COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2012-13 STAFF FIGURE SETTING

TOBACCO SETTLEMENT FUNDED PROGRAMS

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

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FY 2012-13 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

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	FY 2009-10 Actual Allocation	FY 2010-11 Actual Allocation	FY 2011-12 Projected Allocation	FY 2012-13 Projected Allocation
This table shows the transfer of tobacco settlement money to settlement supported programs or to the cash funds that support those programs. The appropriations are classified as cash funds, except for the transfer to the Department of Public Health and Environment, which is reappropriated funds transferred from other programs.				
OVERSIGHT				
Office of the State Auditor	103,640	112,831	94,587	89,000
Public Health and Environment Administration Division - RF	28,000	28,000	28,000	28,000
SUBTOTAL - OVERSIGHT	131,640	140,831	122,587	117,000
EDUCATION				
Assistance to Public Schools				
Read-to-achieve Grant Program	4,990,663	4,706,694	4,452,976	4,464,880
HEALTH CARE POLICY AND FINANCING				
Indigent Care Program				
Children's Basic Health Plan Trust	26,705,183	26,910,569	28,292,000	28,230,480
Comprehensive Primary And Preventive Care Fund /1	1,169,398	*2,824,017*	0	0
Pediatric Specialty Hospital	283,000	307,000	0	0
Medical Services Premiums				
Children with Autism	1,000,000	1,000,000	1,000,000	1,000,000
SUBTOTAL - HEALTH CARE POLICY AND FINANCING	29,157,581	31,041,586	29,292,000	29,230,480

	FY 2009-10 Actual Allocation	FY 2010-11 Actual Allocation	FY 2011-12 Projected Allocation	FY 2012-13 Projected Allocation
MILITARY AND VETERANS AFFAIRS				
Division of Veterans Affairs				
State Veterans	998,133	941,339	890,595	892,980
PUBLIC HEALTH AND ENVIRONMENT				
Local Public Health Planning and Support				
Local, District and Regional Health Department Distributions	2,450,000	2,239,190	2,049,760	1,989,030
Disease Control and Environmental Epidemiology Division				
Immunizations	1,400,000	1,279,537	1,171,291	1,136,590
AIDS and HIV Prevention Grants (CHAPP)	1,996,265	1,882,678	1,781,190	1,785,950
Prevention Services Division				
Short Term Innovative Health Programs Grants /2	358,429	*1,919,305*	*1,506,937*	*1,365,880*
Health Services Corps Fund (Provider Loan Repayment) /3	*0*	*0*	250,000	250,000
Dental Loan Repayment Program	200,000	200,000	200,000	200,000
Nurse Home Visitor Program	13,453,724	13,178,744	12,737,350	12,737,350
Tony Grampsas Youth Services Program	3,992,530	3,765,355	3,562,381	3,571,900
Disease Control and Environmental Epidemiology Division				
AIDS Drug Assistance Program (ADAP; Ryan White)	3,493,464	3,294,686	3,117,083	3,125,420
SUBTOTAL - PUBLIC HEALTH AND ENVIRONMENT	27,344,412	27,759,495	26,375,992	26,162,120
HIGHER EDUCATION				
Regents of the University of Colorado				
University of Colorado Health Sciences Center	17,150,000	15,674,327	14,348,319	13,923,200

	FY 2009-10 Actual Allocation	FY 2010-11 Actual Allocation	FY 2011-12 Projected Allocation	FY 2012-13 Projected Allocation
HUMAN SERVICES				
Mental Health and Alcohol and Drug Abuse Services				
Residential Mental Health Treatment for Youth	300,000	300,000	300,000	300,000
Treatment, Detoxification, and Prevention Contracts	1,050,000	959,653	878,469	852,440
Offender Mental Health Services	4,200,000	3,838,611	3,513,874	3,409,760
SUBTOTAL - HUMAN SERVICES	5,550,000	5,098,264	4,692,343	4,562,200
PERSONNEL AND ADMINISTRATION				
Supplemental State Contribution Fund	1,575,000	1,439,479	1,317,703	1,278,660
CAPITAL CONSTRUCTION				
Department of Higher Education				
Fitzsimons Lease Purchase Payments	8,000,000	7,546,687	7,137,921	7,143,810
OTHER				
Amount Diverted from Nurse Home Visitor to General Fund	0	0	621,577	1,550,270
TOTAL ALLOCATION TO TOBACCO-SUPPORTED PROGRAMS /4	94,869,429	94,320,702	89,224,013	89,297,600

1/ Amounts in italics reflect initial allocations; the entire FY 2010-11 amount was transferred to the General Fund by S.B. 11-216.

2/ Amounts in italics reflect initial allocations; all allocations except those directed to other programs via statute ($308,249) were transferred to the General Fund in FY 2010-11. A similar transfer would occur in FY 2011-12 pursuant to current law. A JBC-sponsored bill would repeal the program in FY 2012-13.

3/ $90,700 was transferred from the Short-term Innovative Health Programs Grant Fund to this program in FYs 2009-10 and 2010-11.

4/ Excludes the reappropriated amount for the Department of Public Health and Environment in the Oversight category.

FY 2012-13 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

Purpose of this document: This presentation incorporates a forecast of the amount of tobacco settlement revenue that will be received in April 2012, based on the Legislative Council January 2012 interim forecast. This forecast serves as the basis for the estimated allocation of settlement revenues among settlement-supported programs in FY 2012-13 that is shown in the number pages, an allocation that is driven by statutory rules. Once approved by the Committee, this distribution will be used by other JBC analysts in setting FY 2012-13 appropriations to settlement-supported programs. (Fiscal year FY 2011-12 figures also reflect small adjustments based on the Legislative Council Staff forecast; however, no related supplemental adjustments are required or recommended.)

Tobacco Settlement Background

Most appropriations depend on prior-year tobacco settlement revenue. Appropriations of tobacco settlement moneys to settlement-supported programs are largely governed by statute, with the key provisions contained in Section 24-75-1104.5, C.R.S. The Treasury uses these formulas to divide settlement moneys among the various tobacco programs and the General Assembly then appropriates the allocated funds. Without such appropriations, the programs can't spend the settlement money that they have been allocated. Additional information on the statutory allocation process is included in the appendix.

Appropriations must be based on a tobacco settlement revenue forecast. Most of the appropriations in the Long Bill to settlement-supported programs depend upon the amount of settlement revenue received in the prior fiscal year. At the same time, all or most of settlement revenue arrives in April, after the Long Bill is written. As a result, each year's Long Bill is based upon a forecast of settlement payments. Thus, for FY 2012-13, even though the actual funding available will be known by mid-April 2012, figures in the Long Bill will be based on the January 2012 Legislative Council Staff forecast.

The potential for forecasting error has been exacerbated in recent years by the "diligent enforcement" dispute between the states and the tobacco manufacturers who participate in the tobacco Master Settlement Agreement. This has led all of the larger manufacturers and about half of the smaller manufacturers to withhold a portion of the payments they otherwise would have paid to Colorado and the other states.

The table below compares, for the last four years, the total projected receipts in Legislative Council Staff projections for Tobacco settlement revenues used for JBC staff figure setting, with the actual revenue received. As shown, at least in recent years, the variance has been relatively small, although it appears to have been greater in some of the preceding years, due largely to the legal dispute.

Receipt Year	Distribution Year	Legislative Council Projection Used for Figure Setting	Actual Funds Received	Actual Above/(Below) Projection	Percent Variance from Projection
FY 08	FY 09	$106,653,988	$103,640,385	($3,013,603)	-2.8%
FY 09*	FY 10*	103,302,921	105,419,646	2,116,725	2.0%
FY 10	FY 11	96,231,588	94,587,045	(1,644,543)	-1.7%
FY 11	FY 12	90,397,679	89,065,763	(1,331,916)	-1.5%

*Actual amounts shown in this year exclude $7.4 million in special payments received related to the non-participating manufacturers dispute.

Addressing differences between the forecast and final tobacco settlement receipts. *In the past, staff used the following guidelines* to decide whether to recommend supplemental adjustments for tobacco-settlement-supported programs:

1. If actual settlement revenue exceeded the forecast, staff would recommend supplemental adjustments so programs had sufficient spending authority to expend the available allocations.

2. If actual settlement revenue fell below the forecast by a small percentage, staff did not recommend supplemental adjustments because the programs had sufficient spending authority to expend their entire appropriation and the appropriation is in approximate accord with available revenue.

3. If actual revenues were significantly below the forecast, staff would recommend supplemental adjustments to align Long Bill appropriations with the available settlement revenue. Under such circumstances, reducing the appropriation enhanced the informational value of the appropriation.

Staff believes the Committee may wish to consider a modification to the policy outlined in #1 above related to supplemental appropriations. In light of the relatively small variance in recent years, and in the interest of simplicity, **staff recommends that the Committee adopt a policy that it will NOT adjust tobacco settlement appropriations up or down if the variance between the projection and actual revenue is 5.0 percent or less.**

If the Committee adopts this policy, it should be aware that programs fall into three categories: (1) those that have a program fund in which tobacco revenue may be carried from year to year; (2) those for which unexpended funds revert to the Tobacco Litigation Settlement Cash Fund (some Tier 1 programs); and (3) those for which unexpended funds revert to the General Fund (some Tier 2 programs). *For programs that do not have their own program fund, if increased allocations are not accompanied by increased spending authority, the additional tobacco transfers will revert to the Tobacco Litigation Settlement Cash Fund and the General Fund.*

The following **alternatives** could also be considered.

1) **Adopt a common policy of adding the following footnote to tobacco settlement appropriations, which would allow programs to expend more funds if more tobacco funds were received than projected.** This footnote would be appropriate for most line items and could be excluded where it does not make sense (*e.g.*, for fixed dollar appropriations or some programs with program funds).

   Example of footnote option:

   C [Tobacco line items] -- This line item includes an appropriation of funds anticipated to be received from the Tobacco Litigation Settlement Cash Fund, created in Section 24-22-115, C.R.S. The appropriation is based on the January 2012 Legislative Council Staff projection of annual Tobacco Litigation Settlement revenue, allocated pursuant to statutory formulas outlined in Section 24-75-1104.5, C.R.S. If actual Tobacco Settlement revenue received in April 2012 exceeds the January 2012 Legislative Council Staff estimate and results in larger statutory transfers to Tobacco-funded programs for FY 2012-13, it is the intent of the General Assembly that programs be allowed to expend such additional revenue by an amount not to exceed 5.0 percent of their base FY 2012-13 appropriation of Tobacco Litigation Settlement Cash Funds.

Staff has not recommended this option due to concerns raised by the Office of Legislative Legal Services that this footnote extends beyond the legal purpose of footnotes as outlined in Section 24-75-112 (2), C.R.S. :

> (a) When it is not feasible, due to the format of the annual general appropriation act, to set forth fully in the line item description the purpose of an item of appropriation or a condition or limitation on the item of appropriation, the footnotes at the end of each section of the annual general appropriation act are provisions that set forth such purposes, conditions, or limitations. Such provisions are intended to be binding portions of the items of appropriation to which they relate to the extent that those purposes, conditions, or limitations are integral to the appropriation and are not, in accordance with the Colorado supreme court decision in Colorado General Assembly v. Owens, 136 P.3d 262 (Colo. 2006), conditions reserving to the general assembly powers of close supervision over the appropriation.
>
> (b) The footnotes may also contain an explanation of any assumptions used in determining a specific amount of an appropriation. However, such footnotes shall not contain any provision of substantive law or any provision requiring or requesting that any administrative action be taken in connection with any appropriation. Footnotes may set forth

any other statement of explanation or expression of legislative intent relating to any appropriation.

In practice, staff thinks it is unlikely that the Governor would veto such a footnote, given that it provides more, not less, spending authority for the Executive and helps to eliminate the need for time-consuming requests for supplemental appropriations. The State Controller's Office also indicated that it saw no technical obstacles to implementing such a provision. However, given OLLS concerns, a substantive change to statute might be more appropriate.

2) **Make statutory changes that would provide either continuous spending authority for programs for revenue received from Tobacco Settlement programs or that would provide this within certain parameters** (*e.g*,, that would allow receipt and expenditure of funds up to 5.0 percent above amounts reflected in the Long Bill).

Staff believes it is important that tobacco settlement funds continue to be shown in the Long Bill for informational purposes. However, for many programs, it is not clear how much value is added by appropriating funds, and then modifying appropriations, given that allocations are driven by a statutory formula.

Staff believes the General Assembly should consider providing some additional flexibility related to expenditure of tobacco settlement funds that are allocated via formula. However, staff also does not believe this requires imminent action. This change will only be relevant if actual receipts come in higher than appropriations (not an issue for FY 2011-12), and staff believes the Committee may wish to consider a broader policy on continuous appropriations before making statutory changes to this particular class of programs. Thus, staff proposes to bring this issue back to the Committee next fall.

The Legislative Council Staff Revenue Forecast

Table 1 presents the Legislative Council Staff tobacco settlement revenue forecast along with actual tobacco settlement revenues in recent years.

Table 1
Tobacco Settlement Revenues

FY Payment Is Received	This Payment Determines Approps in FY:	Full Payment	Amount Withheld	Total Received Before Special Payments	% Change of Total Before Special Payments	Special Payments
Actual Payments:						
2003-04	2004-05	$86.1	$0.0	$86.1		$0.0
2004-05	2005-06	87.4	0.0	87.4	1.5%	0.0
2005-06	2006-07	91.1	(10.9)	80.2	-8.2%	0.0
2006-07	2007-08	92.7	(8.8)	83.9	4.6%	0.0
2007-08	2008-09	111.4	(7.7)	103.7	23.6%	0.0
2008-09	2009-10	112.5	(7.1)	105.4	1.7%	7.4
2009-10	2010-11	103.3	(8.7)	94.6	-10.3%	0.0
2010-11	2011-12	102.7	(13.6)	89.1	-5.8%	0.0
Legislative Council Staff Forecast:						
2011-12	2012-13	102.3	(13.1)	89.2	0.2%	0.0
2012-13	2013-14	102.3	(13.4)	88.8	-0.4%	0.0
2013-14	2014-15	101.3	(13.6)	87.8	-1.2%	0.0

Amounts are in millions of dollars. "Special payments" reflects a one-time disbursement associated with the current legal dispute with the manufacturers.

Tobacco settlement revenue has varied based on a number of factors. Actual MSA allocations owed in any year equals 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;
- An inflation adjustment, which equals the higher of 3% or the actual rate of inflation during the preceding year; 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 Legislative Council forecast is based on the following assumptions:

- Volume will decline approximately 3.8 percent from 2011 to 2012 and will continue to decline in 2012 and 2013.
- Inflation included in the national calculation of tobacco company obligations under the MSA will range from 3.0 to 3.2 percent.

- All of the major participating manufacturers will continue to withhold, and half of the smaller manufacturers will also withhold.
- The diligent enforcement dispute will not be resolved during the forecast period.

The boxed forecast in Table 1 serves as the basis for the recommended allocation of settlement revenues among settlement-supported programs that is shown in the number pages.

Allocation of Settlement Funds and Notes on Recommended Appropriations

Staff recommends that the Committee approve the above forecast and the resulting allocation of settlement revenue shown in the numbers pages. The detailed staff recommendation by line item is based on an Legislative Council Staff projection for the April 2012 tobacco settlement revenue: $89,202,388 (unrounded). Based on current statutory provisions that govern amounts spent from current-year revenue in any given year, this results in total projected allocations for FY 2012-13 of $89,297,597. Staff used this figure to calculate allocations to individual programs following the rules outlined in the appendix to this packet.

- Calculated amounts are *slightly* adjusted to conform to the changes in allocations that would occur if a JBC bill concerning funding for the State Auditor's Office is adopted, for which introduction is pending.[1] These slight changes eliminate the need for an appropriations clause for that JBC bill. Staff believes the small differences between allocations if the bill passes and if the bill does not pass are within the margin-of-error for amounts that are based on a forecast.

- With the exception of the adjustment described above, figures are based on current law and do not assume the passage of other bills, including JBC bills. One JBC bill, S.B. 12-114 (Concerning the crediting of all disputed payments received by the state pursuant to the tobacco litigation settlement agreement on or after July 1, 2008, to the state general fund) is not expected to have a fiscal impact in FY 2012-13. A second JBC bill (also pending introduction) will eliminate the Short-term Innovative Health Programs Grant Fund entirely.[2] The impact on the FY 2012-13 appropriation for the Grant Fund will be included in the appropriations clause for that bill unless it passes before the Long Bill.

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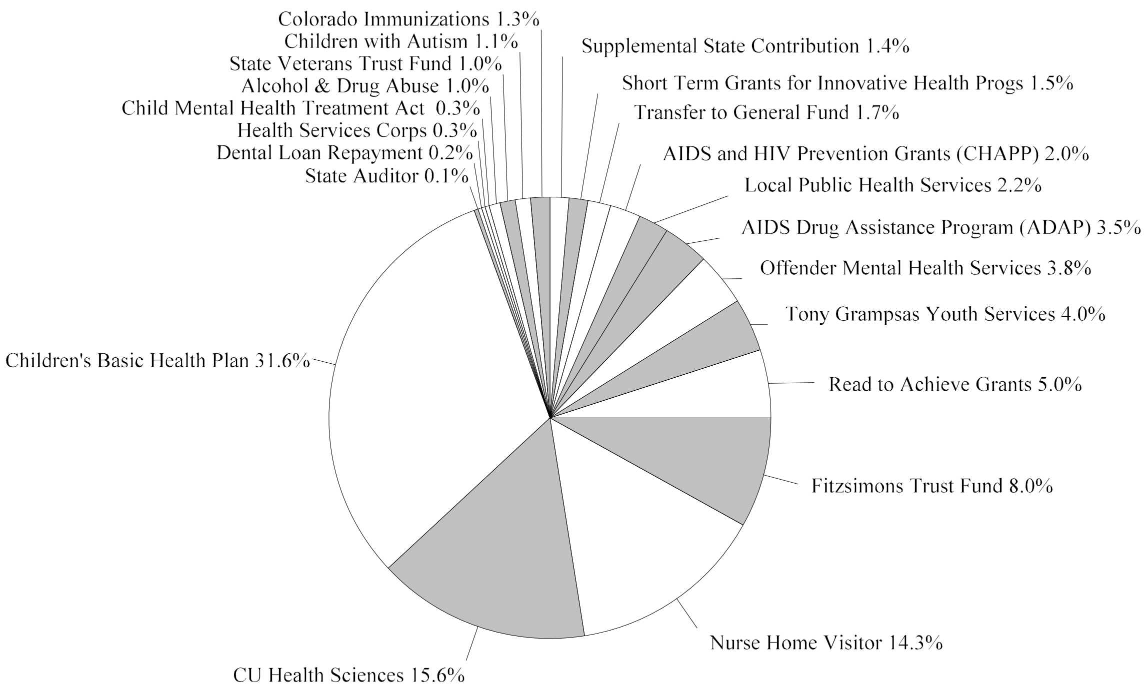
[1] Bill title (OLLS 704): Concerning the manner in which tobacco litigation settlement moneys are allocated to the state auditor's office for the costs of conducting program reviews and evaluations of the performance of tobacco settlement programs.

[2] Bill title (OLLS 703): Concerning annual reductions in the amount of tobacco litigation settlement moneys that are allocated in the fiscal year in which the state receives them, and, in connection therewith, offsetting the reductions with tobacco litigation settlement cash fund moneys made available by the repeal of the short-term innovative health program grant fund.

- Staff has rounded figures in the recommendation by one digit to help acknowledge the fact that figures are based on a projection.

Staff will convey this allocation to other analysts who will use it as the basis for their own recommendations for FY 2012-13 appropriations to tobacco-settlement-supported programs. In some cases, an amount indicated in the numbers pages will directly translate into a single Long Bill appropriation. In other cases, a balance in a cash fund that supports a program may supply additional revenues that for the appropriation.

Allocation of Settlement Payments for Expenditure in FY 2012-13



APPENDIX A
Tobacco Settlement Background and Allocation Rules

This appendix provides background information on the allocation of tobacco settlement revenue, should the Committee need explanations that go beyond those provided in the main text of this document.

Basics of the Master Settlement Agreement

The Master Settlement Agreement (MSA) was signed in 1998 by 52 settling states and territories and the (then) four major U.S. tobacco companies. In the agreement, the participating manufacturers agreed to

1. Abide by a variety of public health restrictions on the advertising and marketing of cigarettes,
2. Create and fund the American Legacy Foundation, which conducts anti-tobacco advertising, and
3. Make specified payments to the settling states *in perpetuity*.

In return, the settling states agreed to release the participating manufacturers from health-related claims by the states and their local governments arising from the use, manufacture and marketing of tobacco products. There is also a separate agreement with smokeless tobacco companies.

A number of smaller tobacco companies subsequently joined the Master Settlement Agreement, agreeing to make payments and abide by its provisions. The tobacco companies that are now parties to the agreement are collectively known as Participating Manufacturers while tobacco companies that have not joined are called Non Participating Manufacturers.

The Diligent-enforcement Dispute

When the Master Settlement Agreement was signed, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers who have not joined the agreement. In an effort to level the playing field, the agreement required states to enact "qualifying statutes" that force non participating manufacturers to make payments into escrow accounts that are comparable to what they would have paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The Master Settlement Agreement requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, settlement payments to states that do not diligently enforce are reduced.

In 2006 a diligent-enforcement dispute led manufacturers to begin withholding part of their scheduled payments. Prior to the 2003 settlement payment, which was made in April 2004, participating manufacturers and states handled diligent-enforcement disagreements in an informal fashion and reached negotiated settlements that did not employ the formal arbitration process specified in the Master Settlement Agreement. By 2003, the market share of the major tobacco manufacturers had slipped notably. The participating manufacturers went ahead and made the 2003 payment but they also set the agreement's payment-reduction process in motion. This process culminated in 2006 in the decision by Reynolds and Lorillard, the county's second and third largest tobacco manufacturers, to reduced their April 2006 payment by the amount of the potential 2003 diligent-enforcement adjustment. The largest tobacco manufacturer, Philip Morris, has now also begun to withhold.

Arbitrators must now decide whether the states diligently enforced. Diligent-enforcement questions are settled by a panel of three arbitrators who must decide the issue in a unified national proceeding in which a separate decision is made on the diligent-enforcement efforts of each participating state. Thus the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce while another state, which diligently enforced, is entitled to its full payment.

Arbitration proceedings are currently in process. State specific hearings related to the 2003 adjustment are scheduled to begin in June 2012 and the state specific hearings must be completed for all affected states before any funds are released or reimbursements required. The arbitration related to 2003 payments will be followed by arbitration proceedings related to subsequent years.

Depending upon the results of this legal dispute for Colorado, the outcome <u>related solely to 2003 disputed payments</u> could range from:

- Receipt of an additional $10-$12 million (payout of amounts withheld); to
- Loss of the entire 2003 tobacco allocation for the state.

The State faces similar potential additional payouts and financial risks related to 2004 and subsequent years.

Statutory Rules for Allocating Settlement Revenues

The three categories of settlement payments: Colorado began receiving master-settlement payments in 1999. These receipts are exempt from TABOR since they result from a damage award. The settlement payments that Colorado has received and will receive in the future are the sum of three components:

1. A series of initial payments, which ended in 2003.
2. A *perpetual* stream of "base" payments, which began in 2000 and are adjusted each year.
3. A series of "strategic contribution" payments, which began in April 2008 and will continue through 2017. These payments are to be allocated among the states based on each state's

contribution to the MSA litigation. Colorado receives a disproportionate share of these payments because of its significant contribution to the litigation effort.

The settlement payments for a given calendar year are due the following April 15th, but disputed amounts are directed into disputed payments accounts or are withheld altogether and are only sent to Colorado when the disagreement is resolved. As a consequence, Colorado has sometimes received two or more settlement payments in the course of a fiscal year. However, the vast majority of the payments always arrive in mid April.

Statutory formulas control appropriations and leave little room for discretion. Appropriations for tobacco-settlement-supported programs are controlled by formulas. The core rules are contained in Sections 24-22-115 through 24-22-116, C.R.S., and in Sections 24-75-1101 through 24-75-1105, C.R.S., with Section 25-75-1104.5, C.R.S., containing the most important formulas. These formulas leave the JBC and the General Assembly with little discretion regarding the amounts appropriated in the Long Bill.

The funding rules in Section 24-75-1104.5, C.R.S., create the following allocation process:

1. *Determine the total allocation to tobacco settlement programs, i.e. the total amount of tobacco-settlement revenue to allocate among all settlement programs during the fiscal year.* In most fiscal years, the total allocation equals the total settlement payments received by the State during the prior year, though the dollars distributed are a combination of moneys received during the prior fiscal year and the current fiscal year. However, in several fiscal years, the amount distributed may be less than the prior year's revenues.

2. *Determine the amount of settlement revenue to allocate to individual tobacco-settlement programs.* Settlement programs are divided into two tiers. Most tier 1 programs receive a statutorily established percentage of the total allocation, but several receive a fixed amount. After tier 1 programs have received their share of the total, the remainder is allocated among tier 2 programs, with each tier 2 program receiving a statutorily established percentage of the remainder.

3. *Adjust the allocations determined in step 2.* For some years, statute contains temporary adjustments that decrease or increase the amount of settlement money allocated to certain settlement programs in specified years.

4. *Determine the appropriation to individual settlement programs.* Steps 1, 2 and 3 determine the amount *allocated* to settlement programs, however, most programs cannot spend their allocation without an appropriation. In most cases the appropriation is equal to the allocation but in some cases the relationship is more complex.

Details concerning these allocation rules are as follows:

1. Determine the total amount of tobacco settlement revenue to allocate among all settlement programs. Table 1 presents the formulas that determine the total amount of settlement revenue allocated to tobacco settlement programs in FY 2010-11 and subsequent years. It shows that the moneys distributed during a given year are a combination of current-year and prior-year revenue.

Table 1

Fiscal Year	Total Allocation to Tobacco Settlement Programs
2010-11 to 2016-17	Payments received during the prior year, excluding $80.4 million + $80.4 million of the payments received during the current year
2017-18	Payments received during FY 2016-17, excluding $80.4 million + $65.0 million of the payments received during the current year (The mismatch between the $80.4 million exclusion from the FY 2016-17 payment and the $65.0 million inclusion from the FY 2017-18 payment reflects the ending of Strategic Contribution Payments.)
2017-18 and later	Payments received during the prior year, excluding $65 million + $65.0 million of the payments received during the current year

The funding arrangement in Table 1, under which some of the settlement dollars distributed to programs in a given fiscal year are from current year revenue, began with the FY 2007-08 distributions to settlement programs (H.B. 07-1359) and was expanded in FY 2009-10 (S.B. 09-269). This "acceleration" of spending enabled the General Assembly to access one-time funding of $80.4 million to meet other needs and balance the budget. The JBC is sponsoring a bill in the 2012 session which will gradually reduce the amount spent from current-year funds and will also make a change to the current formula to eliminate mid-year allocation adjustments that occur when Strategic Contribution Payments are lower than $15.4 million.[3]

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[3] Bill title: Concerning annual reductions in the amount of tobacco litigation settlement moneys that are allocated in the fiscal year in which the state receives them, and, in connection therewith, offsetting the reductions with tobacco litigation settlement cash fund moneys made available by the repeal of the short-term innovative health program grant fund. The bill annually reduces spending from current-year funds by the amount that would otherwise have gone to the Short-term Innovative Health Programs Grant Fund. It also eliminates a distinction between Strategic Contribution Payments ($15.4 million) and other accelerated payments ($65.0 million), which has resulted in reductions to allocations when Strategic Contribution Payments are lower than $15.4 million.

2. Determine the amount of settlement revenue to allocate to individual tobacco settlement programs. Section 24-75-1104.5, C.R.S., divides tobacco settlement programs into two tiers. Settlement moneys are first allocated among the tier 1 programs and the remainder is then allocated among the tier 2 programs. Table 2 lists the Tier 1 settlement programs and provides an overview of each program's statutory funding rule:

Table 2

Tier 1 Program	Portion of the Total Allocation
Children's Basic Health Plan	27%, not to exceed $33 million and not less than $17.5 million.
Nurse Home Visitor Program	14% FY 2010-11 through FY 2012-13; rising 1% annually to 19% in FY 2017-18; except not less than $12,737,350 and not to exceed $19 million
Fitzsimons lease purchase	8%, not to exceed $8 million
Read-to-achieve Grant Program	5%, not to exceed $8 million
Tony Grampsas Youth Services Program	4%, not to exceed $5 million
HIV/AIDS Drug Assistance Program	3.5%, not to exceed $5 million
HIV and AIDS Prevention Grant Program	2%, not to exceed $2 million
State Veterans	1%, not to exceed $1 million. (10% of the State Veterans allocation is retained in the State Veterans Trust Fund and the remaining 90%, plus interest earned by the trust, is expended. See H.B. 09-1329.)
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)
Diversion to General Fund from Nurse Home Visitor	Difference between the Nurse Home Visitor allocation and the following percentages is diverted to the General Fund: 15% in FY 2011-12 rising annually by 1% to 19% in FY 2015-16. *The result is a diversion to the General Fund of 0.7% to 2.0% of allocations.*
State Auditor's Office*	0.1 percent of prior calendar year revenue is *reallocated* from some Tier 1 programs to the State Auditor's Office

*This funding mechanism would be replaced with a fixed tier 2 allocation of $89,000 pursuant to a JBC-sponsored bill.

In FY 2012-13, tier 1 programs receive about 68 percent of all tobacco settlement revenue. Tobacco settlement revenue that is not allocated to tier 1 programs (the "remainder"; about 32 percent in FY 2012-13) is allocated among tier 2 programs in the percentages detailed in Table 3:

Table 3

Tier 2 Program	Percentage of Remainder
University of Colorado Health Sciences Center	49.0%
Mental health services for juvenile and adult offenders	12.0%
Local public health agencies	7.0%
Children's Basic Health Plan	14.5%
Supplemental state contribution for group benefit plans	4.5%
Colorado Immunization Program	4.0%
Alcohol and drug abuse and treatment programs	3.0%
Short-term Grants for Innovative Health Programs less $250,000*	*6.0%*
Health Services Corps	$250,000
Total	**100.0%**

*This allocation would be eliminated pursuant to a Joint Budget Committee Bill.

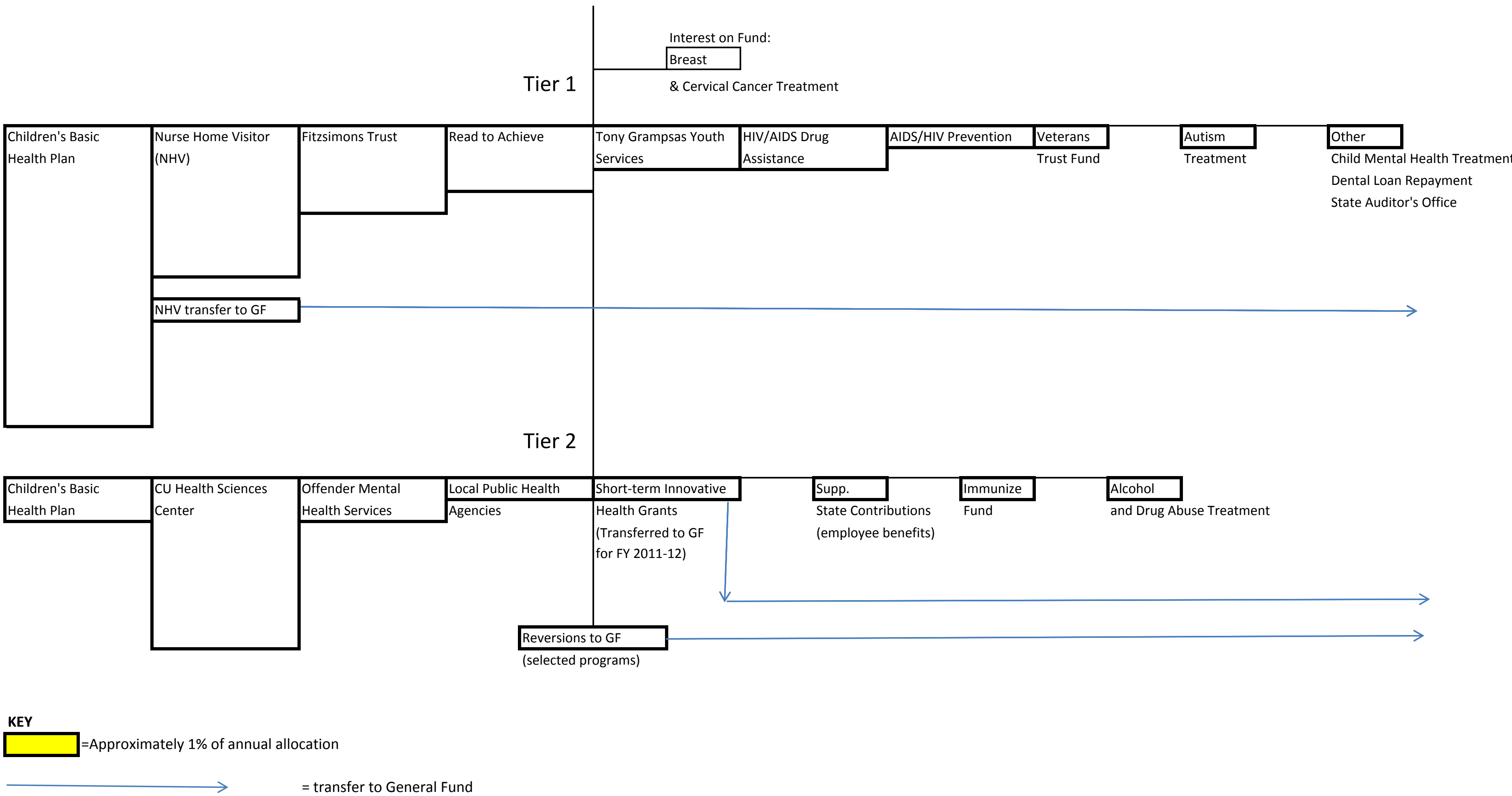
Note that the one percent annual increase of the share allocated to the Nurse Home Visitor program/ Nurse Home Visitor General Fund Diversion means that tier 2 programs' share of the revenue declines by 1.0 percent per year through FY 2015-16. For most tier 2 programs, this translates into an annual decline in each program's base allocation of 3.0 to 3.4 percent per year through FY 2015-16, even if total Tobacco settlement revenue remains unchanged.

3. Determine the appropriation to individual settlement programs. Steps 1 and 2 determine the *allocation* of settlement moneys to programs. In many cases the program's appropriation equals the program's allocation, but for tier 1 programs with cash funds, the appropriation may diverge from the allocation because: (1) the program's cash fund can earn income that can be expended in subsequent years; or (2) the program's cash fund can carry unexpended appropriations forward to be appropriated again in subsequent years. Annual appropriations corresponding to forecasts of the above allocations must be enacted into law several months before the end of the prior fiscal year. Supplemental appropriations enacted during the following legislative session align appropriations with the settlement payments that Colorado actually receives, though tier 1 programs with cash funds can sometimes use the cash funds to avoid supplemental adjustments.

Appendix B - Additional Background on FY 2011-12 Tobacco MSA Allocations

Department	Program	Projected Tobacco Allocation	Program Allocation as Percentage All Tobacco Allocations	Appropriation/ Estimated Total Funding for this Program	Tobacco Funding as Percent Total Funding for this Program	General Fund Appropriation for this Program	Does excess revert or is it carried forward?	Reserves June 30, 2011
Health Care Policy	Children's Basic Health Plan Trust	28,292,000	31.7%	$213,086,149	13.28%	29,997,908	Stays in Program Fund	187,656
Higher Education	CU Health Sciences Center	14,348,319	16.1%	193,782,226	7.40%	50,007,827	Reverts to General Fund	n/a
Public Health	Nurse Home Visitor Program	12,737,350	14.3%	16,829,547	75.68%	0	Reverts to Tobacco Fund	n/a
Higher Education	Fitzsimons Trust Fund	7,137,921	8.0%	13,000,000	54.91%	0	Stays in Program Fund	
Education	Read to Achieve	4,452,976	5.0%	4,452,976	100.00%	0	Stays in Program Fund	0
Public Health	Tony Grampsas Youth Services	3,562,381	4.0%	3,562,381	100.00%	0	Reverts to Tobacco Fund	n/a
Human Services	Offender Mental Health Services	3,513,874	3.9%	3,513,874	100.00%	0	Reverts to General Fund	n/a
Public Health	Ryan White HIV/AIDS Drug Assistance Program	3,117,083	3.5%	17,784,843	17.53%	1,379,025	Reverts to Tobacco Fund	n/a
Public Health	Support for Local Public Health Agencies	2,049,760	2.3%	8,013,294	25.58%	5,935,190	Reverts to General Fund	n/a
Public Health	AIDS & HIV Prevention	1,781,190	2.0%	8,406,248	21.19%	0	Stays in Program Fund	378,399
Public Health	Short Term Innovative Health Grants Program	1,506,937	1.7%	1,506,937	100.00%	0	Stays in Program Fund	0
Personnel	Supplemental State Contribution	1,317,703	1.5%	1,317,703	100.00%	0	Stays in Program Fund	
Public Health	CO Immunization Fund	1,171,291	1.3%	7,798,474	15.02%	1,472,463	Reverts to General Fund	n/a
Health Care Policy	Autism Treatment	1,000,000	1.1%	1,727,250	57.90%	0	Stays in Program Fund	2,054,447
Military Affairs	State Veterans Trust Fund	890,595	1.0%	890,595	100.00%	0	Stays in Program Fund	2,967,397
Human Services	Alcohol & Drug Abuse Treatment	878,469	1.0%	47,486,313	1.85%	15,516,633	Reverts to General Fund	n/a
n/a	Transfer to General Fund	621,577	0.7%	n/a	n/a	n/a	Stays in Program Fund	n/a
Human Services	Child Mental Health Treatment Act	300,000	0.3%	976,994	30.71%	618,574	Reverts to Tobacco Fund	9,975
Public Health	Health Services Corps (Loan Repayment)	250,000	0.3%	2,836,227	8.81%	0	Stays in Program Fund	
Public Health	Dental Loan Repayment	200,000	0.2%	203,225	98.41%	0	Stays in Program Fund	
Legislature	State Auditor's Office	94,587	0.1%	7,992,279	1.18%	7,047,692	Reverts to Tobacco Fund	n/a
	Total	**89,224,013**	**100.0%**					

Tobacco Litigation Settlement Trust Fund - Current Law - Estimated FY 2011-12 - $89 Million



Colorado Department of Health Care Policy &Financing
Memorandum

BUDGET DIVISION

To:	Amanda Bickel, Joint Budget Committee Staff
From:	John Bartholomew, Department of Health Care Policy and Financing, Budget Director
CC:	Eric Kurtz, Joint Budget Committee Staff Carrie Cortiglio, Department of Health Care Policy and Financing, Legislative Liaison Bettina Schneider, Office of State Planning and Budgeting
Date:	January 24, 2012
Re:	Colorado Autism Treatment Fund

Amanda,

At present, the Department does not support any initiative to either reduce the balance of the fund or suspend revenue transfers into the fund. As you pointed out in your briefing to the Joint Budget Committee on the Tobacco Master Settlement Agreement Fund on December 20, 2011: "…as projected receipts from the tobacco settlements decline, the risk grows of a year in which the General Assembly learns in April that it has not received a significant portion of [the funding] on which it was relying for the current year." In our view, reducing the fund balance or the revenues going into the fund, particularly for the purpose of General Fund relief, creates an unnecessary risk to the financial health of the program.

The General Assembly's clear intent for the home and community based services waiver program for children with autism (HCBS-CWA) is that the funding for the program must be appropriated from the Colorado Autism Treatment Fund (see section 25.5-6-803(3)(a), C.R.S.). If the revenues from the tobacco settlements declined to the point where the fund could no longer sustain expenditure for the HCBS-CWA program, maintaining the current fund balance would allow for the program to continue for up to 2 years while the Department, the General Assembly, and stakeholders discussed the future of the program. This timeline may be necessary, especially considering that the Department does not have unilateral authority to immediately withdraw from an approved waiver program under the federal Medicaid program. If revenues cannot support program expenditure, General Fund would be required until the waiver can be terminated.

Finally, the Department has not yet made any proposal to spend down the fund balance. At present, the number of individuals seeking services exceeds the waiver capacity. The Department continues to work with stakeholders on the future of the program, and may return in a future year with a proposal to use effectively use the balance from the fund.

If you have any questions, my staff are available to help. Please contact Josh Block (joshua.block@state.co.us, 303-866-4116) if you require any additional information.