

MEMORANDUM

TO: Joint Budget Committee

FROM: Eric Kurtz, JBC Staff (303-866-4952)

SUBJECT: Department of Health Care Policy and Financing
Staff-initiated Supplemental Comebacks

DATE: January 26, 2015

The JBC initially tabled a decision on the Department's request "S9 CLAG recommendations and HCBS final rule review" to ensure Representative Young could participate in the discussion. Below is the relevant portion from the JBC staff supplemental write-up.

S9 CLAG RECOMMENDATIONS AND HCBS FINAL RULE REVIEW

	Request	Recommendation
Total	<u>\$518,274</u>	<u>\$236,800</u>
General Fund	246,637	105,900
Cash Funds	12,500	12,500
Federal Funds	259,137	118,400

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	YES
JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made. Specifically, new federal rules regarding Home and Community Based Services (HCBS) were finalized after the normal budget request cycle for FY 2014-15.	

Department Request

The Department requests resources to analyze and respond to some recently released policy directives and reports regarding long term services and supports (LTSS).

1. Community Living Advisory Group (CLAG) report, released September 2014 – The report provides wide-ranging recommendations to improve the LTSS delivery system. The Department would like to evaluate the feasibility and fiscal ramifications of implementing the recommendations. The request also includes money to backfill funding the Department took from other initiatives to support the CLAG in FY 2014-15.
2. New federal rules regarding Home and Community Based Services (HCBS), published January 6, 2014 – The new rules primarily address (1) the settings that qualify as HCBS and (2) the person-centered planning process that must be employed in HCBS waiver programs. The person-centered planning process criteria include a requirement for conflict-free case management, which could have significant ramifications for Community Centered Boards that currently provide both case management and services for people with intellectual and developmental

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disabilities. The Department needs to ensure that state policies and practices comply with the new federal rules and educate providers and clients on the new standards.

3. The *Community Living Plan: Colorado's Response to the Olmstead Decision*, published July 30, 2014 – The report provides recommendations for complying with the federal Olmstead decision that found the unnecessary segregation of individuals with disabilities in an institution is a form of discrimination and required states to provide community-based care whenever appropriate. The Department request funding to evaluate the steps necessary to implement the recommendations.

An associated budget amendment requests a new FTE for HCPF to manage the contracts for evaluation of LTSS policies.

Summary of S9 CLAG Recommendations and HCBS Final Rule			
	FY 14-15	FY 15-16	FY 16-17
Backfill accrued CLAG costs			
Chair/Facilitator @ 1,000 per month	\$4,000	\$0	\$0
Facilitation contract	13,340	0	0
Final report preparation	<u>21,784</u>	<u>0</u>	<u>0</u>
	\$39,124	\$0	\$0
Evaluation of CLAG recommendations			
Chair/Facilitator @ 1,000 per month	6,000	12,000	0
Facilitation contract	149,400	149,400	0
Meeting expenses	31,950	40,000	0
Financial/Feasibility Analysis	<u>25,000</u>	<u>75,000</u>	<u>0</u>
	\$212,350	\$276,400	\$0
HCBS rules analysis and implementation			
HCBS settings	148,500	351,675	50,000
Person-centered planning	63,300	70,800	50,000
Conflict-free case management*	25,000	100,000	0
Meeting expenses	<u>0</u>	<u>6,638</u>	<u>0</u>
	\$236,800	\$529,113	\$100,000
Community Living Plan	\$30,000	\$90,000	\$0
State oversight of LTSS contracts			
Personal Services	0	58,479	63,800
Benefits	0	12,575	13,512
Operating	<u>0</u>	<u>5,182</u>	<u>950</u>
	\$0	\$76,236	\$78,262
TOTAL	<u>\$518,274</u>	<u>\$971,749</u>	<u>\$178,262</u>
General Fund	246,637	435,875	89,131
Cash Funds*	12,500	50,000	0
Federal Funds	259,137	485,874	89,131

* The cash funds are for the analysis of the conflict-free case management and the source is the Intellectual and Developmental Disabilities (IDD) Services Cash Fund, which receives year-end reversions from appropriations for IDD services.

Staff Recommendation

Staff recommends the portion of the request related to the HCBS rules analysis and implementation only. The staff analysis of each component of the request is discussed in more detail below.

Backfill accrued CLAG costs – Staff does not recommend backfilling the Department for accrued costs in support of the CLAG. The CLAG was created by Executive Order 2012-027. The executive branch did not request legislative approval or funding of the CLAG and undertook the work within existing resources. Backfilling the Department for accrued costs in support of the CLAG does not meet the JBC's supplemental criteria.

Evaluation of CLAG recommendations – Staff does not recommend funding for the Evaluation of the CLAG recommendations. The Department envisions a modified version of the CLAG, involving many of the same people, meeting in smaller implementation committees, to go through the details of how to operationalize the CLAG recommendations. The Department believes the stakeholder input through the CLAG has been valuable and would like to continue the process through the implementation of the recommendations. The JBC staff has three concerns with this approach. First, the CLAG was originally implemented within existing appropriations, and not in response to a legislative directive, and so staff is not sure why the General Assembly should begin funding the CLAG through a supplemental. Second, staff suspects that many of the CLAG recommendations were phrased in general terms lacking detail because those broad recommendations could achieve consensus, and there may be less of a consensus about the implementation details. The Department has received the stakeholder input and needs to start making decisions. Staff is concerned that continued stakeholder involvement at the level typical of the CLAG to this point may actually be counter-productive and result in paralysis and stagnation, rather than operationalization of the CLAG recommendations. Third, the JBC recently approved a significant increase in staff and resources for the Department specifically so the Department would be better positioned to work with stakeholders, and so a supplemental to ensure stakeholder input on the implementation of the CLAG recommendations seems redundant.

HCBS rules analysis and implementation -- Staff does recommend funding for this component of the request. These are externally imposed rules that the Department must implement. The Department needs to ensure that policies and business practices comply with the rules and educate providers and clients about the changes. Some of the rules could have significant impacts on providers and clients and the Department needs to proceed cautiously to implement them in the least disruptive way.

Community Living Plan – Staff does not recommend funding for this component of the request. The Department has been working on the implementation of the Olmstead decision since it came out in 1999. This is at least the third report on the topic. The purpose of the report is to, "revisit and update the original recommendations with the intent of developing a strategic plan that could be fully implemented, monitored and evaluated." The report contains specific recommendations for action steps.

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The JBC staff believes any further work to operationalize or analyze the feasibility of the recommendations can and should be done within existing resources.

State oversight of LTSS contracts – Staff does not recommend this component of the request. The staff is recommending fewer contracts than the original request. Also, the Department already has personnel experienced in managing contracts and subject matter experts on long-term services and supports. Even if the JBC approved the Department's request, the proposed contracts are for a short duration, and so the JBC staff is not sure why new permanent state FTE to manage the contracts would be needed.