received federal grants to address underage alcohol use, but the last remaining federal grant for this purpose will expire in September 2014. Finally, the Department has not had any funding available to specifically address the growing problem of youth prescription drug misuse.

### **Analysis of Request**

The OBH seeks funding to implement evidence-based marijuana and prescription drug misuse and underage alcohol prevention strategies that will improve overall health, behavioral health, and educational outcomes. The programs would focus on achieving the following outcomes:

<sup>1</sup> Please note, however, that Section 39-28.8-203 (1) (b), C.R.S., states that the additional sales tax revenues that are transferred from the General Fund to the MCF are "to be used for the enforcement of regulations on the retail marijuana industry and for the other purposes of the fund as determined by the general assembly."

<sup>2</sup> Cash fund sources include: the Adolescent Substance Abuse Prevention and Treatment Fund; the Tobacco Use Prevention Fund; the Persistent Drunk Driver Cash Fund; the Law Enforcement Assistance Fund; the Alcohol and Drug Abuse Community Prevention Treatment Fund; and the Rural Alcohol and Substance Abuse Prevention and Treatment Program.

- Increase the perceived risk of harm associated with marijuana use, prescription drug misuse, and underage alcohol use among youth ages 12 to 20;
- Decrease rates of youth marijuana use and prescription drug misuse in the past month and continue to reduce underage alcohol use;
- Decrease the rates of youth who have ever used marijuana or misused prescription drugs in their lifetime; and
- Delay the age of first use of marijuana, prescription drug misuse, and alcohol use.

The OBH indicates that the above outcomes should also result in decreased drug- and alcohol-related violations, suspensions, and expulsions reported by schools.

The OBH proposes an approach that is designed to help communities build the infrastructure necessary for effective and sustainable prevention. The OBH would provide 45 communities with annual grants ranging from \$150,000 to \$225,000 per community. The grants would be awarded through a competitive request for proposal (RFP) process, and issued annually based on available appropriations. While the primary focus of the prevention programs would be to reduce youth marijuana use, the grants would also support strategies and efforts to reduce prescription drug misuse and underage alcohol use. Each community would be required to submit a five-year plan that includes: an assessment of the community's prevention needs (to establish baseline data); the evidence-based programs, practices, and approaches that the community intends to implement; and the process that will be used to evaluate the program, including performance and benchmark outcomes. The OBH also lists a variety of evidence-based program models and services that could be transferable to this initiative. This list includes school-based programs, a family-based program, a program targeting middle school-aged Native American youth, and a social marketing campaign.

The OBH indicates that the programs would target youth ages 12 to 20 based on the Colorado Department of Education's Comprehensive Health Education Standards, as well as data indicating that most substance use starts after age 12.

The requested funds for FY 2014-15 would be utilized as follows:

- \$9,527,606 to provide annual grants to 45 communities (based on an average grant of \$211,725) to cover the costs of a program coordination, travel and operating, curriculum, community education and awareness activities, social norming/marketing campaigns, and evaluation expenses;
- \$300,000 for statewide data tracking and evaluation; and
- \$204,463<sup>3</sup> and 2.5 FTE to administer the grant program, including: 1.0 FTE Program Manager (to assist communities in program planning, execution, and evaluation; to provide on- and off-site training and technical assistance; and to monitor program outcomes); 1.0 FTE Contract Coordinator (to handle all administrative and business functions); and 0.5 FTE Program Assistant I.

<sup>3</sup> This amount includes: \$155,199 for salaries, PERA and Medicare; \$24,305 for centrally appropriated employee benefits; and \$24,959 for capital outlay and operating and travel expenses.

## **Staff Recommendation**

Staff recommends approving the request, as long as sufficient funds are available in the MCF for such purpose for FY 2014-15 and subsequent fiscal years. However, staff would recommend appropriating a smaller amount (\$10,007,764) to exclude funding requested for centrally appropriated employee benefits, consistent with Committee policy.

The proposal identifies a problem that is directly linked to the legalization of marijuana for those age 21 or older: Colorado has a relatively high number of youth who use marijuana, and the legalization of retail marijuana for adults is likely to increase the risk for youth to use marijuana due to a decreased perception of harm and increased availability. While the primary focus of the prevention programs would be to reduce youth marijuana use, the proposed grant program would also support strategies and efforts to reduce underage alcohol use and prescription drug misuse – the two other substances that Colorado high school students are most likely to report having used.

The OBH proposes an approach that is designed to help local communities build the infrastructure necessary for effective and sustainable prevention programs. The proposal includes funding for program evaluation, and it clearly states the anticipated outcomes it seeks to achieve and the data that will be used to evaluate the program's effectiveness.

The proposed grant program would be administered by OBH, the state agency that is: statutorily charged with formulating a comprehensive state plan for alcohol and drug abuse programs; and statutorily authorized to purchase services for prevention or for treatment of alcohol and drug abuse on a contract basis from any tribal nation or any public or private agency, organization, or institution approved by the OBH<sup>4</sup>. The OBH currently administers similar substance use prevention programs. The proposal also provides information indicating that OBH has administered a similar initiative in the past and demonstrated success in working with community coalitions to exceed the stated initiative goals (in that case it was a reduction in binge drinking among Hispanic youth).

The OBH has requested funding for staff to administer the grant program and provide training and support for grantees. The requested state administrative funding represents 2.0 percent of the requested funding.

## **Recommendation Requirements**

If the Committee approves the request, legislation is required to authorize the appropriation of moneys in the MCF for a marijuana, prescription drug, and alcohol misuse program for youth.

<sup>4</sup> See Sections 27-80-102 and 106, C.R.S.



## **HUM: Intensive residential treatment for substance use disorders (BA7)**

### **Request**

The Department of Human Services requests \$7,018,646 cash funds from the Marijuana Cash Fund (MCF) and 1.4 FTE for FY 2014-15 to provide an additional 105 intensive residential treatment (IRT) beds for individuals with a substance use disorder (SUD) who are not eligible for Medicaid. The Department anticipates an ongoing need for \$7,010,050 and 1.4 FTE in FY 2015-16.

### **Linkage to Marijuana**

The request summary indicates that the additional IRT beds would be used to "serve individuals with marijuana use problems". The Governor's letter to the Joint Budget Committee, dated February 18, 2014, indicates that the proposal would increase the capacity for treating marijuana misuse. However, the proposal indicates that it "seeks proactively to make more available the full substance use treatment continuum of care in order to meet the wide range of treatment needs among Colorado's population". Further, the proposal indicates that the additional IRT beds are intended "to serve those with the most severe problems that are not being addressed through the current treatment system".

The proposal includes data from the DHS' Drug and Alcohol Coordinated Outcomes and Data Set (DACODS) for FY 2012-13 indicating that of all people admitted to IRT, 1,324 (32.9 percent) reported use of marijuana, and 368 (9.0 percent) identified marijuana as a primary drug of abuse.

Based on this data, it is likely that for the individuals who would access the new IRT beds: about one in three use marijuana; and marijuana is the primary drug of abuse for about one in ten. There is no data available to indicate what impact, if any, the implementation of the use and regulation of retail marijuana will have on the number of individuals who need IRT services.

### **Constitutional Authorization**

The constitution does not address state funding for substance use disorder services. The use of any marijuana excise tax revenues that exceed the first \$40.0 million is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

Proposition AA requires the following to be credited to the Marijuana Cash Fund (MCF): excise tax revenues in excess of \$40.0 million; the state share of retail marijuana sales tax revenues; and sales tax revenues on medical and retail marijuana (from the 2.9 percent state sales tax).

- The ballot question that was submitted to voters regarding the imposition of retail marijuana sales and excise tax (Proposition AA), as codified in Section 39-28.8-401, C.R.S., indicated that revenues from the additional 10.0 percent sales tax on the sale of retail marijuana and retail marijuana products would be used "to fund the enforcement of regulations on the retail

marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters"<sup>5</sup>.

- The ballot question was silent concerning the use of excise tax revenue in excess of the first \$40 million, as well as the use of revenues from the 2.9 percent state sales tax.

There does not appear to be a direct linkage between this proposal and "other costs related to the implementation of the use and regulation of retail marijuana". The requested appropriation could, however, be authorized to come from excess excise tax revenues or the 2.9 percent state sales tax revenues.

### **Statutory Authorization**

This proposal would require a statutory change to authorize the appropriation of moneys in the MCF for IRT services for individuals who are not eligible for Medicaid.

### **Request's Relationship to Existing Program(s)**

The OBH currently contracts with four managed service organizations (MSOs) for the provision of substance use disorder (SUD) treatment and detoxification services for low income individuals who are not eligible for Medicaid. The MSOs, in turn, subcontract with local treatment providers with locations around the state to deliver these services. Treatment services include: detoxification; outpatient opioid replacement treatment; individual, group, and family outpatient therapy; intensive outpatient therapy; transitional residential treatment; therapeutic community, and IRT. The OBH indicates that it has administered the provision of IRT services since 1992, and the services have been supported by the federal Substance Abuse Prevention and Treatment block grant.

In addition to the contracts described above, the OBH and the Department of Health Care Policy and Financing jointly administer the "Special Connections" program, which provides for residential and outpatient treatment for high risk pregnant women.

The OBH indicates that there are currently 20 programs in Colorado licensed to provide IRT to individuals of all income levels and insurance coverage. In FY 2012-13, those programs provided 4,019 admissions (at this time, staff does not have information about the number of beds or the locations of these existing programs). The OBH seeks to fill an existing gap in IRT services by adding seven IRT programs, including:

- Two IRT programs with specialty programming tailored to the needs of women with children;
- At least one IRT program with specialty programming for treatment specific to the needs of young transition-aged adults ages 18 to 25; and
- One IRT program with specialty programming to meet the needs of veterans.

<sup>5</sup> Please note, however, that Section 39-28.8-203 (1) (b), C.R.S., states that the additional sales tax revenues that are transferred from the General Fund to the MCF are "to be used for the enforcement of regulations on the retail marijuana industry and for the other purposes of the fund as determined by the general assembly."

All seven IRT programs would provide care based on a client-centered, trauma-informed course of treatment in order to maximize treatment engagement.

OBH indicates that, among people who are involuntarily committed to an IRT level of care because their substance use constitutes a danger to themselves and others, the average wait to access IRT services is 16 days. As people who are involuntarily committed receive priority for admission, the average wait time for other people is likely longer.

### **Analysis of Request**

The OBH indicates that the types of individuals who require the structured setting and supervision provided through an IRT program include:

- individuals who present with risk of severe withdrawal from substances, unaddressed psychiatric and emotional issues, and physical health issues such as poorly controlled diabetes, pregnancy, infections, and chronic medical conditions;
- homeless individuals with unresolved medical and/or psychiatric needs; and
- individuals who live in environments in which there is drug use and criminal activity.

The goal of IRT is to stabilize the individual by removing him or her from the environment in which the problematic substance use occurred. IRT entails a minimum of 40 hours of structured group and individual treatment activities, and the average length of stay is 30 days. Upon completion of the IRT program, individuals will be coached into engaging in outpatient treatment (which is available through the OBH contracts with MSOs or, for Medicaid clients, through BHOs).

The requested funds for FY 2014-15 would be utilized as follows:

- \$5,991,525 for seven facilities providing 105 additional IRT beds;
- \$898,729 for contractor expenses (not to exceed 15.0 percent); and
- \$128,392<sup>6</sup> and 1.4 FTE, including: 1.0 FTE General Professional V for monitoring (*i.e.*, chart review to assure appropriateness of care and compliance with contracts and licensing requirements), technical assistance (*i.e.*, training regarding trauma-informed care, staff and client safety, and evidence-based approaches to treatment), and quality assurance (*i.e.*, assuring that individuals are correctly placed in the appropriate level of care and are receiving the proper intensity and types of services, and that documentation is adequate to support the resources allocated); and 0.4 FTE General Professional III to administer and fiscally monitor seven contracts.

The request includes information indicating that SUD treatment can reduce hospital and psychiatric admissions and other health care costs, criminal activity, and incarceration.

<sup>6</sup> This amount includes: \$100,354 for salaries, PERA and Medicare; \$15,982 for centrally appropriated employee benefits; and \$12,056 for capital outlay and operating and travel expenses.

## **Staff Recommendation**

Similar to the HCF BA4 (Enhanced Medicaid substance use disorder benefit), this proposal aims to address an existing gap in the continuum of SUD services. The expansion of IRT beds would increase the likelihood of success for those clients with the most severe disorders, and may reduce hospital and psychiatric admissions and other health care costs. However, staff recommends denying the request for FY 2014-15 for two reasons.

First, staff is concerned about the proposed time frame. Staff does not have enough information at this time to determine if the additional IRT services could be implemented by July 1, 2014. In addition, the General Assembly has made significant investments in the last two years in expanding access to behavioral health services, and it seems prudent to wait at least a year to evaluate the need for additional IRT beds. Based on the Committee's actions on March 5 and assuming that the Committee ultimately votes to fully fund the behavioral health crisis response system in FY 2014-15, the total amount of state and federal funding that the Committee will recommend for behavioral health services provided through the HCPF and DHS will represent a \$285.4 million (56.0 percent) increase compared to FY 2012-13. In addition, based on the Committee's actions to date, state support for community-based substance abuse services that other state agencies provide for offenders will be \$6.2 million higher in FY 2014-15 than it was in FY 2012-13. This increase includes a significant investment in IRT beds for high risk/high needs offenders. Thus, the General Assembly has already taken action to expand access to IRT for those individuals most likely to engage in criminal activity.

Second, staff is concerned with the proposed funding source (MCF). The proposal would require community providers to invest in the development of additional IRT beds. If the General Assembly supports this expansion of IRT beds, it is important that the state funding supporting these services be sustained. Given the uncertainty concerning projections of marijuana tax revenues, as well as the lack of a direct linkage between the recent legalization of retail marijuana and the services proposed through this request, staff believes that the proposed funding source is inappropriate.

If the Committee elects to approve the request, staff recommends using a mechanism to fund this proposal from excess excise tax revenues and/or the 2.9 percent state sales tax revenues (and not from the additional 10.0 percent sales tax). In addition, if the Committee elects to approve the request, staff would recommend appropriating a smaller amount (\$7,002,664) to exclude funding requested for centrally appropriated employee benefits, consistent with Committee policy.

## **Recommendation Requirements**

If the Committee approves the request, legislation is required to authorize the appropriation of moneys in the MCF for IRT services.

## **HUM: Collaborative Management Program (BA8)**

### **Request**

The Department of Human Services, Division of Child Welfare requests an increase of \$6,000,000 cash funds for FY 2014-15 and beyond from the Marijuana Cash Fund for the Collaborative Management Program (CMP). The request includes \$5,717,600 for participating counties to fiscally support youth marijuana prevention and intervention programs; \$220,000 for two temporary staff and indirect costs; and \$150,000 for outcomes evaluation.

### **Linkage to Marijuana**

The additional funds are intended to expand the Collaborative Management Program's focus to include the prevention and intervention of marijuana use for individuals under the age of 21. The Department contends that with the legalization of marijuana in Colorado, substance abuse by youth under the age of 21 is likely to increase, and new funds are needed to increase the number of programs specifically addressing marijuana use prevention.

### **Constitutional Authorization**

Amendment 64 indicates that selling, distributing, or transferring marijuana to individuals under the age of 21 shall remain illegal, and consumers of marijuana are stated to be persons 21 years of age or older. It further states that nothing in Article XVIII, Section 16 of the Colorado Constitution is intended to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana. Aside from the first \$40.0 million of marijuana tax revenue that shall be used for public school capital construction assistance, the use of marijuana tax revenue is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

Section 39-28.8-401, C.R.S., states that the first \$40.0 million of tax revenues generated from the 15 percent excise tax be used for public school capital construction. It further states that the revenue from an additional 10 percent sales tax on the sale of retail marijuana and associated products is to be used to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by voters. This section of statute does not specifically address the use of the excise tax revenues in excess of the first \$40.0 million; or the use of revenues from the 2.9 percent state sales tax. Section 39-28.8-203 (1) (b), C.R.S., does state that revenues remaining following the apportionment of local government shares shall be transferred from the General Fund to the Marijuana Cash Fund to be used for the enforcement of regulations of the retail marijuana industry and for the other purposes of the fund as determined by the General Assembly.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S., names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Human Services is not named as a recipient of appropriations from the Marijuana Cash Fund, and marijuana prevention and intervention programs are not named as purposes for appropriations from the fund. Section 24-20-112 (5), C.R.S. requires the Governor to designate a state agency to establish educational materials regarding appropriate retail marijuana use and

prevention of marijuana use by those under twenty-one years of age. In establishing educational materials, to the greatest extent possible, the state agency shall utilize established best practices and existing federal and state resources. The Collaborative Management Program is not currently identified in statute as an eligible use of Marijuana Cash Fund monies.

### **Request's Relationship to the Existing Program**

The Department of Human Services, Division of Child Welfare currently administers the Collaborative Management Program (CMP). Section 24-1.9-101 (2), C.R.S., states that the uniform system of collaborative management is necessary to effectively and efficiently collaborate to share resources or to manage and integrate the treatment and services provided to children and families who benefit from multi-agency services. The CMP utilizes the collaboration of multiple youth serving agencies to create better outcomes for youth who have struggled with substance abuse, delinquency, educational outcomes, behavioral health, and other barriers to successful development. The Department believes that the funding request will support additional local and state coordination across systems to ensure strong collaboration and outcomes. The funding request will increase accessibility of marijuana related substance abuse prevention and intervention by youth who are served by multiple agencies.

While the FY 2013-14 spending authority for the CMP is \$3.1 million, current funding from divorce docket fees results in the distribution of approximately \$2.6 million to the 35 participating counties. The allocation of monies to each county is calculated based on the incentive formula and is dependent upon the successful implementation of the elements of collaborative management and the accomplishment of specified performance measures in four domains, including child welfare, juvenile justice, education, and health/mental health.

Unlike original program monies, the newly requested funds (\$6.0 million) will be distributed to counties through a Request for Applications (RFA) process that will require the implementation of evidence-based marijuana intervention and prevention for youth. It is unclear at what time during the fiscal year funds will be awarded to counties. The Department's written request indicates that awards will be available to the 35 counties that currently participate in the program, as well as 15 additional counties. Discussions with the Department and OSPB staff, however, indicate that only participating counties with signed memorandums of understanding in place will be eligible for the new funds.

The Department indicates that funding received through the RFA process will remain flexible to counties allowing them to use funds to pay for staff facilitation and coordination of client meetings regarding services. The funds are intended to increase youth accessibility to marijuana related substance abuse prevention and intervention. Current CMP incentive funds are used by counties to provide appropriate individualized services to CMP clients. Such services can include facilitation and coordination of client meetings and/or direct services related but not limited to: substance use or abuse intervention and treatment; mental, emotional, and behavioral health services; educational supports when determined appropriate. The Department's request is based on the argument that there are currently no "dedicated funds for accessing substance abuse prevention or intervention."

## **Analysis of Request**

### ***General Background***

The National Institute on Drug Abuse states that while marijuana use by adolescents declined from the late 1990s until the mid-to-late 2000s, it has been on the increase since then. In 2013, 7.0 percent of 8th graders, 18.0 percent of 10th graders, and 22.7 percent of 12th graders used marijuana in the past month, up from 2008. Daily use has also increased, with 6.5 percent of 12th graders now using marijuana every day, compared to 5 percent in the mid-2000s. The Institute relays that rising marijuana use reflects changing perceptions and attitudes. Historically, as perception of risks goes down, use goes up. Young people are showing less disapproval of marijuana use and decreased perception that marijuana is dangerous.

According to 2011-12 data from the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), nearly 8 in 10 (78.4 percent) of 12 to 17 year olds in Colorado perceived no great risk from smoking marijuana once a month. While this percentage did not change dramatically in the four years prior to this study, it does represent a rate higher than the national rate of 73.0 percent. With the legalization of retail marijuana in Colorado, there is speculation about the changes that might be seen in these data.

Perceived risk of adolescent marijuana use notwithstanding, research indicates that adverse effects of adolescent marijuana can be seen in physical and mental health, cognitive development and functioning, and risk behaviors. A summary of peer-reviewed journal articles finds that adolescent marijuana use has been associated with an increased risk of a range of negative health outcomes, including:

- Future depression and anxiety disorders,
- Fatal automobile crashes,
- Accidental injuries, and
- Chronic bronchitis and respiratory infections.

In addition, frequent marijuana use in adolescents “can have a detrimental impact on cognitive functioning and may affect functional and structural development in areas of the brain involved in higher intellectual capabilities.” Finally, research indicates that adolescent marijuana use results in impaired judgment, contributing to increased risk behaviors including practicing unprotected sex, driving under the influence, and substance-use/abuse problems.<sup>1</sup> Substance abuse problems are not likely to present themselves in isolation, however, and adolescents experiencing the negative health and developmental outcomes of substance use and abuse, including marijuana, are more likely to require services from multiple systems.

### ***Program Background***

Section 24-1.9-101 through 104, C.R.S., authorizes, but does not require, each county department of social services to enter into a memorandum of understanding (MOU) with local representatives of various agencies to promote a collaborative system of services to children and families. This system will provide individualized integrated services and supports to children and families with multi-systems needs. In order for a county to participate in the Collaborative

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<sup>1</sup> Resko, Stella M. *Public Perceptions and Attitudes Toward Adolescent Marijuana Use*. Wayne State University. Sage Journals, Jan. 2014. Retrieved on March 9, 2014 from <http://sgo.sagepub.com/content/4/1/2158244013518055>

Management Program (CMP), local representatives from the following agencies are required to participate and sign the MOU:

- The local judicial districts, including probation services;
- The health department, whether a county, district, or regional health department;
- The local school district or school districts;
- Each community mental health center;
- Each behavioral health organization (BHO);
- The Division of Youth Corrections;
- Alcohol and drug abuse managed service organizations;
- A designated managed service organization for the provision of treatment services for alcohol and drug abuse pursuant to section 27-80—107, C.R.S.; and
- A domestic abuse program as defined in section 26-7.5-1.2, C.R.S., if representation from such a program is available.

The statute encourages local agencies to enter into MOUs by region, and recommends that the agencies seek input, support, and collaboration from key stakeholders in the private and nonprofit sectors, as well as from parent advocacy or family advocacy organizations. Parties to each MOU are required to establish collaborative management processes that are designed to: (1) reduce duplication and eliminate fragmentation of services; (2) increase the quality and effectiveness of services; and (3) encourage cost-sharing among service providers.

The number of collaborative management programs has grown significantly in the last several years. As of FY 2013-14, 34 counties were participating in collaboratives; and there are 35 participating at this time. All ten of the largest counties have implemented Collaborative Management to varying degrees. Participating entities may agree to attempt to meet certain performance measures, specified by the Department and the Board of Human Services. Local interagency groups that choose this option are eligible to receive incentive moneys from the "Performance-based Collaborative Management Incentive Cash Fund" through this line item. Incentive moneys, which are allocated by the Department to those interagency groups that meet or exceed the specified performance measures, are to be reinvested in services for children and families.

In addition, parties to an MOU are to create a procedure to allow General Fund savings realized as a result of the MOU to be reinvested in services for children and families. General Fund savings associated with the program that will be retained by participating counties, are to be determined based on rules established by the State Board of Human Services. This mechanism, as implemented in the Child Welfare Services line item, often has a substantial fiscal impact on participating counties, as it enables them to keep unspent portions of their child welfare services funding allocations.

Statute requires each MOU to include authorization for the establishment of individualized service and support teams. These teams are critical to implementing the goals of the program, as they provide for multi-system "staffing" and thus development of an individualized integrated service plan for children and youth. Individualized plans can include services related to education; juvenile justice; mental, emotional, behavioral health; parenting skills; mentoring;



substance abuse treatment; domestic violence; physical health; and other necessary services as identified in the individualized plan.

Evaluation of the program indicates that it is achieving its statutory goals despite challenges, including funding. Performance indicators for the various collaboratives reflect a high level of success in achieving goals related to placement stability and prevention of out-of-home placement (youth in the child welfare system) and reducing recidivism (youth involved in the juvenile justice system).

**Funding**

The CMP is funded from the Performance-based Collaborative Management Incentive Cash Fund. The fund consists of moneys received from docket fees in civil actions transferred pursuant to Section 13-32-101 (5) (a), C.R.S. For FY 2007-08, the Performance Incentive Cash Fund was repealed and all moneys in the fund were transferred into the Performance-based Collaborative Management Incentive Cash Fund. In addition, the fund received transfers from the family stabilization services fund. Current program appropriation levels exceed the annual fund revenue of approximately \$200,000 per year.

In FY 2013-14, the program appropriation was reduced from \$3.2 million to \$3.1 million cash funds to avoid over-spending available revenue. The FY 2014-15 recommendation is a further reduction in spending authority to \$3.0 million. The current projection for this cash fund, reflected below, indicates that while reserves can continue to support the program at the current level through FY 2014-15, additional reductions or the identification of a new revenue source is necessary to avoid depleting the fund entirely.

<b>Performance-based Collaborative Management Incentive Cash Fund*</b>						
	<b>Actual FY 09-10</b>	<b>Actual FY 10-11</b>	<b>Actual FY 11-12</b>	<b>Actual FY 12-13</b>	<b>Projected FY 13-14</b>	<b>Projected FY 14-15</b>
Cash balance beginning of year	\$2,171,861	\$1,604,839	\$1,077,947	\$684,612	\$452,557	\$237,545
Actual/anticipated cash inflow	2,832,202	2,883,760	2,823,245	2,806,731	2,814,988	2,814,988
Actual/appropriated cash outflow	3,399,224	3,410,652	3,216,580	3,038,786	3,030,000	3,000,000
Changes from prior year fund balance	(567,022)	(526,892)	(393,335)	(232,055)	(215,012)	(185,012)
Actual/anticipated liquid fund balance	\$1,604,839	\$1,077,947	\$684,612	\$452,557	\$237,545	\$52,533

\*The above figures are from the Schedule 9: Cash Funds Reports provided by the Department of Human Services.

As indicated in the table above, allocations to counties have historically exceeded the available balance of the Collaborative Management Incentive Cash Fund resulting in a projected depletion of the fund. Instead of reducing the total amount allocated to counties to align with available funding, each year the distribution was delayed until such time as the revenue in the cash fund was enough to cover the counties earned incentive funds. According to the Department, an internal review of the payout process and a subsequent Attorney General ruling indicated that the method used to pay counties is unconstitutional, as it is illegal for entities of the state to accrue debt in one fiscal year that must be paid in the next. As a result, in February 2014, the Department informed participating counties that incentive fund payments must be made to each county by September 30<sup>th</sup> of the fiscal year following the close of the year in which the incentive funds are earned. This advance in the payment date for FY 2013-14 earned incentives will leave

an anticipated revenue shortfall in the cash fund of approximately 50.0 percent. The final result of shifting the county allocation to align with the State Constitution means that incentive funds for FYs 2012-13 and 2013-14 will be distributed to counties with cash funds from one year of revenues, effectively reducing the annual allocation by half over the course of two years. The Department has indicated that no other option has been considered to address the funding shortfall.

The Department has indicated that the revenue in the Collaborative Management Incentive Cash Fund has not kept pace with program growth due to the increase in the number of participating counties; however the Department has requested no additional funding for the program since its inception. The Department argues that the request for \$6.0 million in funds from the Marijuana Cash Fund will enhance CMP's ability to utilize marijuana prevention and intervention programs for the youth counties serve, and ensure attainment of positive outcomes for children and youth by providing local communities with sufficient funding to coordinate resources and increase capacity for cross-system data sharing.

### ***Staff Concerns***

Staff believes that the Collaborative Management Program is a valuable initiative and does need additional funding. Staff is concerned, however, that the Department's request for funds specific to marijuana use and abuse introduces a restricted funding stream into a program that relies on flexible funding in order to appropriately serve the individual multi-systems needs of children, youth, and families. In addition, the request limits the use of funds to prevention and intervention services related to youth. Counties indicate that families receiving wrap around services through the CMP are often impacted by substance abuse (not necessarily specific to marijuana) in parents as well as youth. Finally, staff is concerned that the new funds will be distributed through an RFA process, a process that differs significantly from the current distribution of funds through earned incentives. The significant reduction in earned incentives that are expected to be paid to counties over the next two years will result in a significant imbalance of restricted funds as compared with flexible funds; and those that are awarded to counties through an RFA process as compared with those that are earned through performance incentives.

### **Staff Recommendation**

Staff believes that the Collaborative Management Program needs funds beyond those currently available in the Performance-based Collaborative Management Incentive Cash Fund. Staff does not recommend the introduction of a restricted funding stream into the program, however, as this will reduce the flexibility needed by counties to provide appropriate individualized integrated services to children, youth, and families with multi-systems needs. Staff recommends that additional funding be approved for this program from the General Fund, as opposed to the Marijuana Cash Fund, in order to ensure that counties can continue to provide evidence-based services to families through the wrap around framework. Staff recommends that those funds be allocated to counties in a fashion consistent with the approved earned incentive allocation model.

Staff recommends funding for the two temporary staff and outcomes evaluation. If funded through General Fund monies, staff recommends denial of indirect costs.

## **Recommendation Requirements**

If the Committee elects to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to authorize the Department of Human Services as eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The legislation must also amend this section of statute to designate youth marijuana use prevention and intervention program services as a purpose for appropriations from the Marijuana Cash Fund. In addition, staff suggests that the bill include the addition of a footnote defining that the intent of the General Assembly is that \$5,717,600 be used for awards to Collaborative Management Program counties that provide evidence-based marijuana prevention and intervention services to youth.

## **HUM: Tony Grampas Program, Grants for Prevention (BA9)**

### **Request**

The Department of Human Services, Division of Child Welfare requests an increase of \$5,000,000 cash funds for FY 2014-15 and beyond from the Marijuana Cash Fund for the Tony Grampas Youth Services (TGYS) Program. The request includes \$4,792,600 for grants to participating community programs to provide marijuana prevention services to youth; \$132,400 for two temporary staff and indirect costs; and \$75,000 for outcomes evaluation.

### **Linkage to Marijuana**

The additional funds are intended to expand the number of programs in the upcoming TGYS grant cycle that are tailored specifically to the prevention of underage marijuana use. The Department contends that with the legalization of marijuana in Colorado, substance abuse by youth under the age of 21 is likely to increase, and new funds are needed to increase the number of programs specifically addressing marijuana use prevention.

### **Constitutional Authorization**

Amendment 64 indicates that selling, distributing, or transferring marijuana to individuals under the age of 21 shall remain illegal, and consumers of marijuana are stated to be persons 21 years of age or older. It further states that nothing in Article XVIII, Section 16 of the Colorado Constitution “is intended to allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.” Aside from the first \$40.0 million of marijuana tax revenue that shall be used for public school capital construction assistance, the use of marijuana tax revenue is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

Section 39-28.8-401, C.R.S., states that the first \$40.0 million of tax revenues generated from the 15.0 percent excise tax be used for public school capital construction. It further states that the revenue from an additional 10.0 percent sales tax on the sale of retail marijuana and associated products is to be used to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by voters. This section of statute does not specifically address the use of the excise tax revenues in excess of the first \$40.0 million; or the use of revenues from the 2.9 percent state sales tax. Section 39-28.8-203 (1) (b), C.R.S., does state that revenues remaining following the apportionment of local government shares shall be transferred from the General Fund to the Marijuana Cash Fund to be used for the enforcement of regulations of the retail marijuana industry and for the other purposes of the fund as determined by the General Assembly.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Human Services is not named as a recipient of appropriations from the Marijuana Cash Fund, and marijuana use prevention is not a named purpose for appropriations from the fund. Section 24-20-112 (5), C.R.S. requires the Governor to designate a state agency to establish educational materials regarding appropriate retail marijuana use and prevention of

marijuana use by those under twenty-one years of age. In establishing educational materials, to the greatest extent possible, the state agency shall utilize established best practices and existing federal and state resources. The Tony Grampsas Youth Services Program is not currently identified in statute as an eligible use of Marijuana Cash Fund monies.

### **Request's Relationship to the Existing Program**

The Department of Human Services, Division of Child Welfare currently administers the Tony Grampsas Youth Services (TGYS) Program. The program awards grants to community-based initiatives that target youth for intervention services in an effort to reduce incidents of youth crime and violence. It also promotes prevention and education programs that are designed to reduce the occurrence and reoccurrence of child abuse and neglect and reduce the need for state intervention in child abuse and neglect prevention and education. The TGYS Program is funded by 4.0 percent of the tobacco master settlement dollars, up to a maximum of \$5.0 million. Grant awards are paid from the Youth Services Program Fund or out of the General Fund.

Eligible organizations, including local governments, Colorado public or nonsectarian secondary schools, groups of public or nonsectarian secondary schools, school districts or groups thereof, boards of cooperative services, institutions of higher education, the Colorado National Guard, state agencies, state-operated programs, or private nonprofit community-based organization, can apply for funding for programs within six categories:

- General violence prevention,
- School dropout prevention,
- Before and after school programs,
- Mentoring programs,
- Restorative justice, and
- Early Childhood programs.

The Department currently awards approximately \$4.7 million in grant funds to 56 programs across the state. TGYS' new three-year grant cycle starts in FY 2014-15. In the most recent request for application process, 154 applications requesting approximately \$15.5 million were reviewed. Of this total, 38 applications contained components of substance use prevention programming. The TGYS Board recommended funding for approximately 40 of the applications. The Department's request is not intended to duplicate existing work, but rather to increase the TGYS Program's impact on local communities through the expansion of the grant program. Additional funds will allow the TGYS Board to increase the number and/or funding amount of grants awarded to community-based programs. It is anticipated that the new funds will be awarded to between 50 and 70 community programs that will serve a total of 15,000 to 25,000 children, youth, and family members.

### **Analysis of Request**

#### ***General Background***

The National Institute on Drug Abuse states that while marijuana use by adolescents declined from the late 1990s until the mid-to-late 2000s, it has been on the increase since then. In 2013, 7.0 percent of 8th graders, 18.0 percent of 10th graders, and 22.7 percent of 12th graders used marijuana in the past month, up from 2008. Daily use has also increased, with 6.5 percent of

12th graders now using marijuana every day, compared to 5.0 percent in the mid-2000s. The Institute relays that rising marijuana use reflects changing perceptions and attitudes. Historically, as perception of risks goes down, use goes up. Young people are showing less disapproval of marijuana use and decreased perception that marijuana is dangerous.

Perceived risk of adolescent marijuana use notwithstanding, research indicates that adverse effects of adolescent marijuana can be seen in physical and mental health, cognitive development and functioning, and risk behaviors. A summary of peer-reviewed journal articles reports that adolescent marijuana use has been associated with an increased risk of a range of negative health outcomes, including:

- Future depression and anxiety disorders,
- Fatal automobile crashes,
- Accidental injuries, and
- Chronic bronchitis and respiratory infections.

In addition, frequent marijuana use in adolescents “can have a detrimental impact on cognitive functioning and may affect functional and structural development in areas of the brain involved in higher intellectual capabilities.” Finally, research indicates that adolescent marijuana use results in impaired judgment, contributing to increased risk behaviors including practicing unprotected sex, driving under the influence, and substance-use/abuse problems.<sup>1</sup>

### ***Program Background***

The Tony Grampsas Youth Services Program’s FY 2012-13 annual report indicates that “youth mentoring” initiatives are intended to target at-risk youth in an effort to reduce substance abuse and decrease the incidence of youth crime and violence. Though marijuana is not specifically identified in program goals, data on marijuana use by youth is gathered through the Healthy Kids Colorado Survey and used as an indicator in the annual report. Since FY 2007-08, the number of TGYS grant awards to community-based programs that provide youth mentoring services have ranged from approximately 17.9 percent to 32.8 percent. The total value of those awards have ranged from approximately \$0.5 million to \$1.0 million. During that same time period, the TGYS appropriation has ranged from \$3.3 million to \$5.1 million. The table below provides a breakdown of the total appropriation for the program.

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<sup>1</sup> Resko, Stella M. *Public Perceptions and Attitudes Toward Adolescent Marijuana Use*. Wayne State University. Sage Journals, Jan. 2014. Retrieved on March 9, 2014 from <http://sgo.sagepub.com/content/4/1/2158244013518055>

<b>Tony Gramscas Youth Services Program Appropriations History</b>				
	<b>General Fund</b>	<b>Cash Funds*</b>	<b>Federal Funds</b>	<b>Total Appropriation</b>
FY 1999-00	\$8,300,000	\$0	\$0	\$8,300,000
FY 2000-01	8,871,000	1,415,946	0	10,286,946
FY 2001-02	8,862,029	1,495,936	0	10,357,965
FY 2002-03**	0	1,415,946	0	1,415,946
FY 2003-04	0	0	146,240	146,240
FY 2004-05	0	2,348,545	0	2,348,545
FY 2005-06	0	3,551,114	0	3,551,114
FY 2006-07	0	3,495,654	0	3,495,654
FY 2007-08	0	3,288,870	0	3,288,870
FY 2008-09	1,000,000	4,260,142	0	5,260,142
FY 2009-10	1,000,000	4,124,767	0	5,124,767
FY 2010-11	0	3,841,275	0	3,841,275
FY 2011-12	0	3,613,049	0	3,613,049
FY 2012-13	0	3,575,764	0	3,575,764
FY 2013-14	\$1,453,849	\$3,606,650	\$0	\$5,060,499

\* Prior to FY 2004-05, cash funds included the Youth Mentoring Services Cash Fund and the Student Dropout Prevention Cash Fund. As of FY 2004-05, the cash fund includes Master Tobacco Settlement Agreement funds.

\*\*The Long Bill appropriated \$7,594,816 to this line item; however it was vetoed by the Governor in order to reduce General Fund expenditures.

The Department's request for an additional \$5.0 million cash funds will double the funds available to community-based initiatives that serve children, youth, and families with prevention and intervention services. Approximately 50.0 percent of those funds will be used for youth mentoring initiatives specifically related to youth marijuana prevention and intervention services. The balance of the funds will be awarded to youth mentoring initiatives not related to youth marijuana use, and to programs in the remaining funding categories, including general violence prevention, before and after school programs, student dropout prevention, restorative justice, and early childhood.

A portion of the Department's request (\$132,400) is for temporary staff and associated indirect costs to address the impacts of increased program size. This includes: the anticipated increase in the number of applications from and awards to community-based programs, the corresponding increase in the number of quarterly and annual reports that will be received by the Department, and the increase in the number of site visits that will be made to communities that received awards.

Finally, the Department's request includes \$75,000 for state reports and evaluation. The Department indicates that the TGYS Board votes to set aside funds for the purpose of evaluating the program; however the Department has not provided details on the program's evaluation. The

current contract to manage the evaluation of the direct, measurable impacts among individuals served through the TGYS program is in its fifth year and is with Colorado State University. Because the program was transferred to the Department of Human Services (DHS) from the Department of Public Health and Environment on July 1, 2013, the DHS is reviewing the steps for evaluating the overall effectiveness and success of the TGYS Program.

### **Staff Recommendation**

Though additional funding for the Tony Grampas Youth Services Program will likely benefit communities that provide services in the six funding categories, the Department's request introduces funds that are restricted to programs that are identified in the annual report as only a portion of the youth mentoring category. Because the request restricts the scope of the program as defined in Section 26-6.8-102, C.R.S., staff recommends denial of this request for the following reasons:

- The evaluation process for the overall effectiveness and success of the program is currently under evaluation; and
- The TGYS Program's scope extends beyond that of addressing youth crime or marijuana use. Communities would benefit from additional funding for programs that are not specifically related to youth marijuana use as well as to those that are.

### **Recommendation Requirements**

If the Committee elects to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to authorize the Department of Human Services as eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The legislation must also amend this section of statute to designate youth marijuana use prevention and intervention program services as a purpose for appropriations from the Marijuana Cash Fund. In addition, staff suggests that the bill include the addition of a footnote specifying that the intent of the General Assembly is \$4,792,600 be used for grants awarded to programs specifically related to the prevention and intervention of adolescent and youth marijuana use.



## **HUM: Colorado Access to Recovery Program (BA10)**

### **Request**

The Department of Human Services requests \$4,122,617 cash funds from the Marijuana Cash Fund (MCF) and 1.2 FTE for FY 2014-15 to continue and expand the existing Access to Recovery (ATR) program. This existing program was funded by a time-limited federal grant that will expire September 30, 2014. The Department anticipates an ongoing need for \$4,113,938 and 1.2 FTE in FY 2015-16.

### **Linkage to Marijuana**

The request summary indicates that the Department seeks funding to continue and expand the ATR program, "so that individuals recovery [sic] from marijuana addiction can receive the community supports they need for successful community recovery". The summary also notes that the six month evaluations for clients who have participated in ATR over the last three years "reveal that the most common substances individuals relapse with are alcohol and marijuana." Further, the summary indicates that retail marijuana is anticipated to further increase the availability of marijuana and make relapse even more prevalent. Finally, the Governor's letter to the Joint Budget Committee, dated February 18, 2014, indicates that the proposal would support a program that "provides community support so that people who leave substance abuse treatment programs can continue their recoveries in their communities, including avoiding the misuse of marijuana".

However, the proposal indicates that the existing ATR program focuses on all substances of abuse (with the exception of nicotine). The data provided from the six month evaluation for clients indicates that of those participants who reported using a drug at intake, 16.3 percent reported using marijuana. Further, the data indicates that those participants who reported using alcohol were nearly four times more likely to relapse than those who reported using marijuana; 10.4 percent of participants who reported using alcohol at intake relapsed, and 2.9 percent of participants who reported using marijuana at intake relapsed.

Based the data provided, it is likely that some of the individuals who would benefit from the continuation and expansion of the ATR program may use marijuana. However, there is no data available to indicate what impact, if any, the implementation of the use and regulation of retail marijuana will have on the number of individuals who need ATR services.

### **Constitutional Authorization**

The constitution does not address state funding for substance use disorder services. The use of any marijuana excise tax revenues that exceed the first \$40.0 million is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

Proposition AA requires the following to be credited to the Marijuana Cash Fund (MCF): excise tax revenues in excess of \$40.0 million; the state share of retail marijuana sales tax revenues; and sales tax revenues on medical and retail marijuana (from the 2.9 percent state sales tax).

- The ballot question that was submitted to voters regarding the imposition of retail marijuana sales and excise tax (Proposition AA), as codified in Section 39-28.8-401, C.R.S., indicated that revenues from the additional 10.0 percent sales tax on the sale of retail marijuana and retail marijuana products would be used "to fund the enforcement of regulations on the retail marijuana industry and other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters"<sup>1</sup>.
- The ballot question was silent concerning the use of excise tax revenue in excess of the first \$40 million, as well as the use of revenues from the 2.9 percent state sales tax.

There does not appear to be a direct linkage between this proposal and "other costs related to the implementation of the use and regulation of retail marijuana". The requested appropriation could, however, be authorized to come from excess excise tax revenues or the 2.9 percent state sales tax revenues.

### **Statutory Authorization**

This proposal would require a statutory change to authorize the appropriation of moneys in the MCF for ATR services.

### **Request's Relationship to Existing Program(s)**

The Department received two consecutive Access to Recovery (ATR) grants from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) to provide support services to assist individuals to stay in and complete treatment and then maintain their sobriety in the critical months after completing treatment. This funding focused on all substances of abuse (with the exception of nicotine). The ATR program sub-contracts with over 150 community- and faith-based organizations to provide support services to help individuals stay in and complete addiction/ co-occurring disorder treatment. The Department indicates that one of the most valuable services provided by ATR is the use of care coordinators who maintain regular contact with clients. Services also include: housing; employment and education assistance; individual and group peer support; relapse prevention activities; living skills (*e.g.*, parenting, conflict management, financial and personal responsibility); transportation; child care; and reconstructive dental work. Since 2007, the ATR program has provided services to over 15,000 Colorado residents.

This funding was initially received in federal FY 2005-06, and the second federal grant expires on September 30, 2014. The federal government has not reissued a grant for reapplication, and has advised states to seek alternative funding sources such as private foundations or state funding to continue ATR services. The request would continue the existing ATR program, and expand it by one-third to provide services for an estimated 2,500 clients.

<sup>1</sup> Please note, however, that Section 39-28.8-203 (1) (b), C.R.S., states that the additional sales tax revenues that are transferred from the General Fund to the MCF are "to be used for the enforcement of regulations on the retail marijuana industry and for the other purposes of the fund as determined by the general assembly."

## **Analysis of Request**

The Department reports that the existing ATR program has had many successful outcomes. For example, the ATR six month follow-up evaluations demonstrate a doubling of stable employment (26 percent to 52 percent) and housing (23 percent to 53 percent), an increase in social connectedness (21 percent to 69 percent), and significantly lower rates of depression (67 percent to 14 percent). The relapse rate is significantly lower than the national average of 50 percent. However, the Department notes that neither Medicaid nor private health insurance provide coverage for these types of recovery services.

The Department indicates that the ATR program has built considerable infrastructure to provide effective services, including: an evaluation system that gathers information on participants at intake and six months after completing the program; an electronic voucher management and billing system; and an independent assessment of client needs.

The Department indicates that the demand for ATR services exceeds the capacity of the existing ATR program; the program has had to stop funding new clients in the ninth month each year. The Department's request is designed to allow an additional 625 clients to be served annually (a total of 2,500 per year). The Department would also modify the program to eliminate some unnecessary or duplicative evaluation requirements, and add new services that were not allowed under federal funding restrictions (*e.g.*, pre-treatment outreach groups which can play a critical role in getting people into treatment, and meeting basic needs such as work clothes and tools). The requested funds for FY 2014-15 would be utilized as follows:

- \$3,605,575 for client vouchers (for services such as housing, social activities, children care, employment/education assistance, group and individual peer support, case management, transportation, living skills group, basic needs, and pre-treatment outreach groups);
- \$395,000 for an independent program evaluation, an electronic voucher management system, and independent site visit audits; and
- \$122,042<sup>2</sup> and 1.2 FTE, including: 1.0 FTE General Professional V program manager and 0.2 FTE General Professional III (for business services).

## **Staff Recommendation**

Staff recommends denying the request. The urgency of this proposal appears to be more related to the loss of federal funding for an existing program than the voter approval of retail marijuana. While the program appears to be effective in helping clients maintain sobriety following successful completion of a substance abuse treatment program, there does not appear to be a direct linkage between the need to replace federal funding and the recent legalization of retail marijuana. Thus, staff believes that the proposed funding source is inappropriate.

If the Committee elects to approve the request, staff recommends using a mechanism to fund this proposal from excess excise tax revenues and/or the 2.9 percent state sales tax revenues (and not from the additional 10.0 percent sales tax). In addition, if the Committee elects to approve the

<sup>2</sup> This amount includes: \$90,085 for salaries, PERA and Medicare; \$15,251 for centrally appropriated employee benefits; and \$16,706 for capital outlay and operating and travel expenses.

request, staff would recommend appropriating a smaller amount (\$4,107,366) to exclude funding requested for centrally appropriated employee benefits, consistent with Committee policy.

**Recommendation Requirements**

If the Committee approves the request, legislation is required to authorize the appropriation of moneys in the MCF for ATR services.

## **LAW: Development of in-house expertise on regulations (BA11)**

### **Request**

The Department of Law requests an increase of \$456,760 cash funds from the Marijuana Cash Fund and 2.0 FTE for FY 2014-15 to: (1) increase the Department's expertise and knowledge of legal and regulatory issues surrounding marijuana legalization and (2) develop training materials and provide regional training opportunities for local law enforcement and prosecutors. The requested funds are ongoing into future fiscal years.

Specifically, the Department intends to add 2.0 additional FTE to the Special Prosecutions Unit, including: (1) a General Professional VI with police experience to focus on training police officers and (2) a Senior Assistant Attorney General with drug prosecution experience to focus on the interrelationships of the State Constitution, statute, and local regulations. The requested staff would spend approximately six months of FY 2014-15 researching legal issues associated with marijuana legalization and developing related training materials. The staff would begin offering regional training programs in the second half of FY 2014-15.

### **Linkage to Marijuana**

The Department reports apprehension among local law enforcement agencies regarding the enforcement of retail marijuana laws and regulations. According to the Department, police forces are seeking comprehensive training related to marijuana enforcement and the interactions of state and local laws, as well as the State Constitution.

In addition, staff notes that Amendment 64 states, "The people of the state of Colorado further find and declare that it is necessary to ensure consistency and fairness in the application of this section throughout the state and that, therefore, the matters addressed by this section are, except as specified herein, matters of statewide concern" (see section 16 (1) (d) of Article XVIII of the Colorado Constitution). The Department of Law is a logical statewide entity to provide the necessary expertise and training to ensure consistent implementation.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not address using tax revenues from the sale of marijuana to support statewide training regarding regulation and law enforcement.

### **Proposition AA**

As it relates to this proposal, Proposition AA does not address the use of funds to support statewide training efforts. Proposition AA allows the sales tax of 10.0 percent on the sale of retail marijuana and related products to be used to fund "other costs related to the implementation of the use and regulation of retail marijuana as approved by the voters." Given the broad nature of this language, supporting statewide training to increase the consistency of regulation and law enforcement could be considered an "other cost" of implementation. The less restricted revenues (standard sales tax and the 15.0 percent excise tax) could both presumably support the proposed efforts.

## **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b) (IV), C.R.S., names the Department of Law as an eligible recipient of appropriations from the Marijuana Cash Fund. The statute (apparently erroneously) authorizes appropriations from the Marijuana Cash Fund to the Department of Law for the Police Officers Standards and Training (POST) Board to provide training *related to the abuse and exploitation of at-risk elders*. Staff assumes the link to the abuse of elders is an error resulting from multiple bills amending POST Board statutes during the 2013 Session and that the intent of the General Assembly was to allow funding associated with impaired driving enforcement training. That said, statewide training for law enforcement related to marijuana legalization (especially beyond impaired driving enforcement) does not appear to be an established use of the Marijuana Cash Fund.

## **Request's Relationship to Existing Program(s)**

The Department of Law currently serves as legal counsel to the Department of Revenue regarding the regulation of retail marijuana. The POST Board has statewide training responsibilities, including for impaired driving enforcement.

## **Staff Recommendation**

If sufficient funding is available, staff recommends approving the Department's request, with the modifications discussed below. Amendment 64 calls for consistent and fair statewide implementation of retail marijuana law and regulations. Staff agrees that the changing "landscape" for marijuana enforcement is likely to create confusion for local law enforcement and prosecutors and that centralized expertise within the Department of Law could help ensure consistent statewide implementation. Staff is less certain of the long-term ongoing need for the positions but agrees that a need is likely for more than one year (beyond FY 2014-15).

If the Committee does elect to fund the request, staff recommends a total appropriation of \$413,903 cash funds from the Marijuana Cash Fund and 2.0 FTE for FY 2014-15 (annualizing to \$403,037 and 2.0 FTE in FY 2015-16 and beyond). The recommendation includes the following decreases from the request:

- \$32,269 based on Committee policy not to fund centrally appropriated items such as HLD, AED, SAED, and STD in the first year; and
- \$10,588 based on Committee policy to provide \$3,473 per FTE for office equipment and furniture rather than the \$8,767 per FTE requested by the Department.

Staff notes that Marijuana Cash Fund revenues are uncertain and that there may not be funds available to support this request in FY 2014-15. However, if revenues are available, staff recommends this request as an appropriate use of funds.

## **Recommendation Requirements**

If the Committee elects to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S., to authorize the Department of Law to receive appropriations from the Marijuana Cash Fund *for the statewide training proposed in the request*. Staff suggests that any such bill include a corresponding appropriations clause to provide the funding and 1.0 FTE to support the program in FY 2014-15, if the Committee chooses to fund this request.

## **PBH: Public awareness campaign (S2/BA12)**

### **Request**

The Department of Public Health and Environment requests a total of \$13,225,749 cash funds over three years (FY 2013-14 to FY 2015-16) and 3.7 FTE to develop a new statewide marijuana awareness and prevention campaign. The request is for \$3.7 million cash funds in FY 2013-14, \$5.8 million cash funds in FY 2014-15, and \$3.7 million cash funds in FY 2015-16 for a short-term public awareness campaign and a long-term prevention campaign. Each campaign will do the following:

- Short Term Education Campaign
  - Publicize the positive and negative effects of marijuana and facts about the law;
  - Coordinate all information targeted to youth with the requested funding for a youth marijuana education campaign in the Governor's Office;
  - Create a website to serve as the central information point on health effects of marijuana and the law and implement a marketing campaign to tell the public about the website;
- Long Term Prevention Campaign will primarily use television ads to prevent the use of marijuana;
- Expand the Youth Prevention Campaign (Governor's Office request S1) to include marijuana and prescription drugs;
- Coordinate all State Department's messaging including:
  - The Department of Human Services to promote effective strategies with community coalitions DHS funds;
  - Providing five regional training for community providers to implement youth development strategies;
  - Coordinating with the Department of Revenue on messages to retailers, tourists and users;
  - Creation of educational materials;
  - Coordination with the Department of Transportation on impaired driving campaigns;

The request includes 3.7 FTE to do the following:

- 1.0 FTE to coordinate prevention activities;
- 1.0 FTE as a subject matter expert and project manager;
- 1.0 FTE as a prevention program coordinator;
- 0.1 FTE as a health youth development trainer
- 0.6 FTE to conduct literature reviews (term limited);
- 0.03 FTE epidemiologist for literature reviews.

### **Linkage to Marijuana**

The requested funding for the education and the prevention campaigns has a direct relationship to the usage of marijuana authorized by Colorado voters. It is hypothesized that the legalization of marijuana changes the public's attitude on marijuana use toward acceptance.

## **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not expressly state the intent that Colorado launches an educational and prevention campaign, but does indicate that individuals must be over the age of 21 to purchase marijuana, driving while under the influence of marijuana should remain illegal, and that marijuana should be sold by legitimate tax paying individuals. The General Assembly expressed their intent that the Governor designate a Department that shall establish education materials about marijuana and the prevention of marijuana use by individuals under the age of twenty-one in Section 24-20-112 (5), C.R.S. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

## **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Marijuana education and prevention campaigns could be considered an “other cost” associated with the use of retail marijuana.

## **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Public Health and Environment is an eligible recipient of appropriations<sup>1</sup> from the Marijuana Cash Fund for monitoring of the health effectiveness of marijuana including changes in drug use patterns, broken down by county and race and ethnicity, and the emerging science and medical information relevant to the health effects associated with marijuana use pursuant to Section 25-1.5-110, C.R.S. Statute does not expressly allow the Department of Public Health and Environment to receive funds for a marijuana education or a prevention campaign. There is no clear nexus between this request and the eligible purposes of moneys in the Marijuana Cash Fund.

## **Request’s Relationship to Existing Program(s)**

There are a number of requests included in the Governor's marijuana package which connect to this request including:

- Governor's Office request for a Youth Marijuana Public Awareness Campaign which also seeks to create a public awareness campaign and would be combined with the funding in this request starting in FY 2015-16;
- Department of Transportation Marijuana DUI campaign which requests funding for a public awareness campaign about driving while high and relates to public awareness about the law;
- Department of Law's request for local development of in house expertise which ties to one of this requests objectives to create a fact sheet and website about the law; and
- Department of Human Services collaborative management and Tony Grampsas Program requests which relates to the portion of this request to collaborate with DHS on youth program messaging.

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<sup>1</sup> Technical note, Section 12-43.3-501 (b), C.R.S. states the Department shall receive funds pursuant to the monitoring in Section 25-1.5-111, C.R.S. There is no section 25-1.5-111, C.R.S.



Section 24-20-112 (5), C.R.S. requires the Governor to designate a State agency to establish educational materials regarding appropriate retail marijuana use and prevention of marijuana use by those less than twenty-one years of age. This request serves as the indication that the Department of Public Health will be the agency designated to establish educational materials on the use of marijuana. The Department of Public Health and Environment does have experience with statewide public health campaigns including the tobacco education campaigns and alcohol prevention campaigns directed towards physicians and pregnant women.

### **Analysis of Request**

The request states that the legalization of recreational marijuana leads to the need to address the following issues: abuse of marijuana, youth access, second hand smoke exposure, impaired driving, safety of edibles, and the use by pregnant or nursing women. The request would fund two different campaigns, one to do education about the law and allowable uses, and the second would be a prevention campaign.

The educational campaign would provide a central website (and associated publicity of the website), coordination of youth prevention efforts with the Department of Human Services and Governor's Office, and a media campaign to publicize the positive and negative effects of marijuana. The anecdotal comments indicate there is a demand for this information, and this is reinforced by the request from the Department of Law for funding to enhance knowledge about the marijuana laws. Depending on who is asking for information about the law will dictate what type of information should be provided, i.e. information relevant to law enforcement officials is different than information being asked by professional health officials. The sentiment that targeted campaigns are effective is supported by Brad Hesse, chief of the Health Communication and Informatics Research Branch at the National Cancer Institute who said, "Communication campaigns are more successful if they are tailored to the context, values, language, and resources available to local audiences."

The requested funding for a prevention campaign and coordination with other departments raises question for staff about the intent of the voters aligning with what the Governor's office is proposing. A report from 2006 titled, "A 10-year Retrospective of Research in Health Mass Media Campaigns. Where do We Go From Here?" found that "well-executed health mass media campaigns can have small to moderate effects not only on health knowledge and attitudes, but on behaviors as well which can translate into major public health impact given the wide reach of mass media. Such impact can only be achieved, however if principles of effective campaign design are carefully followed." The request put forth by the Department for a prevention campaigns is premature in staff's opinion because there is an unknown base line for what the public already knows and does not know about the negative health effects of marijuana, and what prevention activities will be needed. Staff does acknowledge that it is impossible to measure how successful a prevention campaign is because what does not happen cannot be measured.

As part of considering the request, staff wondered how similar this prevention campaign was to historical prevention campaigns which proved to be ineffective. Due to the timing of the request staff was unable to get a specific answer on the similarities and differences. Staff recommends at

the hearing the Department discuss how the prevention campaign would be similar to and different from the failed campaigns on prevention.

### **Staff Recommendation**

Staff believes there is a demand for information about the legalization of marijuana, and pursuant to Section 24-20-112 (4) the Governor is required to designate a state agency that will develop educational materials regarding appropriate retail marijuana use and prevention of marijuana use by individuals under the age of twenty-one. **Staff recommends an appropriation of \$996,060 cash funds be appropriated in FY 2014-15 for a statewide public awareness campaign about legal marijuana.** The funding will be used for the development of fact sheets, website development, associated media publication of the website, and a review of the effectiveness of the information and publication about the website. The fiscal cost of each component is outlined below:

- Fact sheet development will cost \$20,000 for the design and production of the fact sheets. Note the Department request includes an additional \$135,288 for the development of information for the fact sheets (including clinical guidelines, information on marijuana prohibition on school grounds, and information on the law but the Department already receives \$370,000 and 4.0 FTE for these purposes pursuant to S.B. 13-283);
- Website development will cost \$40,060 which includes the URL in English and Spanish, graphic design costs, and work with OIT to build the site structure;
- Media publication of the website will cost \$915,000 to develop messaging and creative design, a media buy to targeted audiences for four months, this cost is based on past media campaign buys, a standard 10.0 percent agency fee, and to translate English content for the Spanish version of the website; and
- Review of the campaigns effectiveness will cost \$21,000 based on 150 hours at \$140 per hour based on evaluation efforts for similar media public awareness campaigns.

**Staff also recommends the inclusion of a report back to the General Assembly about the results of the effectiveness of the campaign** so that the General Assembly can make decisions about the need and effectiveness of continued public awareness campaigns, and how best to use state resources for these purposes.

### **Recommendation Requirements**

If the Committee opts to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to authorize the Department to use appropriations from the Marijuana Cash Fund for education, prevention and coordination activities. Staff does not recommend appropriating any funds in FY 2013-14 because of the unknown amount of available funds for this purpose. Staff recommends the bill include an appropriation of \$996,060 cash funds for FY 2014-15 if the Committee decides to fund this request. Staff also recommends the bill include the requirement that the Department submit a report on the effectiveness of the campaign.

## **PBH: Marijuana DUI registry (BA13)**

### **Request**

The Department of Public Health and Environment request \$918,560 cash funds in FY 2014-15 and \$256,720 cash funds in FY 2015-16 for the development and maintenance of a blood alcohol and blood drug registry system. The Department requests roll forward spending authority into FY 2015-16 in the event the development of the system is not complete in FY 2014-15.

### **Linkage to Marijuana**

The requested funding for a blood drug (not the blood alcohol) registry has a direct relationship to the usage of marijuana authorized by Colorado voters. The legalization of marijuana could increase the instance of drivers driving while high on marijuana.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 expressly states that driving while under the influence of marijuana should remain illegal, and that marijuana should be sold by legitimate tax paying individuals. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Creating and maintaining a registry of blood drug results could be considered an "other cost" associated with the use of retail marijuana, but creating a registry of blood alcohol results is not considered an "other cost" associated with the use of retail marijuana.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Public Health and Environment is not an eligible recipient of appropriations from the Marijuana Cash Fund for developing and operating a blood drug and blood alcohol registry. Section 12-43.3-1101 (2.5), C.R.S., requires the Department of Public Health and Environment to provide the Department of Revenue with standards for licensing the laboratories that will be responsible for the testing and certification of marijuana, but the associated funding for the Department's cost is from the Laboratory Cash Fund. The Department of Public Safety is required to conduct a scientific study of law enforcement's activities and costs related to the legalization of marijuana pursuant to Section 24-33.5-516, C.R.S. As part of the study the Department of Public safety is required to include the number of traffic accidents related to being under the influence of marijuana. There is a nexus between this request and the eligible purposes of moneys in the Marijuana Cash Fund for the Department of Public Safety but not the Department of Public Health and Environment.

## **Request's Relationship to Existing Program(s)**

Prior to the closure of the Toxicology Unit of the State Laboratory, the Toxicology Unit performed approximately 85.0 of blood alcohol and blood drug testing, thus creating a blood drug and blood alcohol registry for approximately 85.0 percent of tests because the State is required to maintain test records for five years. Now that the Toxicology Unit is closed, there is no statewide data base for results of blood drug and blood alcohol tests. The request is for funding from the Marijuana Cash Fund to create this registry.

## **Analysis of Request**

The registry would be for test results for alcohol, marijuana, and other drugs. Since the Marijuana Cash Fund is only to be used for costs related to retail marijuana use, the blood drug results related to marijuana would fall into that category. The results of the other blood drug tests do not fall into that category. **Staff recommends at the Department's hearing for these requests, the Committee ask the Department what percent of the blood tests results are marijuana related.**

One important point to consider is that now that the testing for blood drug and blood alcohol is done by private labs, private labs may increase their testing fees as a result of the Registry. This increase would impact law enforcement agencies, and the Department indicated they would monitor the fees and come back with a request for funding if the registry becomes an unfunded mandate on law enforcement. It is known that the closure of the Toxicology Unit already had a cost impact to law enforcement, and staff does not believe adding another cost burden on law enforcement at a time when law enforcement is grappling with learning the marijuana laws compounded by the increased cost blood drug and blood alcohol testing is appropriate.

## **Staff Recommendation**

**Staff does not recommend the request because the source of funding is not appropriate or complies with the voter's intent and because of the unknown unfunded mandate on law enforcement.** Staff does acknowledge there would be a benefit to a registry including providing the data to the Departments of Transportation and Public Safety on which they can base educational and enforcement activities, but this benefit does not out weight the unknown cost to law enforcement and the appropriate use of moneys in the Marijuana Cash Fund. Staff recommends the Committee revisit the request when better data is available about the cost to law enforcement of not only creating the registry but the closure of the Toxicology Unit. If the Department provides information on the percentage of tests attributable to blood alcohol and blood drug that is not marijuana, the Committee could revisit the request with a different funding mix.

## **Recommendation Requirements**

If the Committee opts to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to authorize the Department to use appropriations from the Marijuana Cash Fund for a blood drug and blood alcohol registry. Additionally, staff will do a comeback to provide the Committee with a recommendation on a funding mix (General Fund and Marijuana Cash Fund) based on the appropriate amount of General Fund for the blood alcohol and blood drug costs not associated with marijuana, if the Committee decides to fund this request.

## **PBH: Healthy Kids Colorado Survey (BA14)**

### **Request**

The request from the Department of Public Health and is for \$903,561 cash funds and 1.5 FTE in FY 2013-14, and \$897,519 cash funds and 1.5 FTE in FY 2015-16, to expand the the Healthy Kids Colorado Survey. The request is intended to provide a long-term sustainable funding source for the Health Kids Colorado Survey. Currently the survey is funded by a combination of funds from the Department of Human Services, Education and Public Health and Environment.

### **Linkage to Marijuana**

The requested funding for the Health Kids Colorado Survey has a direct relationship to the use of marijuana by youth because fourteen questions (out of 121 total questions) on the high school survey and fourteen questions (out of 105 total questions) on the middle school survey ask about marijuana use. It is hypothesized that the legalization of marijuana changes youth's attitude on marijuana use toward acceptance.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not address administering the Healthy Kids Colorado Survey. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Staff does not believe funding for the Healthy Kids Colorado Survey to be an “other cost” associated with the use of retail marijuana because only a small fraction of the questions on the survey involve marijuana and the questions were included on the survey prior to the legalization of marijuana.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Public Health and Environment is an eligible recipient of appropriations<sup>1</sup> from the Marijuana Cash Fund for monitoring of the health effect of marijuana including changes in drug use patterns, broken down by county, race and ethnicity. Statute does not expressly allow the Department of Public Health and Environment to receive funds for a marijuana education or a prevention campaign. Statute does not allow for the Department of Public Health and Environment to receive funds for the Healthy Kids Colorado Survey. There is a slightly nexus between this request (i.e. funding for questions related to marijuana use only) and the eligible purposes of moneys in the Marijuana Cash Fund.

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<sup>1</sup> Technical note, Section 12-43.3-501 (b), C.R.S. states the Department shall receive funds pursuant to the monitoring in Section 25-1.5-111, C.R.S. There is no section 25-1.5-111, C.R.S.

## **Request's Relationship to Existing Program(s)**

The Health Kids Colorado Survey has been administered in Colorado schools since 2005 to an average of 30 high schools, and 1,500 students each year. As a result of the limited reach of the survey, and lack of flexibility in the survey, a number of other organizations developed methods of collecting student health data. This resulted in schools being petitioned multiple times with requests to administer health surveys. In 2011 the Departments of Education, Human Services, and Public Health and Environment developed a unified approach for administering the 2013 Health Kids Colorado Survey in order to reduce the burden on schools (the survey will be biannual), lower the survey costs, and increase survey sample size. The 2013 survey was administered at 230 schools and over 40,000 students responded from September 2013 to January 2014.

The requested funding will be used to expand the survey up to 575 schools and 220,000 students. Currently only schools selected in the random sample receive a school-level report on the responses at no charge. The request would allow all schools to receive their data for free.

## **Analysis of Request**

The request would allow for the expansion of the survey to more schools, includes 1.5 FTE to manage and support the survey, and funds the development of a website from which data can be accessed by schools, researchers and policy makes. There are two different surveys, one provided to middle school students and one provided to high school students. Both surveys include the same fourteen questions about marijuana use, how student could or did obtain marijuana, and how students think adults perceived marijuana use. The middle school survey has 105 questions, so marijuana questions make up 13.3 percent of the total questions, and the high school survey has 121 questions so marijuana questions make up 11.6 percent of the total questions.

The request argues that the unified 2013 survey was able to reach more students thus providing a better and larger pool of data on which to draw conclusions. The request continues that the success of the 2013 survey is an indication that the survey works, should be expanded, and the expansion should be funded primarily by the State (not by schools). Staff agrees that having a survey on which to draw conclusions of the attitudes and activities of middle school and high school students is important to ensuring that public health education, awareness, and prevention programs are effectively implemented. Staff does not believe that the Marijuana Cash Fund is an appropriate use of funding for the expansion and ongoing costs of the Healthy Kids Colorado survey. If anything, the Marijuana Cash Fund could be used to fund the average percent of the survey that relates to marijuana.

Since the survey is administered once every two years, the next survey will not be administered until 2015, therefore the request for funding in FY 2014-15 would enable the Department, working with the other two Departments, to develop the next survey to account for the legalization of marijuana.

## **Staff Recommendation**

**Staff does not recommend the request. If the funding mix was changed so that General Fund funded 87.55 percent (\$791,068) of the survey, and Marijuana Cash Fund funded the**

**remaining 12.45, staff recommends the Committee approve the request.** The survey is much broader than marijuana, and while the argument was made to staff that all of the other questions lead to marijuana, staff does not believe argument is true and would actually limit what the survey could be used for if that argument was true.

### **Recommendation Requirements**

If the Committee opts to fund the Department's request, staff does not believe legislation is required to amend Section 12-43.3-501 (b), C.R.S. because the Department is already authorized to receive Marijuana Cash Funds for monitoring of the health effectiveness of marijuana including changes in drug use patterns. **Staff recommends a statutory change to the reference to Section 25-1.5-111, C.R.S. to say Section 25-1.5-110, C.R.S.** Additionally, staff suggests the appropriation for a mix of General Fund and Marijuana Cash Funds is included in the Long Bill (if time permits) because there is no statutory change needed. If time does not permit, staff recommends the bill making the technical correction include an appropriation clause of \$791,068 General Fund and \$112,493 cash funds for the Healthy Kids Colorado Survey.

## **PBH: Monitor marijuana-related health issues (BA15)**

### **Request**

The Department of Public Health and Environment request \$859,000 cash funds in FY 2014-15 to create a comprehensive surveillance system to enable the Department and to receive information from emergency departments, identify, and respond to possible outbreaks of harmful or deadly medical conditions. The request is for one time funding.

### **Linkage to Marijuana**

The requested funding for an emergency room surveillance system does not have a direct relationship to the usage of marijuana authorized by Colorado voters. The use of synthetic marijuana is cited in the request an example of how a surveillance system would have helped identify the problem sooner, but there has not been a reported surge in marijuana related emergency room visits that did not involve a child inadvertently consuming marijuana.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not mention a system to track and respond to health outbreaks based on symptoms treated by emergency departments. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Staff is skeptical that creating an emergency room surveillance system could be considered an “other cost” associated with the use of retail marijuana because the system is much more than just symptoms from marijuana use.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Public Health and Environment is not an eligible recipient of appropriations from the Marijuana Cash Fund for developing an emergency room surveillance system. There is no nexus between this request and the eligible purposes of moneys in the Marijuana Cash Fund.

### **Request’s Relationship to Existing Program(s)**

The Department does not have a current system to identify co-occurrences of acute symptoms appearing in emergency departments across the state that could be related. Emergency departments treat patients, but there is no central repository to collect and monitor the cases that are being treated.

### **Analysis of Request**

There are three components of the request: (1) build out of the Biosense System will cost \$489,000, (2) Build out of the ESSENSE system will cost \$70,000, and (3) expansion of the



Colorado Disease Reporting System (CEDRS) to include marijuana related illnesses will cost \$300,000.

The Biosense System is used by the Center for Disease Control, and the request would fund the connection of the hospitals around the state to the system. Once a hospital is connected, the information be gathered by the Department, and Department staff would analyze the data to identify trends. The ESSENSE System works in conjunction with the Biosense System and filters and sorts through all the raw data entered into the Biosense System. The last component of the request is to update CEDRS to include marijuana related illness. CEDRS currently monitors reportable conditions like tuberculosis, and meningococcal disease. It is unclear to staff why there is an expectation that marijuana related illness would rise to the level of conditions like tuberculosis solely because marijuana is legal in Colorado. There has been no historical effort to expand CEDRS to include marijuana related illnesses after the legalization of medical marijuana.

The request cites the recent outbreak of illnesses caused by synthetic marijuana as a justification for the expansion of the Biosense system, but the requirement in Proposition AA was other cost related to retail marijuana not synthetic marijuana. As stated before the legalization of medical marijuana did not result in a significant increase in the outbreak of illnesses related to marijuana use and it is clear that the expansion of the emergency room surveillance system is far broader than just marijuana related illnesses. Staff does acknowledge that it would benefit the State to have a system in place to identify possible outbreaks but does not believe the system should be funded with Marijuana Cash Funds.

### **Staff Recommendation**

**Staff does not recommend the request.** Staff does acknowledge there is a benefit to being able to identify disease outbreaks, but does not believe that the request falls within the allowable uses of the Marijuana Cash Fund. If the Committee wanted to consider funding the request, staff would recommend the Committee ask the Department about the precedent of paying hospitals to connect to a reporting database, and specific reasons why marijuana should be added to CEDRS. Alternatively the Committee could fund the request with General Fund and include the appropriation in the FY 2014-15 Long Bill.

### **Recommendation Requirements**

If the Committee opts to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S. to expand the Department's authorization to use appropriations from the Marijuana Cash Fund for monitoring of the health effectiveness of marijuana to include a system for emergency department reporting, and CEDRS expansion. Additionally, staff would recommend the Department respond to the questions posed in the previous section before the Committee decides on what components of the request to fund.

## **PBH: Pilot project on marijuana use during pregnancy (BA16)**

### **Request**

The Department of Public Health and Environment requests a one-time appropriation of \$211,080 cash funds in FY 2014-15 to investigate the impacts of marijuana use by pregnant women on birth defects. The request is for one fiscal year.

### **Linkage to Marijuana**

The requested funding for marijuana birth defects surveillance does have a direct relationship to the usage of marijuana authorized by Colorado voters. The anecdotal information provided by the Department is that pregnant women in their first trimester may use marijuana to help with nausea.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 does not mention the use of marijuana by pregnant women and tracking the impacts marijuana use has on newborns. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Investigating the connections between birth defects and marijuana use by a pregnant woman could be considered an “other cost” associated with the use of retail marijuana.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Public Health and Environment is an eligible recipient of appropriations<sup>1</sup> from the Marijuana Cash Fund for monitoring of the health effects of marijuana including medical information relevant to the health effects associated with marijuana use pursuant to Section 25-1.5-110, C.R.S. Statute allows for the Department of Public Health and Environment to receive funds for a for monitoring activates. There is a nexus between this request and the eligible purposes of moneys in the Marijuana Cash Fund.

### **Request’s Relationship to Existing Program(s)**

The Birth Defects Program collects medical information on all still borne children, and children born with certain birth defects. When a medical provider identifies the presence of any of the twenty three major reportable birth defects the provider must report that to the Department. The Department reviews the child's medical record and if the diagnosis is confirmed, it is reported to the Center for Disease Control and added to the Department's birth defects registry. This request

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<sup>1</sup> Technical note, Section 12-43.3-501 (b), C.R.S. states the Department shall receive funds pursuant to the monitoring in Section 25-1.5-111, C.R.S. There is no section 25-1.5-111, C.R.S.

would provide the Department with resources to review the mother's medical records to determine if there are common risk factors among women who gave birth to children with a birth defect and marijuana use.

### **Analysis of Request**

There is little research on the impact of marijuana use by a pregnant woman on her unborn child, was one of the findings staff read about while researching information about marijuana use by pregnant women. Staff also found a wide array of conclusions about marijuana use by a pregnant woman ranging from, no significant findings of birth defects, to infants born to women who had used marijuana were smaller than those born to women who did not, to women should not smoke because of increase rates of serious birth defects. The wide range of conclusions in various reports indicates to staff there is a lot of unknowns surrounding the use of marijuana by pregnant women and the effects that could have on her unborn child.

The Department request would be the first step in what could be a long term research study about the impacts of marijuana use by a pregnant woman. Staff believes this question, similar to the questions being addressed in S.B. 155 (Medical Marijuana Research Program) is trying to address, but staff questions why the Department would be doing this work and not a research university. Additionally staff found research papers dating to the 1980's so the question the request is seeking to answer is not new, but what has changed is the availability of marijuana.

### **Staff Recommendation**

Staff does not recommend the request because Marijuana Cash Fund revenues are uncertain and may not be available to support the proposed program in FY 2014-15. Staff recommends the Committee revisit the request once the Committee has a better idea of how much Marijuana Cash Fund revenue will be available for this purpose.

### **Recommendation Requirements**

If the Committee opts to fund the Department's request, staff does not believe legislation is required to amend Section 12-43.3-501 (b), C.R.S. because the Department is already authorized to receive Marijuana Cash Funds for monitoring of the health effectives of marijuana including changes in drug use patterns. **Staff recommends a statutory change to the reference to Section 25-1.5-111, C.R.S. to say Section 25-1.5-110, C.R.S.** Additionally, staff recommends an appropriation of \$211,080 be included in the Long Bill (if time permits) because there is no statutory change needed. If time does not permit, staff recommends the bill making the technical correction include an appropriation clause of \$211,080 cash funds if the Committee chooses to fund this request.

## **PBS: Data analysis on illegal marijuana activities (BA17)**

### **Request**

The Department of Public Safety requests \$373,667 cash funds from the Marijuana Cash Fund and 2.3 FTE in FY 2013-14 and \$473,228 and 7.0 FTE in FY 2014-15 and beyond. The FY 2013-14 request includes \$200,000 for a one-time replacement of all cubicles in the Colorado Information Analysis Center (CIAC).

The Department requests the additional staff and resources in order to create a new program under the CIAC in order to be able to provide actionable information and analysis regarding threats affecting the retail and medical marijuana industry to law enforcement, other state agencies and first responders.

### **Linkage to Marijuana**

In staff's opinion, the requested funding for intelligence and analysis related to the intersection of the legal and illegal arenas for the production, sale and distribution of marijuana does not have a direct relationship to the usage of marijuana authorized by Colorado voters. It is hypothesized by the Department that the legalization of marijuana use for adults could potentially drive heightened levels of criminal activity associated with an expanding market for marijuana. However, the Department has not provided any statistics or reasoning behind its hypothesis. Staff does not have any information to substantiate a hypothesis for heightened levels of criminal activity or lowered levels of criminal activity as a result of the legalization of marijuana consumption in Colorado.

### **Constitutional Authorization**

As it relates to this proposal, Amendment 64 indicates that selling, distributing, or transferring marijuana to individuals under the age of 21 shall remain illegal, and consumers of marijuana are stated to be persons 21 years of age or older. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

### **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Intelligence support could be considered an "other cost" associated with the use of retail marijuana.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S., names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Public Safety is not named as an eligible recipient of appropriations from the Marijuana Cash Fund and intelligence support is not a named purpose for appropriations from the Marijuana Cash Fund. There is no nexus between this request and the eligible purposes of moneys in the Marijuana Cash Fund.

### **Request's Relationship to Existing Program(s)**

The Colorado Information Analysis Center (CIAC) resides in the Office of Prevention and Security in the Division of Homeland Security and Emergency Management. At full staffing, the CIAC will have 8.0 FTE and total costs of \$614,000 General Fund. The CIAC was envisioned to serve as Colorado's central point for collection, analysis, and dissemination of terrorism-related information and to function as a terrorism early warning system. Information is distributed through daily reports, special reports, and incident reports to numerous agencies representing a multitude of disciplines. The center is designed to be a cross-jurisdictional partnership between local, state, and federal agencies, to include private sector participation when appropriate. The CIAC currently has the commitment of human resources from the U.S. Department of Homeland Security, the Federal Bureau of Investigation, the Denver and Aurora Police Departments, the Department of Public Health and Environment, the North-Central Region, Colorado National Guard, and West Metro Fire.

The Committee has currently approved a Department request to fund the CIAC with General Fund starting in FY 2014-15 due to the reduction of federal funding. The Department states that the CIAC was established in 2005 primarily as a counterterrorism entity. However, over the years, the CIAC has migrated from a terrorism-centric model to an "all hazards" model. The Department points to examples such as identifying critical infrastructure threatened by wildfires, providing criminal case support for high-profile murder investigations, and providing local jurisdictions with threat analysis for upcoming local events, as examples of the all-hazards model.

The Department states that with this request, it seeks to meet a challenge of identifying the impacts of illegal marijuana production, sale and distribution (and associated criminal activity) on the legal industry in order to establish effective protections for legal businesses and enhance overall public safety. As it relates to intelligence work related to overall public safety, staff believes that the CIAC is funded and should be performing intelligence work to protect the public and business from criminal and terrorist threats. As it relates to creating a unit within the CIAC that is solely tasked with protecting the legal marijuana industry from any potential impacts of the illegal marijuana industry and associated criminal elements, in staff's opinion, these functions would be over and above the current functions and resources of the CIAC.

### **Analysis of Request**

The Department states that the new marijuana related intelligence and analysis efforts requested to be funded in the CIAC will be modeled on the Auto Theft Intelligence Coordination Center (ATICC) which is part of the Colorado State Patrol's Automobile Theft Prevention Authority (CATPA). CATPA was created in 2003 in Section 42-5-112, C.R.S. In 2008, S.B. 08-60 codified the funding structure for CATPA by assessing a \$1.00 fee on each motor vehicle insurance policy issued by Colorado insurers. The authority created a grant program to fight motor vehicle theft. Recipients of the grant program include two teams of full-time motor vehicle theft investigators who work the Denver metropolitan area and include a crime analyst for each team. The grant also covers four geographically spaced teams around the state and provides overtime funds for motor vehicle theft investigations and operations. The grant also funds

trainings for motor vehicle theft investigators, a public awareness campaign for citizens (Coloradans Against Auto Theft), and an Attorney General task force for prosecution support.

Due to the absence of a statewide centralized crime database for auto theft statistics, CATPA created a centralized location for the collection and analysis of crime data related to auto theft with the creation of the ATICC. ATICC is staffed by State Troopers and crime analysts and is co-located with the CIAC and the State Patrol Intelligence Unit. The Colorado Crime Information Center (CCIC) computer system interface and the National Crime Information Computer System (NCIC) were used to create an interface as an intelligence collection and dissemination point.

The Department requests that the ATICC model be used in creating a new marijuana intelligence unit within the CIAC. The proposed new unit will have 3.0 FTE crime analysts focused geographically in order to be able to provide a range of products and services to local, state and federal officials in their respective regions.

The Department also recommends embedding 2.0 criminal analysts with various agencies around the state to provide mobile, on-site analytical support.

The Department states that it will need a 1.0 FTE administrative assistant to support the criminal analysts

The Department states that the team will require 1.0 FTE lead criminal analyst to supervise the new marijuana unit operations.

The Department also requests a one-time \$200,000 expense to re-model existing CIAC space for the new and existing staff based on a Colorado Correctional Industry (CCI) space utilization study of the CIAC office located in the Kipling complex in Lakewood. The study apparently recommended replacing old cubicles with new ones and reconfiguring the interior layout using new cubicles and more contemporary cubicle equipment and furnishings.

Staff has identified several issues with this request that prevent staff from recommending funding for the request in its current form, the concerns include:

1. The Department has not provided information to substantiate that the illegal marijuana industry will threaten the regulated and legitimate marijuana industry created in the constitution and statute. The Department has not provided information to substantiate claims that there will be more crime as a result of the legalization of marijuana production and consumption in the state.
2. Neither the Constitution nor statute, in its current form, envision the creation of a centralized intelligence unit to gather statewide intelligence and analysis of black market marijuana production, sale, import and export of marijuana, drug trafficking, and other crimes directly or indirectly affecting the medical and retail marijuana industry.

3. The Department has not provided information on the staffing levels or workload of the ATICC, nor the reasons for needing 7.0 additional FTE in the CIAC. As mentioned above, the state currently funds 8.0 dedicated FTE in the CIAC. Therefore, this request equates to an 87.5 percent increase in staffing with the sole focus on marijuana.
4. Local governments are currently scheduled to receive 15.0 percent of the revenues of the additional 10.0 percent sales tax on marijuana pursuant to the passage of Proposition AA. The Department is requesting funding for 2.0 FTE that will essentially be embedded with local agencies. Given the distribution of funding to local governments, staff is uncertain why the State should pay for these positions.
5. The Department is requesting \$200,000 cash funds (MCF) in one-time funding to reconfigure the interior layout of the CIAC that houses the existing CIAC analysts funded with General Fund, the Patrol's Intelligence Unit, and the ATICC. Given that multiple fund sources support the CIAC, staff argues that it would not be appropriate to use the Marijuana Cash Fund to support the entire reconfiguration.

### **Staff Recommendation**

Staff believes the requested proposal is premature. No data exist (no data were presented in this proposal) on which to make projections on how marijuana legalization for adult consumption in Colorado will affect criminal behavior in the state. Staff recommends denying the current request and revisiting the proposal after data are available.

### **Recommendation Requirements**

If the Committee opts to fund the Department's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S., to authorize the Department of Public Safety as eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Committee may also wish to codify in statute the responsibilities of any CIAC marijuana intelligence unit, similar to the statutes for the CATPA.

## **REV: Required programming for taxes (BA18)**

### **Request**

The Department of Revenue requests \$1,840,000 cash funds from the Marijuana Cash Fund in FY 2014-15 to complete computer programming related to H.B. 13-1318 (Implement Amendment 64 and Proposition AA) and H.B. 13-1042 (Medical Marijuana Business Income Tax Deduction). This request seeks to extend the appropriations for contract programming services into FY 2014-15 due to the inability of the contractor and the Department to complete the work in FY 2013-14.

### **Linkage to Marijuana**

The request is related to the implementation of H.B. 13-1318 (Implement Amendment 64 and Proposition AA) and H.B. 13-1042 (Medical Marijuana Business Income Tax Deduction). The Department is requesting an appropriation in FY 2014-15 to finish programming the department's taxation computer system in FY 2014-15 due to an inability to finish the work in FY 2013-14.

### **Constitutional Authorization**

Amendment 64 makes the Department of Revenue responsible for regulating the marijuana industry and collecting marijuana taxes and fees.

### **Proposition AA**

The voters passed Proposition AA. As such, the Department of Revenue has to finish modifying its tax system to allow for the collection, monitoring, and reporting of both the excise tax and the retail marijuana sales tax.

### **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S. names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Revenue is allowed to expend moneys out of the Marijuana Cash Fund for the direct and indirect costs associated with the implementation of the medical and retail marijuana codes.

### **Request's Relationship to Existing Programs**

The Taxation Business Group within the Department of Revenue is tasked with collection, administration, auditing and enforcement responsibilities for all taxes, fees, bonds, and licenses covered under Colorado tax laws.

### **Analysis of Request**

House Bill 13-1318 provided an appropriation totaling \$4,246,090 and 11.5 FTE in FY 2013-14 to the Department of Revenue for information technology costs and tax administration related to the implementation of H.B. 13-1318. The appropriation annualizes to \$1,280,050 and 21.9 FTE in FY 2014-15 and beyond.



H.B. 13-1318 appropriated \$3,400,000 cash funds in FY 2013-14 for modifications to the GenTax system. These costs are for 17,000 hours of programming at the contract rate of \$200 per hour. The programming changes are necessary to allow for the collection, monitoring, and reporting of both the excise tax and the retail marijuana sales tax. H.B. 13-1318 also appropriated \$846,090 cash funds and 11.5 FTE to implement the requirements of the bill.

H.B. 13-1042 appropriated \$280,000 General Fund for 1,400 hours of contract programming to re-program the tax processing software to allow state-licensed medical marijuana businesses to claim a state income tax deduction for business expenses that are otherwise eligible to be claimed as a federal income tax deduction.

The Department states that Fast Enterprises, the contractor supporting the GenTax application, is unable to implement all of the required GenTax programming by June 30, 2014. The Department states that in addition to having to implement the programming requirements of H.B. 13-1318 and H.B. 13-1042, the contractor has to perform 7,500 hours of scheduled GenTax system maintenance and perform 2,706 hours of programming related to other legislation adopted in 2013. Additionally, the Department states that the workload has an impact on the Department's ability to design, test, and implement the legislation within June 30, 2014.

The table below shows the calculations underlying request. As the table shows, the Department is requesting that the programming for H.B. 13-1042 be funded from the Marijuana Cash Fund in FY 2014-15.

<b>Computer Programming Costs in H.B. 13-1318 and H.B 13-1042</b>					
	<b>Hours</b>	<b>Rate</b>	<b>Total</b>	<b>General Fund</b>	<b>Marijuana Cash Fund</b>
<b>FY 2013-14 Appropriations</b>					
H.B 13-1318 Contract Computer Programming	17,000	\$200	\$3,400,000	0	3,400,000
H.B 13-1042 Contract Computer Programming	<u>1,400</u>	\$200	<u>\$280,000</u>	<u>280,000</u>	<u>0</u>
<b>Total FY 2013-14 Appropriations</b>	18,400		\$3,680,000	280,000	3,400,000
<b>FY 2013-14 Reversions</b>					
H.B 13-1318 Contract Computer Programming	7,800	\$200	\$1,560,000	0	1,560,000
H.B 13-1042 Contract Computer Programming	<u>1,400</u>	\$200	<u>\$280,000</u>	<u>280,000</u>	<u>0</u>
<b>Total FY 2013-14 Reversions</b>	9,200		\$1,840,000	280,000	1,560,000
<b>FY 2014-15 Appropriations Request</b>					
H.B 13-1318 Contract Computer Programming	7,800	\$200	\$1,560,000	0	1,560,000
H.B 13-1042 Contract Computer Programming	<u>1,400</u>	\$200	<u>\$280,000</u>	<u>0</u>	<u>280,000</u>
<b>Total FY 2014-15 Reversions</b>	9,200		\$1,840,000	0	1,840,000

The table below shows the Department estimate for implementation of each bill by phase, date, and cost. The Department states that it will complete phases 1, 2, and 3 by June 30, 2014, and that it will complete phases 4 and 5 by December 31, 2014.

<b>Appropriations in H.B. 13-1318 and H.B. 13-1042 by Phase of Implementation</b>					
	<b>Hours</b>	<b>Rate</b>	<b>Total</b>	<b>General Fund</b>	<b>Marijuana Cash Fund</b>
<b>Appropriations in H.B. 13-1318</b>					
One-time GenTax Licensing Fee	0	\$0	\$500,000	0	500,000
<b>Phase 1</b> -Programming for registration, returns, payments, transactions, and revenue accounting. 11/18/13-1/29/14	1,500	\$200	\$300,000	0	300,000
<b>Phase 2</b> - Programming for non-filers, billings, collections, and refunds. 12/2/13-3/5/14	1,700	\$200	\$340,000	0	340,000
<b>Phase 3</b> - audit, audit selection, and audit reporting. 2/17/14-6/30/14	3,500	\$200	\$700,000	0	700,000
<b>Phase 4</b> - Reporting, Marijuana Inventory Tracking System (MITS) interface, and discovery. 7/1/14-10/2/14	3,900	\$200	\$780,000	0	780,000
<b>Phase 5</b> - Burn-in period and change management. 9/15/14-12/31/14	<u>3,900</u>	\$200	<u>\$780,000</u>	<u>0</u>	<u>780,000</u>
<b>Sub-total H.B. 13-1218</b>	<b>14,500</b>		<b>\$3,400,000</b>	<b>0</b>	<b>3,400,000</b>
<b>Appropriations in H.B. 13-1042</b>					
<b>Phase 5</b> - GenTax programming for income tax deductions for H.B. 13-1042 and S.B. 13-283. 9/15/14-12/31/14	<b>1,400</b>	\$200	<b>\$280,000</b>	<b>280,000</b>	<b>0</b>
<b>Total FY 2013-14 Appropriations in H.B. 13-1318 and H.B. 13-1042</b>	<b>15,900</b>		<b>\$3,680,000</b>	<b>280,000</b>	<b>3,400,000</b>

The Department states that consideration was given to requesting a roll-forward request for \$1,840,000 from the Office of the State Controller toward the end of FY 2013-14. However, the Department did not wish to wait until the end of the year to request roll-forward spending authority and risk delaying further the implementation of the programming.

Staff agrees that if the programming will not be completed by the end of June 2014, the Department should be provided an appropriation to complete the programming in FY 2014-15. Staff agrees that the Marijuana Cash Fund is an appropriate fund source for the programming costs for H.B. 13-1042. However, staff also believes that since \$1,840,000; including \$280,000 General Fund and \$1,560,000 cash funds, of FY 2013-14 appropriations will not be spent, these appropriations should be cut in FY 2013-14.

### **Staff Recommendation**

Staff recommends that the Committee appropriate \$1,840,000 cash funds from the Marijuana Cash Fund to the Department of Revenue for FY 2014-15 to complete 9,200 hours of programming costs related to the completion of implementation of programming for H.B. 13-1318 and H.B. 13-1042.

Staff also recommends that the Committee reduce the appropriation to the Department for FY 2013-14 by \$1,840,000; including \$280,000 General Fund and \$1,560,000 cash funds, for programming costs related to H.B. 13-1318 and H.B. 13-1042 that the Department will not be able to complete in FY 2013-14.

## **Recommendation Requirements**

If the Committee opts to fund this request, legislation is not required since these are allowable costs under the Constitution and statutes.

## TRA: Marijuana DUI campaign (BA19)

### Request

The Department of Transportation requests \$1,875,000 from the Marijuana Cash Fund in FY 2014-15 with continuation funding for future years to fund and expand the newly developed “Drive High, Get a DUI” campaign for marijuana impaired driving awareness. The campaign targets male recreational marijuana users, age 18-34, the group believed to have a higher binge risk and be more likely to combine marijuana and alcohol. The campaign is supported by survey efforts and focus group message testing to evaluate and maximize the campaign’s effectiveness.

The request is summarized below by the type of activity being performed by the Department:

Governor's Request by Activity Type		
Activity	Description	Cost
Administration	Program strategy development, management, execution, meeting attendance, consultation, and evaluation	\$100,000
Creative Development	Develop further executions of CDOT's "Drive High, Get a DUI" campaign and use focus groups to test creative concepts.	300,000
Media Buying	Implement one-year statewide media campaign directed at target audience, plus 10% agency fee to buy, manage, and monitor media.	1,200,000
Public Relations	Implement year-long public relations tactics to further our campaign messaging through proactive media pitching, event sponsorship, community building, signage, and partnership development.	175,000
Evaluation	Develop evaluation plan to measure behavioral patterns and message retention, which will inform future campaign efforts.	<u>100,000</u>
<b>Total</b>		<b>\$1,875,000</b>

### Linkage to Marijuana

There is a perception, now that Colorado has legal recreational marijuana, that there are increased risks of marijuana impaired drivers operating vehicles on Colorado roads. Whether or not there are *more* marijuana-impaired drivers on the road, increasing the public’s knowledge of the risks and dangers of marijuana-impaired driving and the potential criminal liability is arguably one of the most important aspects of implementing a new regulatory structure. Furthermore, visitors to the state who have been removed from Colorado news are likely unaware of the potential dangers and liabilities associated with marijuana use.

### Constitutional Authorization

As it relates to this proposal, Amendment 64 indicates that it does not intend to allow driving under the influence of marijuana or driving while impaired by marijuana. It further allows enacting and imposing penalties for these offenses, which the General Assembly did in S.B. 13-1325. The use of marijuana tax revenue (outside of the first \$40.0 million for public school capital construction assistance) is not directly addressed in the provisions of Amendment 64.

## **Proposition AA**

As it relates to this proposal, voters approved Proposition AA, which stated that sales tax of 10.0 percent on the sale of retail marijuana and related products can be used to fund other costs related to the use of retail marijuana. Marijuana impaired driving and the need to educate the public on its dangers could be considered an “other cost” associated with the use of retail marijuana.

## **Statutory Authorization**

As it relates to this proposal, Section 12-43.3-501 (b), C.R.S., names the recipients and purposes eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The Department of Transportation is not named as an eligible recipient of appropriations from the Marijuana Cash Fund and marijuana-impaired drivers’ education is not a named purpose for appropriations from the Marijuana Cash Fund.

## **Request’s Relationship to Existing Program(s)**

The Department is currently administering an almost identical program with the use of federal transportation moneys in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). In using federal funds, the Department works on marijuana impaired driving efforts including a public education campaign, data collection, drug recognition expert training, and DUI enforcement.

The federal funds currently used to run the program are specifically tied to marijuana impaired driving; however, the Department continues to receive mixed signals on whether the federal government will continue reserving funds for these purposes.

This program is *not* an extension of the twelve high visibility impaired-driving campaigns known as the “Heat is On,” and does not direct any money to law enforcement agencies for enforcement of marijuana-impaired driving laws. This is ostensibly because the Colorado Association of Chiefs of Police, Inc. took the position that it does not want to accept tax revenue from a federally-illegal industry for general law enforcement operations.

## **Analysis of Request**

In August 2013, U.S. Deputy Attorney General James Cole issued a memorandum with guidance regarding marijuana enforcement in states which had passed laws making regulated use of marijuana legal. This memo is usually referred to as the “Cole Memo” and describes eight marijuana related activities the federal government deems enforcement priorities. The pertinent activity for this request is the prevention of drugged driving. While this memo does not hold any legal weight for individuals, it does provide the State with guidance on the enforcement activities the federal government will find favorable and could limit the chance of federal intervention in the medical- and retail-marijuana industries.

The Office of Communications and the Office of Transportation Safety within the Department of Transportation manage statewide public awareness campaigns related to impaired driving. The Department currently has the means necessary to support heightened enforcement and Drug Recognition Expert training, which allows law enforcement officers to specialize in the identification of seven drug categories, including marijuana and the dangers of driving impaired.

Therefore, the funds are requested to support mass advertising, public relations, and strategic partnerships to educate both Coloradans and tourists on Colorado's DUI laws related to marijuana. The Department's vision for this program is to continue it indefinitely through a yearly appropriation.

If the funding request is approved, the Department will expand its newly introduced "Drive High, Get a DUI" public awareness campaign. The campaign will target residents and tourists with marijuana impaired driving messaging through paid advertising, strategic partnerships, and earned media. Some of the locations the Department is considering now for advertising include ski resorts, gas stations, movie theaters, and concert venues and it wishes to expand partnerships with the marijuana industry, rental car agencies, community-based organizations, and college campuses.

To evaluate the program's effectiveness, CDOT will measure its success by:

- Analyzing data on DUI filings, serious injuries, motor vehicles fatalities, and tracking reductions to those figures;
- Continued focus group research; and
- A statewide phone survey measuring awareness, behavior change, and knowledge of Colorado DUI laws before and after the campaign.

The desired outcome from this campaign is a reduction in traffic fatalities and serious injuries for roadway users. The Department maintains the most knowledge on impaired driving enforcement and public awareness campaigns in Colorado and already has partnerships and media relationships in place. Therefore, staff agrees that the Department would be the best administrator of this program.

The cost estimates are based on how the Department typically runs its education campaigns but include increases for paid advertising to ensure the message reaches saturation. Staff did not have sufficient time to provide more insight on the specifics on the advertising being purchased; however, the \$1.2 million for media purchases includes an integrated multimedia campaign including television, radio, billboards, print, and online advertising.

### **Staff Recommendation**

Staff is concerned about the total tax revenue that will be available for any programs the General Assembly wish to fund from the marijuana tax fund. Staff ultimately believes it is prudent to postpone funding decisions for marijuana tax revenue until a later date, however, if the Committee decides to move forward with the requests, staff's secondary recommendation follows below.

Staff recommends funding this request if the Committee decides to make appropriations from the Marijuana Cash Fund in FY 2014-15 because Colorado residents and tourists are likely not completely informed on the state of criminal liability if they choose to consume marijuana. Staff finds that targeting advertising at main points of entry to ski resorts, concert venues, and airports will increase the public's collective knowledge of the repercussions of marijuana impaired driving. Because there is not total agreement on the dangers of marijuana impaired driving

among the public, staff believes focusing advertising on the repercussions of driving high will be more effective at changing behavior than trying to change the belief that stoned driving is safe.

### **Recommendation Requirements**

If the Committee opts to fund the Office's request, legislation is required to amend Section 12-43.3-501 (b), C.R.S., to authorize the Department of Transportation as eligible to receive appropriations by the General Assembly from the Marijuana Cash Fund. The legislation must also amend this section of statute to designate marijuana impaired drivers' education as a purpose for appropriations from the Marijuana Cash Fund. Additionally, staff suggests that the bill include a corresponding appropriations clause to provide \$1,875,000 for marijuana impaired drivers' education campaign, if the Committee chooses to fund this request.

**Appendix A:  
Difference in Marijuana Revenue Projections.  
Proposition AA Fiscal Note and Department of Revenue January 2014 Estimate.**

Proposition AA Fiscal Note	Governor's Budget
<b>Resident Retail Marijuana Consumption</b>	
Assumed 14.57 percent of Colorado's population 21 years of age and older uses marijuana. This equates to 512,895 marijuana users in Colorado. This percentage is the midpoint in the U.S. Department of Health and Human Service, Substance Abuse and Mental Health Services Administration's (SAMHSA) National Survey on Drug Use and Health. Assuming that each user will consume 3.5 ounces of marijuana per year, equates to 1,795,133 total ounces consumed per year.	Utilized the SAMHSA survey and 2010-2012 data for Colorado, which estimated the number of marijuana users 21 years of age and older to be 464,779 or 12.9 percent in 2010. From 2010-2012, SAMHSA found that nationally marijuana users increased 0.3 percent each year from 6.7 percent to 7.3 percent. Assumed Colorado's population of marijuana users would increase at the same rate. The number of users in Colorado for fiscal year 2014-15, accounting for inflation and population growth, is estimated to be 639,382 or 13.5 percent of persons 21 years of age or older. Assuming that each user will consume 3.5 ounces of marijuana per year, equates to 2,237,837 total ounces consumed per year.
Assumed no growth in Colorado's population or in the number of marijuana users.	Assumed Colorado's population would increase 1.5% and 1.8% in FY 2014-15 and FY 2015-16, respectively, per the Colorado Department of Local Affairs
Both utilized the frequency of consumption that was estimated from the Colorado Center on Law & Policy (CCLP) analysis of Amendment 64. <sup>[1]</sup> CCLP estimated that one medical marijuana patient uses on average 3.5 ounces per year. <sup>[2]</sup> This data is also used to estimate the marijuana consumption patterns of Colorado residents. <sup>[3]</sup>	
[1] CCLP--Amendment 64 would produce \$60 million in new revenue--these assumptions were used by Legislative Council in their analysis of HB 13-1318. These assumptions were used due to a lack of data on marijuana users.	
[2] CCLP found marijuana use per person to be 3.53 ounces per year from Bouchard, M. (2008) "Towards a Realistic Method to Estimate the Cannabis Production in Industrialized Countries." Contemporary Drug Problems. Col. 35. Pp. 291-300. The study found that the average user consumes between 94 to 116 grams per year. CCLP concluded that 3.53 ounces per year per user is a reasonable assumption.	
[3] For the purposes of this analysis there was no assumption on the impact of production caps on consumption and revenue. However, the department will review the effect of production caps periodically.	



**Appendix A:  
Difference in Marijuana Revenue Projections.  
Proposition AA Fiscal Note and Department of Revenue January 2014 Estimate.**

<b>Visitor Population and Retail Marijuana Use: Colorado visitor population is 21.7 million visitor's</b>	
Applied the national marijuana use average of 7% on the visitor population which equaled to 1,519,000 visitors who are projected to use marijuana. Assuming that each user will consume 0.11 ounces of marijuana per year, equates to 163,748 total ounces consumed per year.	Applied Colorado's marijuana use rate of 13.5% which equals 2,929,500 visitors who are projected to use marijuana. Assuming that each user will consume 0.35 ounces of marijuana per year, equates to 1,025,325 total ounces consumed per year.
Assumed each visitor would spend \$20 dollars on marijuana.	Applied Colorado's marijuana consumption pattern from CCLP of 3.5 ounces per year per user. When applied, a visitor on average is projected to spend \$110 dollars on marijuana.
Applied no growth rate to population, marijuana use or visitor population and use.	Applied Colorado's estimated population growth rate of 0.3% to Colorado marijuana users and visitor users.
<b>Medical Marijuana Patient Population Conversion</b>	
Utilized the Substance Abuse and Mental Health Service Administration's National Survey of Drug Use and Health and estimated the number of marijuana users who use 300+ days out of the year and used this cohort as habitual users. The fiscal note applied the habitual user rate on the medical marijuana patient population (101,220) as the conversion rate to retail marijuana. The conversion (habitual) rate is 45.91% (54,752).	Estimated the first 6 months of the forecast that 10 percent of the medical marijuana patient population would convert to retail marijuana; in the second six months a total of 15 percent would convert; and after the first year a total of 25 percent would convert.
It is assumed that a portion of the medical marijuana patient population would not renew their medical marijuana patient card and, instead, purchase marijuana from retail establishments. Patients may decide not to renew for the following reasons: (1) they no longer want to be listed on the Medical Marijuana Patient Registry; and (2) they no longer want to pay the annual renewal cost of \$35.00 for a medical marijuana patient card and an annual Physician Certification, which on average costs \$75.00.	
<b>Wholesale and Retail Marijuana Prices</b>	
Both assumed the average market wholesale price and the average market retail price of medical marijuana is \$93.75 per ounce and \$187.50 per ounce, respectively. Prices are based on a review, by the Legislative Council through the Medical Marijuana Industry Group, of current medical marijuana dispensary prices in the state. <sup>[1]</sup> Legislative Council utilized the estimates from Colorado Futures and the RAND Corporation. <sup>[2]</sup> The estimates in the Governor's budget will be adjusted once the MED market study is completed in April 2014.	
[1] Estimates do not assume that increased consumption or competition would reduce prices.	
[2] The estimates were found by comparing the RAND Corporation's and Colorado Future's estimates on the average market price for wholesale and retail medical marijuana.	

**Appendix A:  
Difference in Marijuana Revenue Projections.  
Proposition AA Fiscal Note and Department of Revenue January 2014 Estimate.**

<b>Medical Marijuana Sales Tax Revenue Projections</b>	
Did not include medical marijuana sales tax revenue projections.	Included medical marijuana sales tax revenue projections.
<b>Retail Marijuana Sales Tax Revenue Projections</b>	
Did not include any adjustment to excise and sales tax revenue in January for the product being transferred from medical to retail and not subject to the excise tax. Retail marijuana projections are yearly and not monthly and did not account for a ramp up effect on revenue.	Assumed 97.5 percent of the product transferred will be not be subject to the excise tax, which results in a loss of retail marijuana excise tax revenues in January 2014. Additionally, the estimates assumed there will be a 7 percent loss in sales tax revenue in January 2014. Due to the timing of the local licensing approval process many of the retail marijuana businesses will become operational between January and June. Therefore, it is assumed the retail marijuana excise tax revenue will be reflective of this licensing pattern. It is assumed retail marijuana sales tax revenue will not reach optimization until June 2014 because of the following: (1) local licensing approval process for retail marijuana; (2) shortage in supply of retail marijuana; and (3) businesses learning to file retail marijuana excise taxes properly.
<b>Medical Marijuana and Retail Marijuana Application and License Fee Revenue</b>	
Did not include application and license fee revenue projections for medical marijuana and retail marijuana.	Included application and license fee revenue projections for medical marijuana and retail marijuana.
<b>License Data</b>	
Included no projections on the number of businesses that would convert from medical marijuana to retail marijuana and the number of new entrants to the retail marijuana market.	Assumed 439 or 50 percent of medical marijuana businesses would apply for retail marijuana licenses while still maintaining their medical marijuana licenses over the first 6 month period.[1] Of the businesses converting, 225 would be retail marijuana cultivation facilities, 170 would be retail marijuana stores, 40 would be retail marijuana product manufacturers, and 4 would be retail marijuana testing facilities. The analysis estimated that there would be a 5.0 percent increase in new entrants in FY 2014-15 and in FY 2015-16.
	[1] The 50 percent conversion rate is based on year to date activity for the number of medical marijuana businesses converting to retail marijuana.
	The estimated number of licenses are based on current retail marijuana license data.

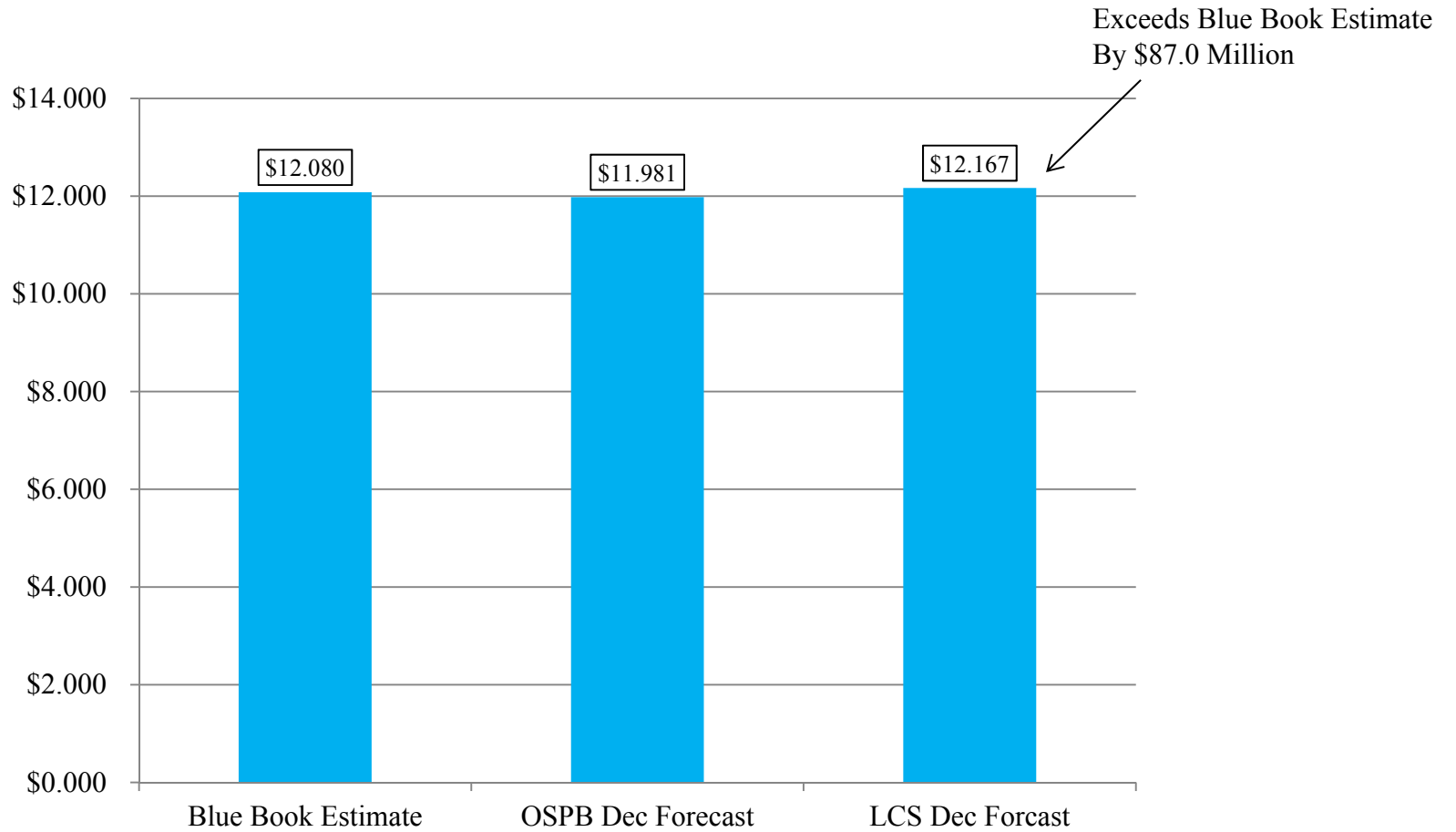
**Appendix A:  
Difference in Marijuana Revenue Projections.  
Proposition AA Fiscal Note and Department of Revenue January 2014 Estimate.**

<b>Economic Analysis</b>	
<p>Did not utilize any economic and control variables.</p>	<p>Utilized macro-economic and control variables in the model including the following: (1) age dispersion of Colorado’s population; (2) Colorado’s migration population; (3) retail marijuana dummy variable; (4) Colorado’s unemployment rate; (5) U.S. unemployment rate; (6) U.S. personal income; (7) U.S. retail sales and food services; (8) crude oil price per barrel; and (9) medical marijuana patient population.<sup>[1]</sup> In addition, Colorado’s beer consumption in gallons is also used since beer is associated as being a substitute of marijuana.<sup>[2]</sup></p> <p>[1] These variables were used as constants that are an unchanging standard of comparison to control for any economic changes in Colorado and the U.S. The retail marijuana dummy variable is equal to 1 for months retail marijuana is legal and 0 otherwise. The dummy variable takes into account the effects of the legalization of marijuana. The U.S. variables are lagged to take into account the effect of the U.S. economy on Colorado’s economy.</p> <p>[2] Anderson, D., Hansen B., and Rees, D. (2012) “Medical Marijuana Laws, Traffic Fatalities, and Alcohol Consumption.” IZA Discussion Paper No. 6112. The researchers found that beer had a substitution effect with medical marijuana. They noted that the response was small but significant. They also found that when medical marijuana was introduced beer sales were affected. They stated that beer is a favorite among the 21-25 age group, which suggests that marijuana is favorable among that age group too.</p>
<p>Did not use any regression analysis for the projected revenue. The projected revenue is a straight calculation based on the number of users, consumption pattern, price of retail and wholesale marijuana, and tax rates. It did not utilize any historical data on medical marijuana tax revenue.</p>	<p>Utilized regression analysis with macro-economic and control variables for the projected revenue. The model for the retail marijuana projected revenue is based on the seasonality and trend of medical marijuana sales tax revenue from October 2010 to present.</p>

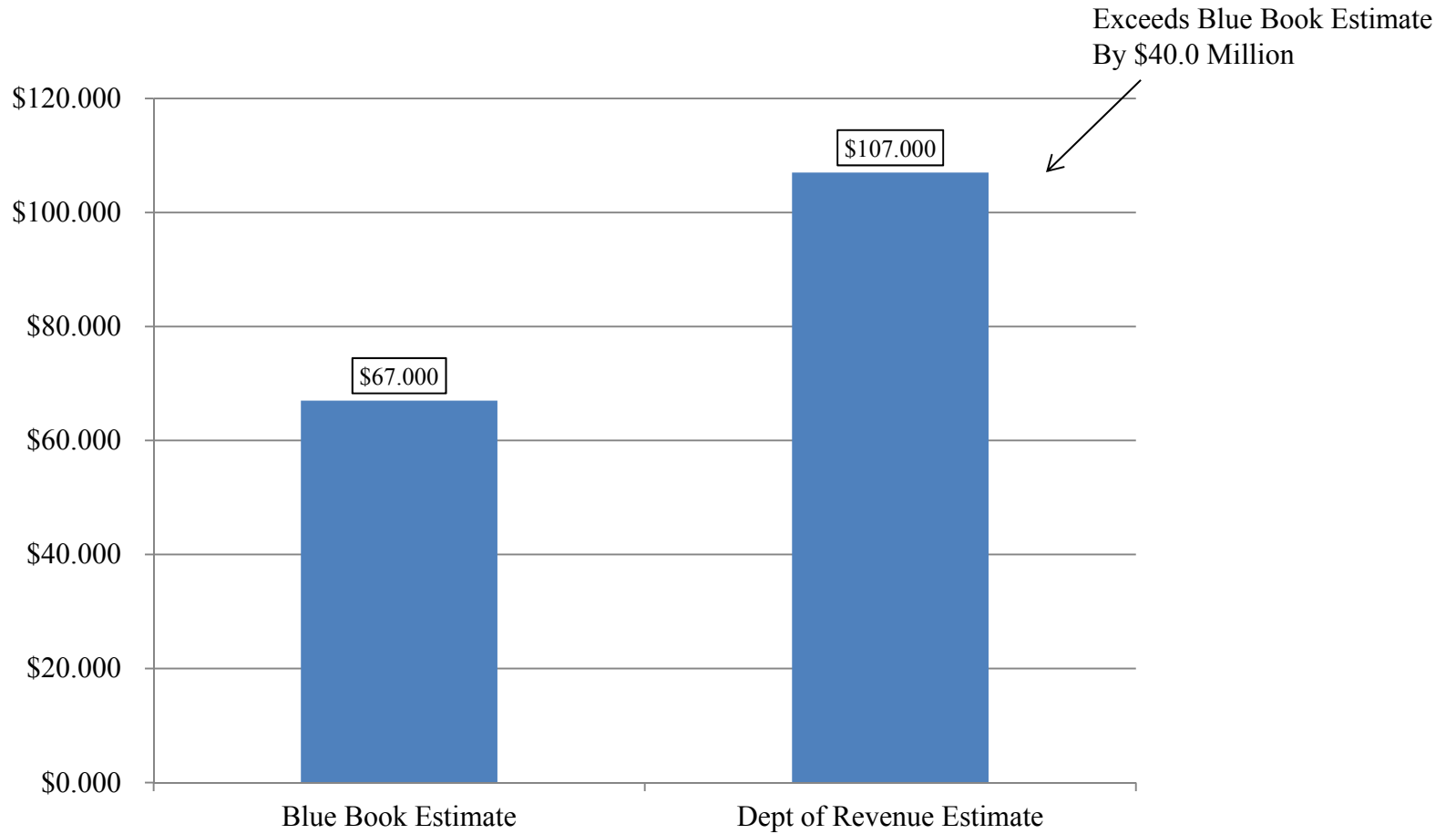
# Appendix B

## Graphical Illustration of TABOR Implications

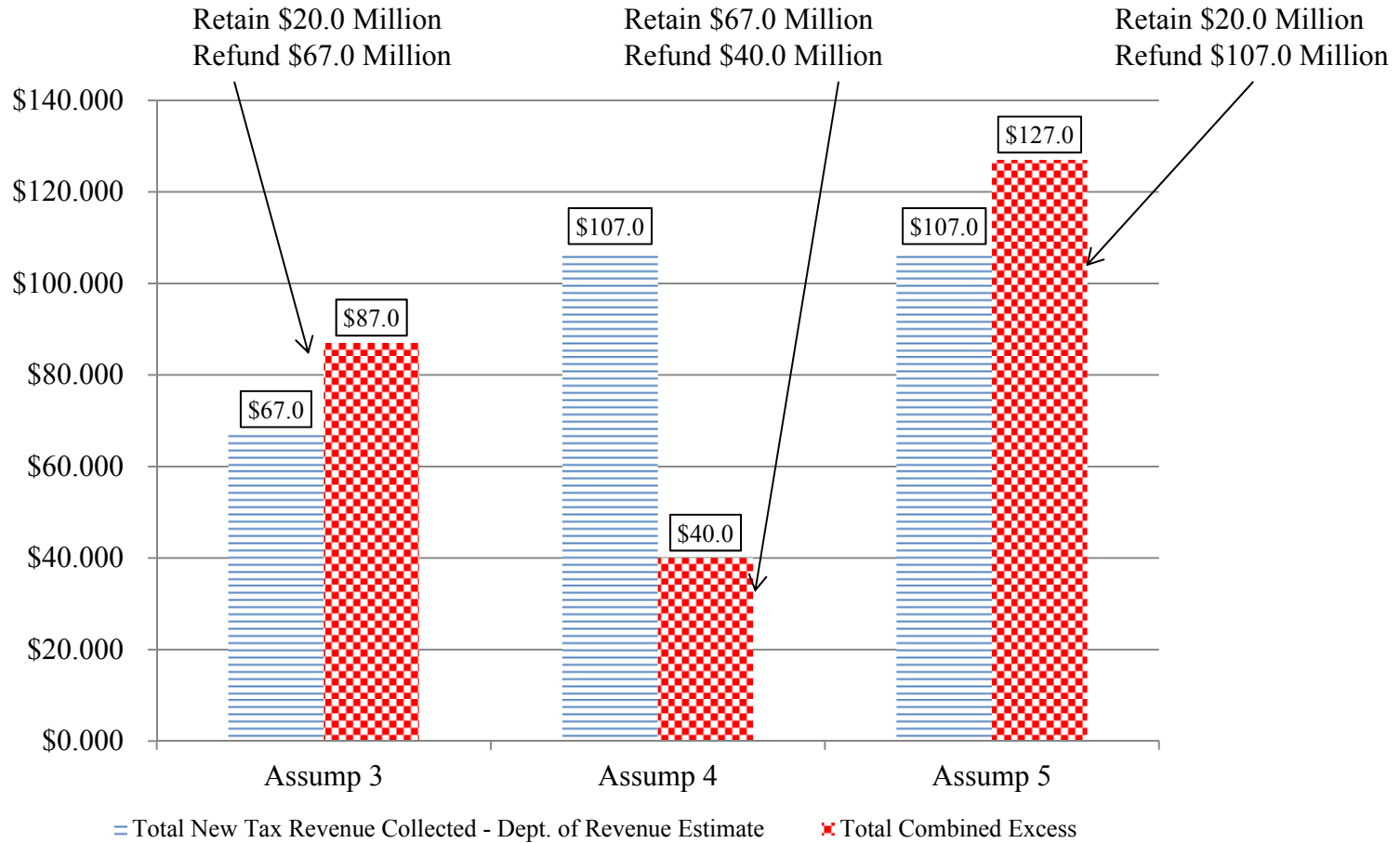
# FY 2014-15 State Fiscal Year Spending (Dollars in Billions )



# FY 2014-15 Marijuana New Tax Revenue (Dollars in Millions )



## FY 2014-15 Combined Excess (Dollars in Millions )



**NOTE:**

Assumption 3 = SFYS exceeded Blue Book by \$87.0 million.

Assumption 4 = NTR exceeded Blue Book by \$40.0 million.

Assumption 5 = SFYS exceeded Blue Book by \$87.0 million and NTR exceeded Blue Book by \$40.0 million.

Maximum refund in each case is equal to total NTR collected.

# Comparison of Various Assumptions for Marijuana Tax Collections (Dollars in Millions )

