

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2016-17 STAFF FIGURE SETTING
TOBACCO MASTER SETTLEMENT AGREEMENT
AND
AMENDMENT 35 FUNDED PROGRAMS**

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

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February 4, 2016**

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Part 1 - Tobacco Master Settlement Agreement

OVERVIEW OF CALCULATING TOBACCO DISTRIBUTIONS

The Legislative Council January 2016 forecast of the amount of Tobacco Master Settlement revenue that will be received in April 2016 serves as the basis for the Long Bill appropriations of Tobacco Master Settlement revenues in FY 2016-17. The allocation percentages are driven by statute and are shown in Appendix A. Once approved by the Committee, JBC analysts will use the FY 2016-17 allocations to set appropriations for Tobacco Master Settlement-supported programs in their respective departments.

Tobacco Master Settlement allocations and appropriations

- Section 24-75-1104.5 (1), C.R.S., specifies that the total Tobacco Master Settlement funds allocated to programs will be based on the *prior year's* Tobacco Master Settlement receipts.
- The distribution across programs is governed by statute, with the key provisions contained in Sections 24-75-1104.5 (1) and (1.5), C.R.S. The Treasury uses these formulas to divide settlement moneys among the various Tobacco Master Settlement-supported programs.
- The General Assembly appropriates the allocated funds in the Long Bill. Without such spending authority, most programs can't spend the allocated money.

Appropriations are based on a tobacco settlement revenue forecast

Most of the appropriations in the Long Bill to Tobacco Master Settlement-supported programs depend upon the amount of Tobacco Master Settlement revenue received in the prior fiscal year. However, almost all the revenue arrives in April, after the Long Bill is written. As a result, even though actual receipts are known by mid-April, appropriations in the Long Bill are based on the January Legislative Council Staff revenue forecast. The table below compares, for the last five years, the total projected revenues used for JBC staff figure setting, with the actual revenue received. As shown, the variance between projected and actual receipts has been small.

Variance Between Projected and Actual TMS Revenues					
Receipt Year	Distribution Year	Projection Used for Figure Setting	Actual Funds Received	Actual Above/(Below) Projection	Percent Variance from Projection
April 2010	FY 2010-11	\$96,231,588	\$94,587,045	(\$1,644,543)	(1.7%)
April 2011	FY 2011-12	90,397,679	89,065,763	(1,331,916)	(1.5%)
April 2012	FY 2012-13	89,297,600	90,809,964	1,512,364	1.7%
April 2013	FY 2013-14	90,166,340	90,769,997	603,657	0.7%
April 2014	FY 2014-15	90,616,611	89,037,054	(1,579,557)	(1.7%)
April 2015	FY 2015-16	88,562,575	88,079,225	(483,350)	(0.5%)

TOBACCO MASTER SETTLEMENT AGREEMENT FY 2016-17 ALLOCATION RECOMMENDATIONS

The Legislative Council Staff Revenue Forecast

The table below reflects the Legislative Council Staff January 2016 Tobacco Master Settlement revenue forecast along with actual tobacco settlement revenues in recent years.

Colorado Tobacco Master Settlement Agreement Payments and Disputed Payments 2009 to 2018				
Payment Year	Fiscal Year Appropriation	Colorado Annual Payment After Withholdings	Disputed Amount Withheld	Release of Prior Withholdings
2009	FY 2009-10	\$105,419,647	(\$7,062,223)	\$7,411,531
2010	FY 2010-11	95,709,303	(8,714,641)	
2011	FY 2011-12	89,065,763	(13,614,015)	
2012	FY 2012-13	90,809,964	(11,574,809)	
2013	FY 2013-14	90,769,997	(12,362,477)	
2014	FY 2014-15	89,037,053	(11,756,684)	\$11,367,403
2015	FY 2015-16	88,079,225	(12,500,634)	
Forecast 2016	FY 2016-17	87,573,562	(12,400,000)	
Forecast 2017	FY 2017-18	86,953,541	(12,300,000)	
Forecast 2018	FY 2018-19	71,648,954	(10,200,000)	

Tobacco settlement revenue has varied based on a number of factors. Actual allocations owed in any year equal the amount owed in the prior year, modified by:

- A volume adjustment, which reflects changes in the volume of cigarettes distributed by participating manufactures nationwide and the forecast assumes a decrease in cigarette sales;
- An inflation adjustment, which equals the highest of 3.0 percent or the actual rate of inflation during the preceding year. The forecast assumes a 3.0 percent inflation adjustment; and
- Disputed payments adjustments, associated with the legal dispute over whether states are "diligently enforcing" laws concerning tobacco manufacturers who are not part of the settlement agreement. The forecast above assumes the largest cigarette manufactures will continue to withhold payments.

Staff recommends that the Committee approve the use of the above forecast and the resulting allocation of settlement revenue shown in the following table. The detailed staff recommendation in the following table by line item is based on a Legislative Council Staff projection for the April 2016 tobacco settlement revenue of: **\$87,573,562**. Staff used this figure to calculate allocations to individual programs following the rules outlined in Appendix A.

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Tobacco Master Settlement Agreement Revenue Allocations			
	FY 2015-16 Actual Revenue	FY 2016-17 Allocation	Change from FY 2015-16 Actual
Education - Early Literacy Grant Program	\$4,403,961	\$4,378,678	(\$25,283)
Health Care Policy and Financing			
Children's Basic Health Plan Trust	27,459,195	25,548,832	(1,910,363)
Children with Autism	<u>1,000,000</u>	<u>1,000,000</u>	<u>0</u>
<i>Subtotal - Health Care Policy and Financing</i>	<i>28,459,195</i>	<i>26,548,832</i>	<i>(1,910,363)</i>
Higher Education - University of Colorado Health Sciences Center	12,428,440	12,352,869	(75,571)
Human Services			
Nurse Home Visitor Program	15,735,053	16,638,977	903,924
Tony Grampsas Youth Services Program	3,523,169	3,502,942	(20,227)
Offender Mental Health Services	3,043,700	3,025,192	(18,508)
Treatment, Detoxification, and Prevention Contracts	760,925	756,298	(4,627)
Residential Mental Health Treatment for Youth	<u>300,000</u>	<u>300,000</u>	<u>0</u>
<i>Subtotal - Human Services</i>	<i>23,362,847</i>	<i>24,223,409</i>	<i>860,562</i>
Law - Tobacco Settlement Defense Account	1,000,000	1,751,471	751,471
Legislature - Office of the State Auditor	89,000	89,000	0
Military and Veterans Affairs - State Veterans Trust Fund	880,792	875,736	(5,056)
Personnel - Supplemental State Contribution Fund	1,141,387	1,134,447	(6,940)
Public Health and Environment			
Drug Assistance Program (ADAP; Ryan White)	3,082,773	3,065,075	(17,698)
Local Public Health Agencies	1,775,491	1,764,696	(10,795)
AIDS and HIV Prevention Grants (CHAPP)	1,761,585	1,751,471	(10,114)
Immunizations	1,014,567	1,008,397	(6,170)
Health Services Corps Fund	250,000	250,000	0
Dental Loan Repayment Program	<u>200,000</u>	<u>200,000</u>	<u>0</u>
<i>Subtotal Public Health and Environment</i>	<i>8,084,416</i>	<i>8,039,639</i>	<i>(44,777)</i>
Capital Construction - Department of Higher Education - Fitzsimons Lease Purchase Payments	7,046,338	7,005,885	(40,453)
Amount not allocated - used to reduce accelerated payments	1,182,850	1,173,596	(9,254)
Total Allocations to Tobacco-Supported Programs	\$88,079,226	\$87,573,562	(\$505,664)

Note on the above table: Amounts shown represent actual and anticipated allocations to program cash funds supported with Tobacco Master Settlement Revenue based on statutory formulas and settlement payments received in April 2016. Appropriations for individual programs from program cash funds typically differ from these amounts for various reasons, including because actual revenue is not known at the time appropriations are enacted. Program spending is limited by the lesser of total funds available in program cash funds or appropriated amounts. However, with limited exceptions, programs are authorized to carry forward revenue that exceeds their appropriation into the next fiscal year.

Individual staff analysts will recommend FY 2016-17 appropriation amounts for programs in their budget areas that are supported by Tobacco Master Settlement funds, taking into consideration the tobacco revenue forecast and the balance of tobacco moneys expected to be available in program cash funds.

Part 2 - Allocation of Amendment 35 Revenues

Amendment 35 was approved by the voters in 2004 and added the following two cigarette and tobacco taxes to Section 21 of Article X of the Colorado Constitution.

1. An additional \$0.64 tax on each pack of cigarettes sold in Colorado (a pack equals twenty cigarettes); and
2. A statewide tobacco products tax equal to 20.0 percent of the manufacturer's list price, on the sale, use, consumption, handling, or distribution of tobacco products by distributors.

Amendment 35 was codified in Section 24-22-117, C.R.S. which outlines how revenue from Amendment 35 is distributed to various state agencies including: the Departments of Health Care Policy and Financing, Public Health and Environment, and Human Services. The graphic in Appendix B illustrates which departments and programs receive Amendment 35 tobacco tax 20.0 percent of the manufacturer's list price dollars.

Legislative Council staff in their December 2015 revenue forecast projects Amendment 35 revenues will equal **\$141,210,000** in FY 2016-17. The following table summarizes staff's recommendation of the allocation of Amendment 35 dollars for FY 2016-17. The recommendation is based on the Legislative Council December 2015 forecast using allocations to individual programs following the rules outlined in Appendix B. **Staff recommends the Committee approve this distribution and requests permission to adjust the allocation if the March 2016 Amendment 35 forecast is greater than the December 2015 forecast.** Each JBC staff with Amendment 35 funded programs will provide additional information on the use of Amendment 35 dollars during their figure setting presentation.

The FY 2016-17 projected Amendment 35 revenues are \$370,000 less than the FY 2015-16 projected amount. It is not clear what is causing the reduction of Amendment 35 revenue and possible causes include the economy, the legalization of marijuana, and/or an increase in the purchase of electronic cigarettes.

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FY 2016-17 Distribution of Amendment 35 Moneys			
Dept.	Program and/or Fund	FY 2016-17 Allocation	Change from FY 15-16 Allocation
HCPF	Health Care Expansion Fund	\$64,956,600	(\$607,660)
HCPF	Primary Care Fund	26,829,900	(250,990)
DPHE	Tobacco Education Programs Fund	22,593,600	(211,360)
DPHE	Prevention, Early Detection and Treatment Fund	22,593,600	(211,360)
	Breast and Cervical Cancer Screening Program	4,518,720	(42,272)
	Health Disparities Program Fund	3,389,040	(31,704)
	Center for Health and Environmental Information	<u>283,884</u>	<u>0</u>
	<i>Remains in the Prevention, Early Detection and Treatment Fund</i>	<i>14,401,956</i>	<i>(137,384)</i>
DHS	Old Age Pension Fund	2,118,150	(19,815)
DOR	Local governments for lost revenue from tobacco taxes	1,270,890	(11,889)
DPHE	Immunizations performed by small local public health agencies.	423,630	(3,963)
HCPF	Children's Basic Health Plan	423,630	(3,963)
Total Distributions		\$141,210,000	\$10,000
Department Summary			
	Health Care Policy and Financing Total	\$92,210,130	(\$862,613)
	Department of Public Health and Environment Total	45,610,830	(426,683)
	Department of Human Services Total	2,118,150	(19,815)
	Department of Revenue Total	1,270,890	(11,889)

Requests for Information

REQUESTS FOR INFORMATION

Staff recommends **continuing** the following requests for information, with modifications in struck type and small caps:

4. Department of **Education**, Assistance to Public Schools, Grant Programs, Distributions, and Other Assistance, Reading and Literacy, Early Literacy Competitive Grant Program; Department of **Health Care Policy and Financing**, Medical Services Premiums; Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs; Department of **Higher Education**, Colorado Commission on Higher Education, Special Purpose, University of Colorado, Lease Purchase of Academic Facilities at Fitzsimons; Governing Boards, Regents of the University of Colorado; Department of **Human Services**, Division of Child Welfare, Tony Grampas Youth Services Program; Office of Early Childhood, Division of Community and Family Support, Nurse Home Visitor Program; Behavioral Health Services, Mental Health Community Programs, Mental Health Services for Juvenile and Adult Offenders, and Mental Health Treatment Services for Youth (H.B. 99-1116); and Substance Use Treatment and Prevention, Other Programs, Community Prevention and Treatment; Department of **Military and Veterans Affairs**, Division of Veterans Affairs, Colorado State Veterans Trust Fund Expenditures; Department of **Personnel**, Division of Human Resources, Employee Benefits Services, H.B. 07-1335 Supplemental State Contribution Fund; Department of **Public Health and Environment**, Administration and Support, Local Public Health Planning and Support; Disease Control and Environmental Epidemiology Division, Administration, General Disease Control, and Surveillance, Immunization Operating Expenses; Special Purpose Disease Control Programs, Sexually Transmitted Infections, HIV and AIDS Operating Expenses, and Ryan White Act Operating Expenses; Prevention Services Division, Chronic Disease Prevention Programs, Oral Health Programs; Primary Care Office -- Each Department is requested to provide the following information to the Joint Budget Committee by November 1, ~~2015~~, 2016, for each program funded with Tobacco Master Settlement moneys: the name of the program; the amount of Tobacco MASTER Settlement moneys received for the program for the preceding fiscal year; a description of the program including the actual number of persons served and the services provided through the program; information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals; and a recommendation regarding the amount of Tobacco Master Settlement funds the program requires for ~~FY 2016-17~~ FY 2017-18 and why.

Comment: This request for information was added in FY 2015-16 and replaced a statutory report from the Department of Public Health and Environment and the State Board of Health to improve the accountability of each program that receives Tobacco Master Settlement funding. The responses to the request for information were reviewed and presented by the JBC staff analyst during the Tobacco Master Settlement Agreement briefing which was not possible with the statutory report because the report was not submitted until mid-January.

Appendix A - Tobacco Master Settlement Allocation Percentages

Section 24-75-1104.5, C.R.S., divides Tobacco Master Settlement-supported programs into two tiers. Moneys are first allocated to tier 1 programs, which will use approximately two thirds of the total. The remainder is allocated among the tier 2 programs. The tables below list the tier 1 and tier 2 programs and provide an overview of each program's statutory funding rule. Note that the Children's Basic Health Plan receives allocations from both tier 1 and tier 2.

Tier 1 Programs	
Recipient	Portion of the Total Amount Distributed
Children's Basic Health Plan	27.0% through FY 2015-16, 25.0% starting in FY 2016-17, not to exceed \$33.0 million and not less than \$17.5 million
Nurse Home Visitor (NHV) Program and the General Fund (GF)	\$12.7 million in FY 2012-13, 17.0% less \$1.0 million in FY 2013-14, 18.0% less \$1.0 million in FY 2014-15, 19.0% less \$1.0 million in FY 2015-16, and 19.0% in FY 2016-17 and thereafter, not to exceed \$19.0 million in any year
Fitzsimons lease purchase	8.0%, not to exceed \$8.0 million or the actual lease purchase payment
Early Literacy Program (H.B. 12-1238)	5.0%, not to exceed \$8.0 million
Tony Gramscas Youth Services Program	4.0%, not to exceed \$5.0 million
HIV/AIDS Drug Assistance Program	3.5%, not to exceed \$5.0 million
HIV and AIDS Prevention Grant Program	2.0%, not to exceed \$2.0 million
Defense Account	2.0% starting in FY 2016-17
State Veterans Trust Fund	1.0%, not to exceed \$1.0 million (10.0% of the state veterans allocation is retained in the State Veterans Trust Fund and the remaining 90.0%, plus interest earned by the trust, is expended)
Litigation Settlement Defense Account	\$1.8 million in FY 2012-13, \$1.0 million in FY 2013-14, \$1.0 million in FY 2014-15, and \$1.0 million in FY 2015-16
Autism Treatment Fund	\$1,000,000 annually (fixed)
Child Mental Health Treatment Act	\$300,000 annually (fixed)
Dental Loan Repayment Program	\$200,000 annually (fixed)

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Tier 2 Programs	
Recipient	Portion of the Residual Distributed after Tier 1 Program Allocations
University of Colorado Health Sciences Center	49.0%
Children's Basic Health Plan	14.5%
Mental health services for juvenile and adult offenders	12.0%
Local public health services	7.0%
Supplemental state contribution for state employee group benefit plans	4.5%
Colorado Immunization Program	4.0%
Alcohol and drug abuse and treatment programs	3.0%
Health Services Corps (Health Care Professional Loan Forgiveness Program)	\$250,000 (fixed)
State Auditor's Office	\$89,000 (fixed)
Retained in Tobacco Litigation Settlement Cash Fund	6.0% less fixed Tier 2 allocations
Total	100.0%

Appendix B - Allocation of Amendment 35 Money

Allocation of Amendment 35 Moneys		
Dept.	Program and/or Fund	Percent
HCPF	Health Care Expansion Fund, to provide funding to the Children's Basic Health Plan and Medicaid.	46.0%
HCPF	Primary Care Fund, to provide funding to clinics and hospitals that offer health care services to the uninsured or medically indigent.	19.0%
DPHE	Tobacco Education Programs Fund, to support grants for tobacco education, prevention and cessation.	16.0%
DPHE	Prevention, Early Detection and Treatment Fund	16.0%
	Breast and Cervical Cancer Screening Program (up to \$5.0 million)	3.2% of 16.0% allocated to the PEDT Fund
	Health Disparities Program Fund	2.4% of 16.0% allocated to the PEDT Fund
	Center for Health and Environmental Information	fixed dollar amount
	Remains in the PEDT Fund for cancer, cardiovascular and pulmonary disease prevention, detection and treatment grants.	16.0% less amounts credited to three above purposes.
DHS	Old Age Pension Fund	1.5%
DOR	Local governments, to compensate for lost revenue from tobacco taxes	0.9%
DPHE	Immunizations performed by small local public health agencies.	0.3%
HCPF	Children's Basic Health Plan	0.3%
Total Distributions		100.0%