

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
FROM Carolyn Kampman, JBC Staff (303-866-4959)
DATE March 6, 2017
SUBJECT Department of Human Services, Behavioral Health Services, Tabled Staff Recommendation Related to H.B. 16-1408

Last Thursday (March 2), the Committee considered the Department of Human Services' FY 2017-18 budget request for behavioral health programs. This memorandum concerns one of two tabled items. This staff recommendation includes potential legislation, so the Committee delayed action on this recommendation until all six members could be present. I have pasted below the relevant excerpt from my March 2 figure setting document (pages 32 through 36).

→ STAFF-INITIATED: CHANGES RELATED TO HB 16-1408

RECOMMENDATION: Staff's recommendation includes three staff-initiated changes related to H.B. 16-1408.

- *Technical Adjustments.* Staff recommends maintaining the adjustments that were approved for FY 2016-17, with one exception. Staff recommends eliminating the one-time reduction of \$125,007 in the appropriation for Mental Health Services for Juvenile and Adult Offenders. The Department reduced allocations to community mental health centers from this line item to mitigate the impact of the error in H.B. 16-1408. Staff's recommendation restores this amount (for an appropriation totaling \$3,025,192).
- *Discretionary Adjustments.* Staff recommends increasing cash fund appropriations from the Marijuana Tax Cash Fund (MTCF) and the Offender Mental Health Services Fund by an additional \$2,439,030 to ensure that funding is sufficient to allow community mental health center staff in every region to provide case management and treatment services, wrap-around services, and medications (that are not covered by Medicaid) for juvenile and adult offenders who have mental health problems.
- *Statutory Changes.* Staff recommends the Committee consider introducing a bill to clarify the intent of H.B. 16-1408 as it relates to authorized uses of the MTCF.

Analysis:

House Bill 16-1408

The Joint Budget Committee sponsored legislation last session (H.B. 16-1408) that establishes a new formula for the allocation of the annual payment received by the State as part of the Tobacco Master Settlement Agreement (Tobacco MSA). The new formula allocates all Tobacco MSA revenue by percentage shares, rather than the hybrid structure of fixed dollar amounts and capped percentage shares in multiple tiers. The formula increases annual allocations to most programs receiving funding under the current distribution, while eliminating dedicated funding for certain purposes in the Department of Human Services. The act makes the following appropriation changes in the Department related to funds from the Tobacco MSA revenues and the MTCF.

SUMMARY OF TOBACCO MASTER SETTLEMENT AGREEMENT DISTRIBUTION FORMULA APPROPRIATION CHANGES			
SECTION	PROGRAM	TOBACCO MASTER SETTLEMENT CASH FUNDS	MARIJUANA TAX CASH FUND
28	Mental Health Services for Juvenile and Adult Offenders	(\$3,025,192)	\$3,025,192
28	Mental Health Services for Youth (H.B. 99-1116)	(300,000)	300,000
28	Community Prevention Treatment - Alcohol and Drug Abuse	(756,298)	756,298
30	Tony Grampas Youth Services	(2,626,328)	2,626,328
33	Nurse Home Visitor Program	6,743,164	0
TOTAL		\$35,346	\$6,707,818

This staff recommendation concerns two of the above programs:

- “Mental Health Services for Juvenile and Adult Offenders” is a line item that supports the purchase of mental health services from community mental health centers (Centers) for juvenile and adult offenders who have mental health problems. Eleven of the 17 Centers have designed and implemented such programs (called "S.B. 07-097 programs" based on the authorizing legislation). These funds are used for staff that provide case management and treatment services, wrap-around services, and medications that are not covered by Medicaid. This line item was previously supported by tobacco MSA revenues that were annually transferred to the Offender Mental Health Services Fund. House Bill 16-1408 eliminated this transfer, so the Offender Mental Health Services Fund no longer has a revenue source. The act eliminated the FY 2016-17 appropriation from this fund for this line item (\$3,025,192) and substituted a direct appropriation from the MTCF.
- “Community Prevention and Treatment” is a line item that provides funding for the purchase of alcohol and drug abuse prevention and treatment services from managed service organizations and other community providers. This line item was previously supported by Tobacco MSA revenues that were annually transferred to the Alcohol and Drug Abuse Community Prevention and Treatment Fund. House Bill 16-1408 repealed this fund, eliminated the FY 2016-17 appropriation from this fund for this line item (\$756,298), and substituted a direct appropriation from the MTCF.

Recommended Technical Adjustments to Correct Error in Appropriation Clause

Following the 2016 legislative session, Department staff notified JBC staff of a technical error in the appropriation clause in H.B. 16-1408. JBC staff worked with the Department to clarify the situation and identify a solution. The Committee recently approved a staff-initiated recommendation to amend the FY 2016-17 appropriation clause in H.B. 16-1408 to correct the errors, including:

- eliminating administrative appropriations totaling \$166,725 for which there is no longer a revenue source (including \$99,815 from the Offender Mental Health Services Fund and \$66,920 from the Alcohol and Drug Abuse Community Prevention and Treatment Fund);
- replacing these administrative appropriations with appropriations totaling \$166,735 from the MTCF (including \$150,715 for Personal Services and \$16,020 for Operating Expenses); and
- reducing the appropriation from the MTCF for Mental Health Services for Juvenile and Adult Offenders by \$125,007 to reflect lower anticipated expenditures.

These adjustments result in a net change of \$0 for administrative expenses, and a one-time reduction to the appropriation for Mental Health Services for Juvenile and Adult Offenders is based on information provided by the Department concerning amounts that had been awarded for FY 2016-

17. For FY 2017-18, staff recommends maintaining the technical adjustments for administrative expenses and eliminating the one-time \$125,007 reduction for community mental health center (Center) allocations.

Recommended Discretionary Adjustments to Establish a Basis for the Annual Appropriation

Since the two programs described above were created in 2007, the annual appropriation has been determined based on the formulaic distribution of tobacco master settlement funds. As a consequence, the funding available has declined by about 27 percent for each program. Now that the General Assembly has elected to support these programs with the MTCF, staff asked the Department for information about the actual need for these programs, particularly in terms of an overall strategy to address behavioral health needs of individual involved in the criminal justice system. Based on information provided by the Department, staff recommends increasing the appropriation for Mental Health Services for Juvenile and Adult Offenders.

Specifically, staff recommends increasing cash fund appropriations for this program by \$2,439,030 to ensure that funding is sufficient to allow Center staff in every region to provide case management and treatment services, wrap-around services, and medications that are not covered by Medicaid. The recommended increase includes:

- \$1,058,038 to restore to FY 2009-10 levels the amounts allocated to the 11 Centers that have been receiving allocations from this line item;
- \$1,350,000 to allocate funding to the six Centers (all rural) that do not currently receive any funding for this purpose¹;
- \$9,767 to restore a \$10,000 budget to make annual training available for Centers; and
- \$21,225 to restore funding for 1.5 FTE state level staff that were originally funded to administer this program.

Staff recommends that \$509,329 of this increase be appropriated from the balance available in the Offender Mental Health Services Fund, with the remainder (\$1,887,251) from the MTCF.

Staff understands that the Department has been able to maintain funding for 1.0 FTE Health Professional VI, but it does not have sufficient funding to support the 0.5 FTE Administrative Assistant III. Given the Department's actual fill rate for the FTE that are currently reflected for this line item appropriation, staff does not recommend adjusting the FTE to reflect an increase of 0.5 FTE.

Recommended legislation to clarify statutory authority related to the MTCF: House Bill 16-1408 clearly indicates the General Assembly intent to fund the following three behavioral health programs from the MCTF (rather than from tobacco master settlement funds):

- Mental Health Services for Juvenile and Adult Offenders;
- Mental Health Services for Youth (H.B. 99-1116); and
- Community Prevention Treatment (for alcohol and drug abuse).

¹ These six Centers include: Centennial (10 counties in northeast region); Center for Mental Health (Delta, Gunnison, Hinsdale, Montrose, Ouray, and San Miguel counties); San Luis Valley Behavioral Health Group (Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties); Southeast Health Group (Baca, Bent, Crowley, Kiowa, Otero, and Prowers counties); Axis Health Systems (Archuleta, Dolores, La Plata, Montezuma, and San Juan counties); and Solvista Health (Chaffee, Custer, Fremont, and Lake counties).

However, staff is concerned that H.B. 16-1408 did not include a provision to modify the list of authorized purposes for appropriating money in the MTCF. Specifically, **staff recommends the Committee consider introducing legislation to make the following modifications to Section 39-28.8-501 (2)(b)(IV), C.R.S.:**

“Subject to the limitation in subsection (5) of this section, the general assembly may annually appropriate any money in the fund for any fiscal year following the fiscal year in which they were received by the state for the following purposes:

(A) To educate people about marijuana to prevent its illegal use or legal abuse;

(B) To provide services for adolescents and school-aged children in school settings or through community-based organizations;

(C) To treat and provide related services to people with any type of ~~substance use~~ BEHAVIORAL HEALTH disorder, ~~including those with co-occurring disorders~~, or to evaluate the effectiveness and sufficiency of ~~substance use disorder~~ BEHAVIORAL HEALTH services;

(D) For jail-based and other behavioral health services for persons involved in the criminal justice ~~system through the correctional treatment cash fund created in section 18-19-103 (4)(a), C.R.S.~~; SYSTEM;”

The above changes would clarify the legislative intent expressed through H.B. 16-1408 to utilize the MTCF to support services for both substance use and mental health disorders (referred to collectively as “behavioral health” disorders). It would also clarify that the General Assembly does not intend that every appropriation from the MTCF for the provision of behavioral health services is required to be appropriated through the Correctional Treatment Cash Fund. This Fund, which originates in the Judicial Department budget, currently supports only substance use-related services for offenders (including those who have a co-occurring mental illness, but excluding those who only have a mental illness.

Staff also recommends repealing the Offender Mental Health Services Fund that is created in Section 27-66-104 (4)(a), C.R.S., effective July 1, 2018. This fund was created through S.B. 07-097 to receive allocations of tobacco master settlement funds. Rather than repealing the fund, H.B. 16-1408 maintained the fund, which now costs of “any money that the general assembly may appropriate to the fund for the purchase of mental health services for juvenile and adult offenders who have mental health problems and are involved in the criminal justice system”. Given that the General Assembly has elected to fund these services directly from the MTCF, this cash fund is no longer necessary and should be repealed. However, the Department reports that this fund had a balance of \$509,329 as of July 1, 2016. Staff recommends appropriating this amount for FY 2017-18, and repealing this fund at the end of FY 2017-18.