MEMORANDUM

JOINT BUDGET COMMITTEE

TO	JBC Members
FROM	JBC Staff
DATE	March 14, 2023
SUBJECT	Figure Setting Comeback Packet 3

Included in this packet are staff comeback memos for the following items:

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Alfredo Kemm, JBC Staff (303-866-4549)
DATE	March 10, 2023
SUBJECT	JUD figset comeback 3 – OADC Fellowships

On March 8th, the Office of Alternate Defense Counsel (OADC) submitted a budget-neutral FY 2023-24 budget amendment request for additional fellowships.

<u>The request includes a transfer of $201,829 General Fund from the Conflict-of-interest Contracts line item to personal services, operating expenses, and capital outlay. The request includes an additional 1.8 FTE in FY 2023-24 annualizing to 2.0 FTE in FY 2024-25.</u>

The request is for an additional Greater Colorado Fellow serving rural Colorado and an additional Inclusivity Fellow from the BIPOC (Black, Indigenous, and People of Color) community. The Office states that the response was so strong to the posting for the first approved positions for FY 2022-23 that the Office wished to seek two more positions for FY 2023-24.

This request is budget neutral and provides an effective outcome for the Office related to seeking and developing attorneys in these communities. **Staff recommends that the Committee approve this request.**

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Eric Kurtz, JBC Staff (303-866-4952)
DATE	March 14, 2023
SUBJECT	Health Care Policy and Financing – Staff Comebacks

This memo includes the following comebacks

➔ R7(B) TARGETED RATE ADJUSTMENTS – REBALANCING PROVIDER RATES

The JBC tabled a decision on one component of the Department's targeted rate adjustments request related to rebalancing rates to within 80-100 percent of the benchmark identified through the rate review process. The JBC asked for some scenarios that would balance rates to wider window, such as 80 percent to 110 percent. The table below summarizes some options for the JBC and the incremental increase of each of those options relative to the Governor's request.

FY 2023-24 Total Costs of Potential Options for Repricing Medicaid Rates				
Different Scenarios	Total Cost of Repricing		Incremental to R-7	
	Total Funds	General Fund	Total Funds	General Fund
Governor's Request	$42,104,180	$12,384,482		
Repricing Up to 80% and Down to 110%	$54,999,711	$16,227,167	$12,895,531	$3,842,685
Repricing Up to 80% and Down to 120%	$58,503,841	$17,254,679	$16,399,661	$4,870,197
Repricing Up to 80% and Down to 130%	$60,743,690	$17,906,005	$18,639,510	$5,521,523
Repricing Up to 80% and Down to 140%	$62,164,597	$18,326,857	$20,060,417	$5,942,375
Repricing Up to 80% and Down to 150%	$63,418,963	$18,697,959	$21,314,783	$6,313,477

FY 2024-25 Total Costs of Potential Options for Repricing Medicaid Rates				
Different Scenarios	Total Cost of Repricing		Incremental to R-7	
	Total Funds	General Fund	Total Funds	General Fund
Governor's Request	$45,931,833	$13,781,994		
Repricing Up to 80% and Down to 110%	$59,999,687	$18,058,316	$14,067,854	$4,276,322
Repricing Up to 80% and Down to 120%	$63,822,373	$19,201,771	$17,890,540	$5,419,777
Repricing Up to 80% and Down to 130%	$66,265,845	$19,926,589	$20,334,012	$6,144,595
Repricing Up to 80% and Down to 140%	$67,815,926	$20,394,928	$21,884,093	$6,612,934
Repricing Up to 80% and Down to 150%	$69,184,325	$20,807,908	$23,252,492	$7,025,

The staff recommendation to adopt the Department's request is unchanged. The JBC created the Medicaid Provider Rate Review Advisory Committee (MPRRAC) to try to help tame some of the out-of-control lobbying on provider rates and to bring some rationality, consistency, equity, fairness, and reliance on data and analysis to how provider rates are set. The Department's request to rebalance rates to within 80-100 percent of the benchmark stems directly from the 2022 MPRRAC rate review.

If the JBC wants to provide more money for this particular set of providers, then staff would recommend that the JBC staff consider including these providers in the 3.0 percent across-the-board common policy. Including these providers in the 3.0 percent common policy would cost $37.6 million total funds, including $11,048,689 General Fund. Staff believes there is a stronger policy argument for including these providers in the 3.0 percent common policy than there is in exempting certain providers from rate rebalancing, or widening the window for rebalancing. If JBC members are hearing specific concerns about specific rate reductions where the Department's analysis may have missed some information or treated a rate unfairly, then that might be a reason for modifying the request. If it is just a general concern about decreasing rates, then applying the 3.0 percent common policy is probably a more defensible approach to provide some rate assistance to these providers.

Following are excerpts from the relevant portions of the original JBC staff recommendation.

Excerpted Portion of R7(b) Targeted Rate Adjustments

Request

In addition to the common policy provider rate adjustment, the Department requests $168.7 million total funds, including $61.3 million General Fund, for targeted provider rate adjustments. The FY 2024-25 cost is higher due to timing differences between when services are rendered and paid, projected increases in utilization, the Department's proposal to use federal funds in the HCBS Improvement Fund to offset $11.7 million of the General Fund cost in the first fiscal year, and changes in the federal match rate. The Department's estimated cost of the targeted rate increases in FY 2024-25 is $184.1 million total funds, including $80.0 million General Fund. For the rates impacted by the rate review recommendations to rebalance to a benchmark, the non-medical transportation, and the Group Residential Support and Services, the proposed targeted rate adjustment is in lieu of, rather than in addition to, the across-the-board common policy adjustment.

Recommendation

The staff recommendation is summarized in the table below. The staff recommendation differs from the request primarily due to updated cost estimates based on the February forecast.

R7(b) Targeted Rate Adjustments FY 2023-24					
Rate	Change	Total Funds	General Fund	Cash Funds	Federal Funds
Rate Review Rebalancing Recommendations					
Physician services	80-100% of benchmark - net 2%	20,160,924	6,045,729	831,971	13,283,224
Eyeglasses and vision	80-100% of benchmark - net 41%	19,170,361	5,748,685	791,094	12,630,582
Laboratory & pathology	80-100% of benchmark - net 4%	2,453,574	531,849	138,476	1,783,249
Dialysis & nephrology	80-100% of benchmark - net 5%	427,077	90,531	26,405	310,141
Injections & miscellaneous J-Codes	80-100% of benchmark - net -9%	(107,757)	(32,313)	(4,448)	(70,996)
Subtotal - Rate Review Rebalance		42,104,179	12,384,481	1,783,498	27,936,200
Other Provider Rate Adjustments					
Minimum wage adjustment for HCBS	$15.75 per hour/$17.29 in Denver	56,953,319	18,850,369	9,056,774	29,046,176
Non-medical transportation - Adult Comp	Align with other waivers - 48.9%	10,050,656	3,299,629	1,625,191	5,125,836
Non-medical transportation - SLS	Align with other waivers - 48.9%	4,299,137	1,411,407	695,170	2,192,560
Group Residential Service and Supports	Align with other services - 18.6%	9,099,372	3,935,213	523,480	4,640,679
Eliminate most non-statutory copays	Retain non-emergent ER copays	2,084,178	408,436	126,731	1,549,011

R7(b) Targeted Rate Adjustments FY 2023-24					
Rate	Change	Total Funds	General Fund	Cash Funds	Federal Funds
Subtotal - Other Provider Rate Adjustments		82,486,662	27,905,054	12,027,346	42,554,262
Changes Recommended in Long Bill		**124,590,841**	**40,289,535**	**13,810,844**	**70,490,462**
Proposed Legislation					
Nursing facility rates - Set aside	$18.37/day incr. (on av.)	35,593,248	17,440,692	0	18,152,556
Eliminate statutory copays	Pharmacy and outpatient services	7,345,507	1,439,499	446,651	5,459,357
Subtotal - Proposed Legislation		42,938,755	18,880,191	446,651	23,611,913
TOTAL Recommended Changes		**$167,529,596**	**$59,169,726**	**$14,257,495**	**$94,102,375**
Requests NOT Recommended by JBC Staff					
Rural health provider technology payments	Incentive for connecting to HIE	$4,220,000	$2,067,800	$0	$2,152,200

R7(b) Targeted Rate Adjustments FY 2024-25					
Rate	Change	Total Funds	General Fund	Cash Funds	Federal Funds
Rate Review Rebalancing Recommendations					
Physician services	80-100% of benchmark - net 2%	21,993,736	6,727,991	910,490	14,355,255
Eyeglasses and vision	80-100% of benchmark - net 41%	20,913,121	6,397,425	865,756	13,649,940
Laboratory & pathology	80-100% of benchmark - net 4%	2,676,626	591,762	151,214	1,933,650
Dialysis & nephrology	80-100% of benchmark - net 5%	465,902	100,777	28,865	336,260
Injections & miscellaneous J-Codes	80-100% of benchmark - net -9%	(117,552)	(35,959)	(4,868)	(76,725)
Subtotal - Rate Review Rebalance		45,931,832	13,781,995	1,951,457	30,198,380
Other Provider Rate Adjustments					
Minimum wage adjustment for HCBS	$15.75 per hour/$17.29 in Denver	62,130,893	30,873,618	191,837	31,065,438
Non-medical transportation - Adult Comp	Align with other waivers - 48.9%	10,964,352	5,482,176	0	5,482,176
Non-medical transportation - SLS	Align with other waivers - 48.9%	4,689,968	2,344,984	0	2,344,984
Group Residential Service and Supports	Align with other services - 18.6%	9,926,588	4,963,295	0	4,963,293
Eliminate most non-statutory member copays	Retain non-emergent ER copays	2,084,178	408,436	126,731	1,549,011
Subtotal - Other Provider Rate Adjustments		89,795,979	44,072,509	318,568	45,404,902
Changes Recommended in Long Bill		**135,727,811**	**57,854,504**	**2,270,025**	**75,603,282**
Proposed Legislation					
Nursing facility rates - Set aside	$18.37/day incr. (on av.)	40,129,132	20,064,566	0	20,064,566
Eliminate statutory member copays	Pharmacy and outpatient services	7,345,507	1,439,499	446,651	5,459,357
Subtotal - Proposed Legislation		47,474,639	21,504,065	446,651	25,523,923
TOTAL Recommended Changes		**$183,202,450**	**$79,358,569**	**$2,716,676**	**$101,127,205**
Requests NOT Recommended by JBC Staff					
Rural health provider technology payments	Incentive for connecting to HIE	$4,220,000	$2,067,800	$0	$2,152,200

Rate Review Rebalancing Recommendations

The Department attributes a subset of the requested changes directly to the 2022 rate review required by S.B. 15-228.

The JBC sponsored S.B. 15-228 to increase the data available to support rate setting decisions and to establish formal procedures for the Department to review rates at least once every five years and engage with providers regarding rate setting priorities. The JBC sponsored S.B. 22-236 to modify the composition of the Medicaid Provider Rate Review Advisory Committee (MPRRAC) and require that rates be reviewed at least once every three years, beginning July 1, 2023, instead of at least once every five years.

The bills require the Department to submit an analysis report by May 1 each year looking at the access, service, quality, and utilization associated with each rate under review. The analysis report compares each rate to available benchmarks and uses qualitative tools to assess whether payments are sufficient to allow for provider retention and client access and to support appropriate reimbursement of high-value services. The MPRRAC evaluates the Department's data and analysis, solicits public testimony, and offers feedback to the Department and the legislature. The Department then works with the MPRRAC and stakeholders to develop strategies for responding to the findings, including non-fiscal approaches, rate rebalancing, and policies to address regional capacity issues. Next, the Department works with the Office of State Planning and Budgeting to determine achievable goals and executive branch priorities within the statewide budget. By November 1 each year the Department submits a recommendation report summarizing the Department's proposals and rationale for rate adjustments as well as stakeholder feedback and the Department's response.

The 2022 rate review looked at the following rates:

- Physician Services
- Eyeglasses and Vision
- Laboratory and Pathology
- Dialysis and Nephrology
- Injections and Miscellaneous J-Codes

The Department's annual analysis reports and recommendation reports can be found here: https://hcpf.colorado.gov/rate-review-reports

In the descriptions below, the benchmark is based on comparable Medicare rates when available. Medicare regularly updates rates using a method that attempts to capture average provider costs. To do this, Medicare typically does a deep analysis of actual costs for a sample of providers and then applies regional modifiers to establish rates across the country. The Medicare rates are not immune to criticism. For example, sometimes the sample of providers is not considered representative, or Medicare doesn't recognize and attribute expenses that contribute to the total costs of the provider in delivering a service, or the regional modifiers don't correctly adjust for local conditions. Medicare rates can be different from what is needed to serve Medicaid clients, due to differences in the population demographics, common diagnoses, and treatment approaches at different ages. The Medicare rate is designed to cover provider costs and not intentionally to provide any profit margin for providers. Historically, Medicare rates have tended to be higher than Colorado's Medicaid rates in aggregate, though the results for individual rates might vary. When there was not a comparable Medicare rate, the Department used averages of Medicaid rates paid by other states as the benchmark.

For each of the service areas covered in the 2022 rate review, the Department proposes rebalancing rates to within a range of 80-100 percent of the benchmark. This means that some rates within the service category will be increased and some will be decreased. In most cases the net result is an increase in aggregate compensation to providers. For example, some ophthalmology rates will increase and some will decrease, but overall ophthalmology will see an increase in compensation. However, it is possible that an individual ophthalmology provider could experience a decrease in payments due to the specific subset of services delivered and the applicable rates.

In some cases, a provider will see a net reduction. For example, Radiology is an area with significant expenditures and the Department proposes a net decrease of 3.0 percent. However, the relationship is not always straight forward and intuitive. A radiologist is probably not billing for Ear, Nose, and Throat codes that are getting an increase, but they might be in the same practice, or they might be billing for Primary Care/Evaluation and Management codes that are getting an increase. The Department doesn't spend as much for Cognitive Capabilities Assessment codes as Radiology codes, but the proposed rebalancing would reduce the rates for Cognitive Capabilities Assessment codes by 24.2 percent. The provider billing for Cognitive Capabilities Assessment codes might be the same provider, or in the same practice with providers, billing for Primary Care/Evaluation and Management, or even Ear, Nose, and Throat, or Women's Health and Family Planning.

The JBC staff recommends both the proposed increases and decreases in rates. When an individual rate gets out of alignment with benchmarks and provider costs it can create an economic incentive for providers to prioritize a particular service or treatment based on reimbursement rates rather than health outcomes. When the Medicaid rates pay more than the benchmark, it implies that the Department is paying more than the provider's cost. While it would be nice for Medicaid to pay a profit margin, there isn't enough money and the rates are typically not intentionally designed to result in a profit, but rather just to cover costs. There are a few exceptions for "high value" preventive services that the Department wants to incentivize due to the impact on reducing overall expenditures. Finally, bringing down rates that are above the benchmark helps offset the cost of bringing up rates that might be woefully below the benchmark.

At the hearing, the Department implied that the JBC has historically been reluctant to reduce rates that exceed the benchmark, but this was not an accurate portrayal of the JBC's past actions. In FY 2019-20 the JBC approved rebalancing primary care, radiology, physical therapy, occupational therapy, laboratory, and pathology rates for a net reduction of $9.3 million total funds, including $3.5 million General Fund. The same year the JBC rejected a proposal to reduce anesthesia rates to 100 percent of the benchmark, but the JBC had previously initiated an increase in anesthesia rates that had not been requested by the Department and was not convinced that the benchmark accurately reflected the need. In FY 2020-21, the JBC rejected a proposal to rebalance durable medical equipment rates that would have resulted in a small net decrease of $49,244 total funds, including $17,432 General Fund. This recently followed a new federal upper payment limit on certain durable medical equipment that had significantly reduced rates and the JBC members expressed reluctance to further reduce rates for a nominal net savings. However, in the same year the JBC approved rebalancing behavioral health fee-for-service rates that resulted in a net increase of $1.6 million total funds, including $875,964 General Fund. In FY 2021-22, the Department did not submit any proposals that would have decreased rates over 100 percent of the benchmark. In FY 2022-23 the JBC again rejected a proposal to rebalance rates for durable medical equipment and only approved the side of the rebalancing that increased rates. In recent years, the JBC has rejected some rebalancing reductions for very specific policy reasons related to the particular rates. The JBC has not rejected all rebalancing reductions out of hand and has actually approved most of the rebalancing proposals brought forward by the Department.

Rate Review Rebalancing Recommendations					
	Current Cost	Increases	Decreases	Net Change	Percent
Physician Services					
Cardiology	16,065,292	636,972	(1,006,479)	(369,507)	-2.3%
Cognitive Capabilities Assessment	7,390,369	7,340	(1,796,179)	(1,788,839)	-24.2%
Ear, Nose, and Throat	19,610,893	1,359,842	(115,822)	1,244,020	6.3%
Gastroenterology	162,160	45,211	(676)	44,535	27.5%
Health Education	687,240	264,708	(36,363)	228,345	33.2%
Ophthalmology	26,152,155	1,952,071	(740,183)	1,211,888	4.6%
Primary Care/Evaluation and Management	361,644,914	13,751,554	(5,329,701)	8,421,853	2.3%
Radiology	58,816,577	4,915,447	(6,664,023)	(1,748,576)	-3.0%
Respiratory	914,336	18,311	(49,593)	(31,282)	-3.4%
Vaccines and Immunizations	14,203,812	28,790	0	28,790	0.2%
Vascular	3,904,163	49,377	(1,027,426)	(978,049)	-25.1%
Women's Health and Family Planning	188,679,084	8,654,925	(3,062,134)	5,592,791	3.0%
Other Physician Services	371,158,303	16,757,214	(6,619,447)	10,137,767	2.7%
Subtotal - Physician Services	1,069,389,298	48,441,762	(26,448,026)	21,993,736	2.1%
Eyeglasses and Vision	51,457,214	21,342,018	(428,897)	20,913,121	40.6%
Laboratory and Pathology	75,238,081	3,824,750	(1,148,124)	2,676,626	3.6%
Dialysis and Nephrology	9,355,158	465,902	0	465,902	5.0%
Injections & Misc. J-Codes	1,250,195	94,078	(211,630)	(117,552)	-9.4%
TOTAL	**$1,206,689,947**	**$74,168,510**	**($28,236,677)**	**$45,931,833**	**3.8%**
General Fund		22,322,349	(8,540,355)	13,781,994	
Cash Funds		3,137,725	(1,186,268)	1,951,457	
Federal Funds		48,708,436	(18,510,054)	30,198,382	

PHYSICIAN SERVICES

For the majority of the rates in the physician services category, the Department recommends rebalancing rates that were identified to be below 80 percent of the benchmark and above 100 percent of the benchmark. This includes: cardiology, cognitive capabilities assessment, ear, nose and throat (ENT) services, gastroenterology, health education, ophthalmology, primary care/evaluation and management (E&M) services, radiology, respiratory, vascular services, women's health and family planning, other physician services.

The Department recommends only increasing rates for vaccines and immunizations that are below 80 percent of the benchmark up to 80 percent of the benchmark with no corresponding decrease to rates above the benchmark. Overall, the Department found vaccine rates were 107.9 percent of the benchmark with individual rates varying form 36.8 percent to 284.7 percent of the benchmark. Of the 45 procedure codes analyzed only 5 used a comparable Medicare rate as the benchmark and the remaining 40 were compared to the average of comparable Medicaid rates in Arizona, Oklahoma, Nebraska, Utah, Nevada, and Oregon. The Department argues that immunizations are a high-value service with long-term benefits for the individual client and for public health. As a result, the Department views rates above the benchmark as providing appropriate economic incentives to providers, rather than problematic.

EYEGLASSES AND VISION SERVICES

The Department found the aggregate payment for eyeglasses & vision services was 57.4 percent of the benchmark with individual rates ranging from 14.0 percent to 192.0 percent of the benchmark. The Department recommends rebalancing vision service rates that were identified to be below 80 percent of the benchmark and above 100 percent of the benchmark. The Department also recommends increasing eyeglasses and frames rates for children and adults who have had a qualifying surgery to 80 percent of the benchmark.

LABORATORY AND PATHOLOGY SERVICES

The Department found the overall payment rate for laboratory and pathology services was 93.7 percent of the benchmark with individual rates varying between 6.9 percent and 178.3 percent of the benchmark and recommends rebalancing laboratory service rates that were identified to be below 80 percent of the benchmark and above 100 percent of the benchmark.

DIALYSIS AND NEPHROLOGY SERVICES

The Department found that the average payment rate for dialysis relative to the benchmark was 78.5 for facility-based services and 61.1 percent for professional services with rates for individual codes between 26.9 percent and 104.0 percent of the benchmark. Since none of the individual codes are significantly above 100 percent of the benchmark, the Department just recommends increasing rates to at least 80 percent of the benchmark.

INJECTIONS AND MISCELLANEOUS J-CODES

The Department found the payment rate for injections and miscellaneous J-codes was 95.6 percent of the benchmark with individual rates varying from 5.0 percent to 184.9 percent of the benchmark and recommends rebalancing injection and miscellaneous J-code rates that were identified to be below 80 percent of the benchmark and above 100 percent of the benchmark. This results in a slight decrease in payments overall.

➔ BA20 CLINICAL NAVIGATION SERVICES

The JBC staff figure setting document failed to include a recommendation on *BA20 Clinical navigation services*. Below is an analysis or the request and a recommendation.

REQUEST

The Department requests $271,904 total funds, including $135,953 General Fund, and 1.9 FTE for clinical navigation services for a subset of medically complex pediatric members utilizing Private Duty Nursing. The Private Duty Nursing benefit provides skilled nursing services in a home setting for high acuity patients. The majority of the recipients are machine dependent and would otherwise be in a hospital or nursing home setting. To receive the very expensive Private Duty Nursing services, a client must first get approval through a Prior Authorization Review (PAR) as required by federal policy.

In October 2022 the Department implemented a temporary administrative approval process for Private Duty Nursing in response to concerns that the PARs were resulting in inappropriate denials. The Department worked with stakeholders to modify noticing requirements to be more accurate and consistent about approvals, partial denials, and full denials. The Department did training with providers responsible for submitting the PARs to ensure they understand the criteria and the necessary supporting documentation. After the training, the Department required the providers to resubmit the PARs to ensure proper assessment of the medical necessity of services and avoid technical denials due to inadequate documentation. The Department began sending redetermination notices March 8.

In addition to the temporary administrative approval process and efforts to reform and improve the PARs, the Department is asking for two additional nurses to help ensure that families are receiving all possible and available wrap-around services. The nurses would perform monthly outreach with families that have received any denial of Private Duty Nursing benefits, provide education and support to ensure medically necessary services are provided, communicate with the Regional Accountable Entities regarding unmet needs, and conduct provider outreach and education focused on the PAR process and requirements related to missing/supporting documentation.

RECOMMENDATION

Staff recommends approval of the request with modification to apply the JBC's common policies regarding new FTE. There is, arguably, some overlap between this and the requested department team for children with complex and co-occurring needs that the JBC approved in *R10b Children with complex needs*, but that team is more focused on managing the process for Early and Periodic Screening, Diagnostic and Treatment (EPSDT) exceptions and this team is more focused on case management for children utilizing Private Duty Nursing. The Department is clearly struggling with appropriate implementation of the federally-required PARs and this team will hopefully help identify issues, reduce communication gaps, and get clients the services they need, whether the services are Private Duty Nursing and/or alternatives and supports. The recommendation is summarized in the table below.

BA10 Clinical Navigation Services				
	TOTAL FUNDS	GENERAL FUND	FEDERAL FUNDS	FTE
FY 2023-24				
Personal Services	197,947	98,974	98,973	1.8
Operating	16,040	8,020	8,020	0.0
Leased Space	13,200	6,600	6,600	0.0
TOTAL - FY 2023-24	**$227,187**	**$113,594**	**$113,593**	**1.8**
FY 2024-25				
Personal Services	215,942	107,971	107,971	2.0
Operating	2,700	1,350	1,350	0.0
Leased Space	13,200	6,600	6,600	0.0
TOTAL - FY 2024-25	**$231,842**	**$115,921**	**$115,921**	**2.0**

➔ MEDICAID PROVIDER RATE REVIEW ADVISORY COMMITTEE CLEANUP BILL

REQUEST

The Department identified some issues with the JBC's S.B. 22-236 that converted the five-year provider rate review process to a three-year process. The Department did not submit an official request to address these issues.

The Department's concerns stem from ambiguity about when the three-year review cycle is supposed to begin. The original bill removes references to the five-year review cycle effective July 1, 2023, but it does not insert all the provisions relevant to the new three-year review cycle until May 1, 2025. The Department is proceeding assuming that the first report under the three-year review cycle is due November 1, 2023.

The old five-year review cycle required reports May 1 and November 1 each year. The new cycle calls for a consolidated report on November 1 each year. Because the original bill does not remove references to the five-year review cycle until July 1, 2023, it appears that the Department still needs to submit the May 1, 2023, report, but this report would be redundant if the Department is submitting a consolidated report by November 1, 2023.

RECOMMENDATION

Staff recommends that the JBC introduce a bill to make the following modifications to the provider rate review process.

1. In Section 25.5-4-401.5(2)(d), C.R.S., change the date of the required report from November 1, 2025 to November 1, 2023, and change the effective date of the section from May 1, 2025 to July 1, 2023. This is the section that requires a consolidated November 1 report under the three-year review cycle.
2. Change the effective date of Section 25.5-4-401.5(2)(a), C.R.S. from July 1, 2023 to April 30, 2023. This is the section that removes the annual May report, so the Department wants it to be effective before the May 1, 2023 report is due.

The JBC staff does not recommend another modification suggested by the Department related to the date when the JBC or MPRRAC can request an out-of-cycle rate review. The Department proposed changing the deadline from December 1 the year prior to the report to February 1 the year prior to the report. So, if the JBC requested an out-of-cycle review during the FY 2024-25 briefing process it would not be included in the Department's report until November 1, 2025, versus November 1, 2024, under current law. This length of delay makes a request for an out-of-cycle rate review near pointless. The statue already allows the Department to submit a written response within 30 days with explanation if the Department believes a request for an out-of-cycle rate review cannot reasonably be completed within existing resources, allowing the Department to propose some alternative on a case-by-case basis if the JBC or MPRRAC make demands that exceed the Department's analysis capacity.

➔ ARPA ROLLFORWARD AUTHORITY

REQUEST

In the Governor's January 3, 2023, budget letter, he requested rollforward authority for $34,750,000 federal American Rescue Plan Act (ARPA) funds appropriated in H.B. 22-1302. The ARPA funds were deposited in the Behavioral and Mental Health Cash Fund and appropriated to the Department of Health Care Policy and Financing for the primary care and behavioral health statewide integration grant program and the universal contract for behavioral health services.

Any money in the Behavioral and Mental Health Cash Fund that is not "obligated" or spent by December 30, 2024, is transferred to the Unemployment Compensation Fund pursuant to Section 24-75-226 (4)(d), C.R.S. Because the money must be "obligated" by December 30, 2024, the appropriation clauses on the bill provided rollforward authority to that date. However, both state and federal statute allow the money to be spent until December 31, 2026.

At the time the appropriation clause was written, it was assumed that "obligated" meant essentially the same thing as an encumbrance for which the Office of the State Controller can grant rollforward authority. The purpose of the appropriation deadline was to ensure that the Department got the money out the door. However, it now appears there are circumstances where money could be "obligated" pursuant to the federal definition but not meet the criteria where the Office of the State Controller would allow a department to rollforward the funds. According to the Governor, this is creating barriers to completing contracts that would successfully obligate the money pursuant to the federal definition but not spend all the money until after the appropriation expires.

Neither the Governor nor the Department provided any explanation of what is causing a delay in spending the money by the December 30, 2024, date in the appropriations clause. The request describes the appropriations clause in H.B. 22-1302 as a technical error and says there have been program implementation challenges in executing the contracts for the appropriation.

RECOMMENDATION

Staff recommends replacing the language in the bill that provides rollforward authority until December 30, 2024, with the following language:

> *Any money appropriated in this section that originated from money the state received from the federal coronavirus state fiscal recovery fund that is obligated prior to December 30, 2024, in accordance with the federal "American Rescue Plan Act of 2021", Pub.L. 117-2, as amended, but not expended prior to December 30, 2024, is further appropriated to the department for use prior to December 31, 2026, for the same purpose.*

It is clear the General Assembly intended that the money be available for expenditure through December 31, 2026, so long as the money is obligated by December 30, 2024. Staff believes this modified language accomplishes that legislative intent better than the original appropriation clause. It is important to note that this modified language does not eliminate the requirement that the money be "obligated" pursuant to the federal definition by December 30, 2024.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Justin Brakke, JBC Staff (303-866-4958)
DATE	March 13, 2023
SUBJECT	JBC Staff Comebacks for the Department of Corrections

This memo is the second of two planned JBC staff comeback memos related to the Department of Corrections. It contains the following items:

- **Tabled line item appropriation**: Discussion about special needs parole and the Appropriation to Community-based Reentry Services Cash Fund line item
    - *General Fund requested by DOC = $1,481,662 | General Fund recommended by JBC staff = $0*
- **Tabled Long Bill Footnotes and Requests for Information**
- **New decision item**: Staff-initiated DOC match Human Services contracted medical staff salary increase
    - *Net FY 24 General Fund impact = $510,061*

DEPARTMENT OF CORRECTIONS – TABLED

➔ DISCUSSION ABOUT SPECIAL NEEDS PAROLE AND THE APPROPRIATION TO COMMUNITY-BASED REENTRY SERVICES CASH FUND LINE ITEM

REQUEST: The JBC tabled this line item pending further discussion about special needs parole, which relates to the amount requested by the Department, and funding for the grant program that the cash fund supports. The Department requested a base appropriation of $1,481,662 General Fund for this line item in FY 2023-24. Staff recommended denial of the request and removal of the line item from the Long Bill.

RECOMMENDATION: Staff still recommends $0 General Fund for this line item. There is already an approved $7.0 million General Fund base appropriation in the Long Bill for the grant program that the cash fund supports. The $1.48 million at stake here is *in addition to* that existing $7.0 million appropriation. Furthermore, the $1.48 million figure is based on assumed savings from a bill that passed in the 2021 session. Those savings have not materialized.

DISCUSSION:

COMMUNITY-BASED REENTRY SERVICES CASH FUND AND GRANTS TO COMMUNITY-BASED ORGANIZATIONS FOR REENTRY

The requested $1,481,662 General Fund for the *Appropriation to Community-based Reentry Services Cash Fund* line item for FY 2023-24 would deposit that amount into the continuously-appropriated

Community-based Reentry Services Cash Fund (CRS Fund).[1] The CRS Fund supports a grant program for community- and faith-based organizations that provide reentry services for offenders.[2]

The CRS Fund is not the only source of funding for that grant program. The *Grants to Community-based Organizations for Parolee Support* line item provides a direct General Fund appropriation to the DOC for grants. The JBC previously approved an appropriation of $7,036,014 General Fund for FY 2023-24 for that line item. The requested $1,481,622 General Fund appropriation to the CRS Fund is *in addition to* the other $7.0 million General Fund appropriation for the related grant program. If the JBC approves the Department's request, total funding for the grant program would come to $8.5 million General Fund.

Staff notes that Section 17-33-101 (7)(g), C.R.S., would repeal the grant program and the C.R.S. Fund in September 2023. Senate Bill 23-157 (Sunset Offender Reentry and Education Programs) would revise that statute and delay repeal until September 1, 2032. If S.B. 23-157 fails, the grant program would wind down and end by September 2024.

EXPLAINING THE ORIGINS OF THE $1.48 MILLION GENERAL FUND REQUEST

STATUTE REQUIRES APPROPRIATION IN FY 2022-23 BUT NOT IN FY 2023-24

The FY 2022-23 Long Bill (H.B. 22-1329) included a $1,481,662 General Fund appropriation to the CRS Fund. This was done through a line item called *Appropriation to Community-based Reentry Services Cash Fund*. This line item was included in the FY 2022-23 Long Bill because statute required it.[3] This statute was created through Senate Bill 21-146 (Improve Prison Release Outcomes), which required specific appropriations to the CRS Fund in both FY 2021-22 and FY 2022-23. Statute does not require appropriations past FY 2022-23, but the Department requested $1.48 million as part of its base appropriation for FY 2023-24.

WHERE $1.48 MILLION COMES FROM

The $1.48 million figure is based, in-part, on a fiscal note assumption that 135 DOC inmates would be released to parole as a result of S.B. 21-146, which changed eligibility criteria for special needs parole (SNP). The fiscal note for S.B. 21-146 assumed that releasing those 135 inmates to parole would result in net General Fund savings totaling $2.45 million in FY 2022-23. The bill was amended in the House Judiciary Committee to require the General Assembly to appropriate $1,481,662 General Fund in FY 2022-23 to the CRS Fund "from the savings from enactment of Senate Bill 21-146."[4]

The number of assumed releases in the fiscal note (135) was primarily based on an eligible population of 352 and an approval rate of 43.0 percent. This assumed approval rate was the midpoint between: (1) historical data showing DOC recommendations to the Parole Board as a percentage (17.0%) of

[1] Section 17-33-101 (7)(f.5)(I), C.R.S.
[2] Section 17-33-101 (7), C.R.S.
[3] Section 17-33-101 (7)(f.5)(IV.5)(B), C.R.S.
[4] https://s3-us-west-2.amazonaws.com/leg.colorado.gov/2021A/amendments/SB146_L.009.pdf

total eligibility, and (2) Parole Board approvals as a percentage (69.0%) of the DOC's recommendations.

ACTUAL NUMBER OF SNP RELEASES

Through February 2023, 16 inmates have been granted SNP by the Parole Board in FY 2022-23 out of 40 total applications submitted to the Board by the DOC. Of the 24 that were not approved, 20 were denied. The remainder were either tabled or found to be ineligible. The following table shows the reasons for denial as of January 2023.

SPECIAL NEEDS PAROLE: PAROLE BOARD DENIAL REASONS FY 2022-23 (AS OF JANUARY 2023)

REASON	NUMBER
Undue Risk	12
Risk not mitigated and noncompliance with medical treatment	1
Does not meet criteria	1
Application incomplete	3
Medical condition(s) can be managed within DOC	2
Total	**19**

The number of applications submitted to the Parole Board and the subsequent number of approvals do not tell the whole story. So far in FY 2022-23, 346 SNP referrals have been sent to DOC clinical staff. Of those 346 referrals, DOC clinical staff determined that 317 did not meet criteria to move on to the next step in the process. Not meeting criteria pursuant to Section 17-1-102 (7.5), C.R.S., means:

1. The inmate is not 55 years older with a medical or mental health condition that renders them seriously impaired (e.g. unable to perform essential day to day activities without daily intervention, attention, or support); **or**
2. The inmate does not suffer from a chronic, permanent, terminal, or irreversible physical illness, condition, disease, or a behavioral or mental health disorder that requires costly care or treatment and who is incapacitated; **or**
3. The inmate is not 64 years of age, has served 20 years, and was not convicted of certain crimes; **or**
4. The inmate does not have a substantial probability of being restored to competency for the completion of any sentence and is not likely to pose a risk to public safety, including those with dementia, as determined by a licensed health care professional; **or**
5. The inmate does not have a terminal illness with a life expectancy under 12 months as determined by a licensed health care professional.

DOC clinical staff use a standardized worksheet to evaluate these criteria pursuant to DOC policy as laid out in Administrative Regulation 250-81 (effective Sept. 2022). It is not clear why so many referrals to DOC clinical staff do not meet the above criteria.

➔ LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

REQUEST: The Department did not request these footnotes and requests for information. Rather, they are related to concepts presented to the Committee during the original figure setting discussion. Staff indicated that they would bring specific language to the Committee during comebacks. One of the requests for information was requested by a member of the Committee.

RECOMMENDATION:

LONG BILL FOOTNOTES

N Department of Corrections, Management, Executive Director's Office Subprogram, Overtime & Incentives and Bonuses– In addition to the transfer authority provided in section 24-75-108, C.R.S., the department of corrections is authorized to transfer up to 5.0 percent of the total appropriation for overtime and incentives and bonuses between those two line items for the purposes of providing overtime pay and incentives and bonuses to employees.

N Department of Corrections, Management, Executive Director's Office Subprogram, Incentives and Bonuses– It is the General Assembly's intent that $9,064,000 of this appropriation be used for housing stipends for departmental staff, including new recruits.

REQUESTS FOR INFORMATION

2 Department of Corrections, Management, Executive Director's Office Subprogram, Overtime & Incentives and Bonuses -- It is requested that the Department of Corrections submit a report to the Joint Budget Committee by January 15, 2024 that shows how much the department has spent on overtime and bonuses and incentives year-to-date in FY 2023-24. The report should also show expected expenditures through the end of the fiscal year.

COMMENT: Staff recommends adding this request for information so the JBC receives an update on fiscal year-to-date expenditures related to overtime and bonuses and incentives.

3 Department of Corrections, Management, Executive Director's Office Subprogram, Overtime & Incentives and Bonuses -- It is requested that the Department of Corrections submit a report to the Joint Budget Committee by November 1, 2024 detailing how the appropriations for these two line items were distributed to other line items within the department in FY 2023-24.

COMMENT: Staff recommends adding this request for information so the JBC can clearly see which line items received centrally-appropriated distributions for overtime and bonuses and incentives.

4 Department of Corrections, Management, Executive Director's Office Subprogram, Additional Prison Capacity -- It is requested that the Department of Corrections submit a report to the Joint Budget Committee by November 1, 2023 detailing the number of prison beds, by facility and by custody level, that have been brought online using these appropriations.

COMMENT: Staff recommends adding this request for information so the JBC receives a fiscal year-to-date update on the actual utilization of these funds to increase state prison capacity.

5 Department of Corrections, Management, Executive Director's Office Subprogram, Additional Prison Capacity -- It is requested that the Department of Corrections submit a report to the Joint Budget Committee by November 1, 2024 detailing how the appropriations for these line items—Personal Services, Operating Expenses, Personnel start-up, and Facility start-up—were distributed to other line items within the department in FY 2023-24.

COMMENT: Staff recommends adding this request for information so the JBC can clearly see which line items received centrally-appropriated distributions to increase state prison capacity.

6 Department of Corrections, Inmate Programs, Sex Offender Treatment Subprogram -- It is requested that the Department of Corrections submit a report to the Joint Budget Committee by November 1, 2023 that details the cost to fully address the backlog for sex offender treatment. If a reason for the backlog is staffing shortages, the report should describe those shortages and compare wages for employees and contracted treatment providers to prevailing market rates. If employee compensation and/or contracted treatment provider rates are below prevailing market wages, the report should include the cost of bringing employee compensation and/or contracted treatment provider rates to prevailing market rates.

COMMENT: The Department responded to a hearing question about the sex offender treatment backlog in December 2022 by saying:

As of 12/7/22, there are 1,086 people on the global referral list for sex offender treatment, validated through individual assessments for treatment readiness, amenability, and risk for sexual recidivism. Individuals who score below low risk for sexual recidivism are not recommended for treatment. Additionally, the SOTMP created several behavioral telehealth positions. The Department is limited in its ability to expand telehealth due to lack of infrastructure.

The SOTMP currently has 32 vacant treatment provider positions. Since the primary limiting factor for this program is staffing shortages, a request for additional funds was not warranted. Consequently, DOC is focusing on recruiting treatment providers to fill the current vacancies. Given the current job market, however, the Department struggles to hire and retain qualified and competent staff due to compensation that significantly lags behind alternatives.

JBC staff crafted this request for information at the Committee's request and did so in a way that asks the DOC to indicate how much it would cost to address the backlog. Because this hearing response indicated that staffing was an issue, the RFI specifically highlights the staffing component and asks for related data.

DEPARTMENT OF CORRECTIONS – NEW DECISION ITEM

➔ STAFF-INITIATED DOC MATCH HUMAN SERVICES CONTRACTED MEDICAL STAFF SALARY INCREASE

REQUEST: The Department did not request this decision item, but is aware of it.

RECOMMENDATION: Staff recommends an increase of $510,061 General Fund to the *Medical Contract Services* line item in the DOC's Mental Health Subprogram. The recommendation aims to align the DOC's contract rates for medical personnel with the Department of Human Services (DHS) contract rates for medical personnel.

The DHS submitted an FY 2023-24 budget request for $4.3 million General Fund (R9/BA1 Salary Increase Hospital Medical Staff) to increase contracted medical staff salaries to effectively recruit qualified psychiatrists, internal medicine physicians, nurse practitioners, and physician assistants. These personnel work the Colorado Mental Health Hospital in Pueblo (CMHHIP) and the Colorado Mental Health Hospital in Fort Logan (CMHHIFL). The JBC approved the request.

The DHS' request generated discussion between JBC staff. Specifically, JBC staff wondered how the DHS request might impact the DOC, given how the San Carlos Correctional Facility is located just one mile from CMHHIP. Per DOC policies, the San Carlos facility houses "male offenders who are seriously mentally ill, have intensive treatment needs and are in need of psychiatric stability which may include involuntary medication, as clinically indicated."[5] Similar to the DHS, the DOC contracts with the University of Colorado for psychiatrists, a couple of psychiatric nurses, and one psychiatric physician's assistant.

Using the same methodology used by the DHS to calculate its request, the DOC showed JBC staff that it would cost $510,061 to provide equal pay to contracted medical staff at San Carlos. This amount includes a 10.0 percent salary increase, a 25.04 percent increase for benefits, and a 10.5 percent administrative fee.

Like the DHS, the DOC struggles to recruit and retain qualified medical staff. Staff concluded that it would be a good idea to ensure that neighboring facilities operated by two different state agencies could provide the similar levels of compensation for similar services provided to patients with similar needs.

[5] Page 11 of AR 650-04.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Abby Magnus, JBC Staff (303-866-2149)
DATE	March 15, 2023
SUBJECT	State and County Election Costs and Proposed Changes

CURRENT COST STRUCTURE FOR ADMINISTERING ELECTIONS

- Counties are responsible for the entirety of costs to conduct all general, primary, and congressional elections in accordance with Section 1-5-505, C.R.S.;
- For Presidential Primary Elections, the Department reimburses counties for their actual direct costs from the General Fund in accordance with Section 24-21-104.5(2), C.R.S.; and
- In elections where there is a statewide ballot question, the Department subsidizes county costs at a rate of 80 or 90 cents per active registered voter, based on the number of eligible voters registered in each county, pursuant to Section 1-5-505.5, C.R.S. In rare instances, when there are odd-year elections in which the statewide ballot question is the only item on a county ballot, the Department reimburses the county for its actual direct costs.

Historically, statewide ballot questions occurred in odd-year elections, however more recently these have become an annual occurrence, and the Department has made payments to counties after every November election. In recent years, Department payments to the counties at the statutory rate per voter to support statewide ballot measures totaled:

- $2,840,287 in FY 2019-20 for the November 2019 Coordinated Election.
- $3,067,234 in FY 2020-21 for the November 2020 General Election; and
- $3,141,411 in FY 2021-22 for the November 2021 Coordinated Election.

DEPARTMENT OF STATE PROPOSAL

The Department would like to transition the statutory election payments for statewide ballot questions from the DOS Cash Fund to the General Fund. This would alleviate current pressures on reserves in the DOS cash fund caused by the increasing costs of elections. As shown in the table below, the DOS Cash Fund's historical revenue and expenditures have been relatively close, and the fund is in compliance with statutory reserve requirements. The Schedule 9 report for the DOS Cash Fund is attached to the end of this memo.

DOS CASH FUND REPORTS				
	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Revenue	$27,348,753	$40,330,488	$31,120,000	$32,170,000
Expenses	(27,738,855)	(41,079,862)	(29,755,073)	(34,540,984)
Net cash flow	(390,102)	(749,374)	1,364,927	(2,370,984)
Reserve	4,668,167	2,750,146	4,115,073	2,548,603

PROPOSED CHANGES BY COUNTIES

The rate at which the State subsidizes costs for statewide ballot questions has not increased since 2012, however the total amount the counties receive mirrors population changes. The counties have put forward a proposal that would restructure how elections are currently paid for in Colorado. The proposal includes two changes:

Establish cost share between the State and counties/coordinating entities for statewide ballot questions

- Currently, for statewide ballot questions, the State subsidizes county costs at the rates identified in statute, and counties coordinate with any entities that are on their ballot on payments from entities to the counties. The 2020 statewide ballot questions cost counties an average $3.97 per voter, and State payments equated to the an estimated 20.0 percent of costs at $0.80 to $0.90 per voter.
- The proposal would restructure this system to have the State cover 45.0 percent and counties cover 55.0 percent of the costs of administering elections related to statewide ballot questions. This model allows counties to negotiate with coordinated entities on payment amounts.

Establish cost share between the State and counties for State Primary Elections

- Currently, counties cover the entirety of the costs related to administering State Primary Elections.
- The proposal would split costs between the State and counties 50/50.

Timeline and Impact of County Proposal

The proposal from the counties would not go into effect until the General Election in 2024. The first State Primary with the proposed changes would occur in 2026. Under the proposed cost splits, payments to counties by the Department would have increased by:

- $2,907,809 in 2018;
- $3,735,865 in 2020; and
- $4,599,755 in 2022 for the statewide primary election.

Considerations

- The Department of State currently only audits reported costs for Presidential Primaries. If the State were reimbursing counties annually for a percentage of direct costs, the Department would require an additional 1.0 FTE for their accounting team to complete annual audits.
- Staff does not have data on the amounts counties currently receive from coordinated entities for statewide ballot questions or what average ballot splits look like regarding questions for the State, counties, and coordinating districts.
- Estimates for the costs of elections can be difficult to nail down. During the 2022 primary recount, estimates were about twice as expensive as the costs, and in the 2020 presidential primary, estimates were significantly under actual costs, necessitating a supplemental budget request from the Department.
- Currently, the State subsidizes election costs for counties. If these proposed changes were to occur, this structure would shift from a subsidy of county costs to a State obligation to cover a percentage of the costs of elections.
- The counties have not identified a funding source in their proposed changes and staff would not recommend the Committee move forward with legislation without identifying a funding source.
- If the Committee is wanting to move forward with these changes, due to the structural adjustments to how elections are paid for, staff would recommend using General Fund rather than the DOS Cash Fund as the payment source.

OPTIONS MOVING FORWARD

1 Draft legislation to increase the subsidy rate for State payments to counties for elections costs related to statewide ballot measures, with the State contribution coming from the General Fund/DOS Cash Fund.

2 Draft legislation based on the proposal from the counties to split the costs of administering elections related to statewide ballot questions 45.0 percent and 55.0 percent between the State and counties, and 50.0 percent and 50.0 percent between the State and counties for Statewide Primary Elections, with the State contribution coming from the General Fund/DOS Cash Fund.

3 Draft legislation based on the proposal from the counties to split the costs of administering elections related to statewide ballot questions 45.0 percent and 55.0 percent between the State and counties, with the State contribution coming from the General Fund/DOS Cash Fund.

4 Add an RFI to collect data on: total annual election costs, amounts counties currently receive from coordinated entities for statewide ballot questions, and what average ballot splits look like regarding questions for the State, counties, and coordinating districts. This would facilitate a discussion on this issue next fall, with the additional data.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Abby Magnus, JBC Staff (303-866-2149)
DATE	March 14, 2023
SUBJECT	JBC staff comebacks for Department of State – R1 2022 HAVA Election Security Grant State Match

The Joint Budget Committee approved staff recommendation for this request on March 10, 2023, however, there are some technical details that were not clear in the recommendation and must be approved in order for the Department to meet the requirements of the grant.

➔ R1 2022 HAVA ELECTION SECURITY GRANT STATE MATCH

REQUEST

The Department requests $234,488 in one-time DOS Cash Fund spending authority for FY 2023-24 to match a federal HAVA grant for $1,172,438. The State must match 20.0 percent of the grant in order to access the federal funds, and must have the spending authority by March 2024. The funding is to support ongoing election administration improvements and must be spent by September 2027.

PREVIOUS RECOMMENDATION

Staff recommends approval of the request including:

- $234,488 in increased DOS cash fund spending authority in FY 2024-25; and
- Authority to transfer the $234,488 for the State match to the Federal Elections Assistance Fund.

ANALYSIS

In March 2022, the US Election Assistance Commission awarded the Department of State $1,172,438 as an additional tranche of HAVA Election Security funds. In order for the Department to leverage the additional federal funding, the State must provide a match of 20.0 percent or $234,488. The grant requires that:

- The State have legal spending authority for the matching funds within two years of the date that Congress appropriated these funds, not later than March 2024; and
- The Department transfer the full amount of the match into the Federal Elections Assistance Fund in accordance with Section 104(d) of HAVA.

Funding in the Federal Elections Assistance Fund is continuously appropriated to the Department. Accrued interest on the funds must be expended for the purposes of the grant. The matching funds must be expended in full by the September 30, 2027, the end of the grant budget period.

UPDATED RECOMMENDATION

Staff recommends approval of the request including:

- $234,488 in increased DOS cash fund spending authority in **FY 2023-24**; and
- Authority to transfer the $234,488 for the State match to the Federal Elections Assistance Fund.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Emily Hansen, JBC Staff (303-866-4961)
DATE	March 13, 2023
SUBJECT	Department of Public Safety, R12 Expand Fire Training

REQUEST: The Department request includes $4,651,780 General Fund and 14.7 FTE in FY 2023-24 to increase state training resources for local firefighters. The request annualizes to $2,748,851 General Fund and 16.0 FTE in FY 2024-25. The request reflects Recommendation 21-02 of the Colorado Fire Commission. FTE are requested at Q2 or the midpoint of the salary range.

RECOMMENDATION: Staff recommends approval of the request.

DISCUSSION: The request includes the following resources.

R12 FIRE TRAINING REQUEST		
	FY 2023-24	FY 2024-25
Regional Training Officers (6)	$612,408	$665,680
Wildland Training Officers (4)	255,689	277,914
Certification Coordinators (4)	249,758	271,467
Labor, trades, and crafts I (1)	69,327	75,355
Centrally approp. Costs	266,797	289,997
Standard operating	130,128	18,160
Leased space	68,448	74,400
Vehicles	284,174	284,174
Cell phones, tablets	39,520	1,725
Radios	94,600	-
Uniforms	24,750	-
Protective equipment	55,000	-
Travel	101,200	110,000
Personnel Subtotal	*$2,251,799*	*$2,068,872*
Mobile driving simulator (1)	$500,000	-
Mobile pump operation unit (1)	225,000	-
Aircraft rescue and firefighter unit (1)	400,000	-
Hazardous materials training prop trailer (1)	400,000	-
Car fire prop (1)	50,000	-
Prop storage	100,000	100,000
Prop tractor (1)	145,000	-
Equipment Subtotal	*$1,820,000*	*$100,000*
Adjunct instructors	$319,980	$319,980
Remove certification fees	250,000	250,000
Books and training materials	10,000	10,000
Education Subtotal	*$579,980*	*$579,980*
TOTAL	**$4,651,779**	**$2,748,852**

During the initial staff presentation, the Committee expressed concern regarding using General Fund to remove certification fees. The Professional Qualifications and Training Section (PQTS) currently charges fees for all certifications and select training classes. Certification fees cover the cost of certifications, including fees to accrediting bodies, fees for online testing programs, and fees for the online database used to track certifications.

Currently, PQTS charges $30 per certification test, and $20 per renewal to cover the administrative costs for the certification program. The request estimates that PQTS earns an average of $222,296 per year from certification fees to cover programmatic costs. The number of certifications administered by PQTS in 2020 and 2021 are provided in the table below.

Certification Activity		
	2020	2021
Initial Certifications	1,902	2,535
Written Exams	3,533	5,616
Renewal Certifications	5,024	5,276
Total	**10,459**	**13,427**

DFPC is statutorily required to provide trainings to improve firefighter safety and develop consistent practices across fire departments.[1] However, certification and participation in trainings is voluntary. Each year DPFC conducts a fire services needs assessment to survey local fire departments. The Department indicates that 239 fire departments, approximately 70.0 percent, responded to the survey in 2022. Of the responding departments, 50.0 percent indicated they seek state certifications. Of the remaining 50.0 percent that do not seek certifications, 40.0 percent indicate that they do not seek certifications due to cost.

In addition to certification fees, DFPC may charge fees for training courses to cover the cost of venue space and adjunct instructors. Courses that include lunch have a fee of $90 per day, while trainings without lunch have a fee of $60 per day. A local fire department may be required to cover additional costs for hosting trainings, such as the cost of propane to supply mobile training units.

DFPC has proposed supporting certification fees with General Fund at the recommendation of the Colorado Fire Commission. The Department notes that regardless of the size of the fire district and tax revenue available, fire departments may not be sufficiently resourced to make certification a priority in competition for limited resources to support personnel and equipment. Removing certification fees is anticipated to increase access to certification for all fire departments and improve fire safety practices across the state.

[1] Section 24-33.5-1203 (i), C.R.S.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Emily Hansen, JBC Staff (303-866-4961)
DATE	March 13, 2023
SUBJECT	Department of Public Safety, Office of Grants Management and Technical Comebacks

➔ R15 SUSTAIN OFFICE OF GRANTS MANAGEMENT

REQUEST: The Department of Public Safety request includes $827,611 General Fund and 6.3 FTE in FY 2023-24 to refinance the existing Office of Grants Management in the Division of Homeland Security and Emergency Management from federal funds to General Fund, and add an additional 2.0 FTE to support the Office. The request annualizes to $828,465 General Fund and 6.5 FTE in FY 2024-25.

The Department of Local Affairs also submitted a request approved by the Committee for 1.8 FTE related to resiliency and disaster recovery capacity.

RECOMMENDATION: Staff recommends an appropriation of $798,260 General Fund and 6.5 FTE in FY 2023-24. Pursuant to Committee common policy, the recommendation does not include centrally appropriated costs in the first year for new FTE and calculates new positions at the minimum of the salary range.

DISCUSSION: During the initial staff presentation, the Committee expressed concern regarding potential overlap in the requests and general programming overlap in emergency operations between DPS, DOLA, and the Governor's Office. Staff agrees that the requests from each agency do not overlap and relate to the specific expertise of each agency.

BACKGROUND

In response to the 2013 floods, the Governor appointed a Chief Recovery Officer and created the Colorado Resiliency Office (CRO) to coordinate the implementation of the state's resiliency framework. The Office was transferred from the Governor's Office to DOLA in 2018 with five positions funded by the Governor's Office through an interagency agreement. House Bill 18-1394 (Update Colorado Disaster Emergency Act) increased the responsibilities of the CRO and changed the funding source for the Office to gifts, grants, and donations.

In 2019, the Governor signed the State Emergency Operations Plan (SEOP) which outlines the operations and responsibilities of state agencies in the event of a disaster. The SEOP can only be activated through Executive Order, and designates the Office of Emergency Management (OEM) in DHSEM as the lead agency for coordinating emergency response and recovery. Once the plan is activated, all state departments are mandated under the Colorado Disaster Emergency Act and the SEOP to respond as necessary to leverage expertise under the coordination of OEM.[1] The SEOP

[1] Section 24-33.5-701, C.R.S.

designates DOLA as the state agency lead for community and economic recovery under the CRO, and housing recovery under the Division of Housing.

DHSEM is also the designated State Administering Agency (SAA) for FEMA Public Assistance (PA). PA is FEMA's largest grant program awarded to states through the Stafford Act. Local governments therefore receive response and recovery dollars from FEMA through the Office of Grants Management (OGM) in DHSEM. OGM is responsible for assisting local governments with complex application, compliance, and reporting standards to maximize federal funding.

When necessary, DHSEM will partner with other state and local agencies to leverage expertise during large scale disasters. Most frequently, this includes partnership with DOLA to coordinate housing recovery. While DHSEM administers FEMA grants, the Division of Housing (DOH) in DOLA is responsible for administering HUD grants in a disaster. According responses provided by DOLA, the Department can leverage HUD grants as the local match for FEMA grants. In large scale disasters, DOLA and DHSEM may enter into Interagency Agreements to formalize responsibilities and allocate funding, and even temporarily embed staff within the impacted local governments to increase the capacity of effected agencies.

In addition to these Departments, a Recovery Office has been temporarily established in the Governor's Office under the Office of Economic Development and International Trade (OEDIT). The Office was established in response to the COVID-19 pandemic to create a coordinated response specifically to the economic impacts of the pandemic across the state. The Office has become the lead in coordinating the distribution and tracking of one-time stimulus and ARPA funds, and consists of 16 term-limited FTE. OEDIT indicates that the Office partners and coordinates with all other state agencies, and is not duplicative of the efforts addressed in the budget requests as the Office does not address response for other emergencies and natural disasters, or develop resiliency plans for local communities.

REQUESTS

The requests from both Departments indicate that current procedures rely on funding provided through declared disaster emergencies, which limits the scope of work and does not allow for pre-disaster planning or grant seeking. Therefore, both requests include additional General Funded FTE to sustain existing programs and improve disaster preparedness.

The CRO in DOLA is statutorily required to provide technical assistance to local governments for the implementation of resilience planning, but to date is not funded to implement projects specific to mitigation. The CRO currently has 3.0 FTE and has added two term limited positions to respond to the Marshall Fire, funded by the Disaster Emergency Fund through an interagency agreement with DHSEM. The Division of Housing does not currently have any permanent FTE dedicated to emergency response. The request approved by the Committee will add 1.0 FTE to the CRO and 1.0 FTE to the DOH to increase capacity and fulfill responsibilities as outlined in the SEOP.

The Committee delayed action on the DHSEM request, which would refinance 4.0 existing FTE from expiring federal grants to General Fund, as well as add 2.0 new FTE. The request is anticipated to increase federal drawdown by increasing capacity, as well as allow the Office to participate in grant seeking and local disaster preparedness. Working with local governments to set expectations for grant application procedures pre-disaster will improve efficiency during a disaster, when FEMA grants usually require immediate action on the part of both local and state agencies. The Department estimates that the state was unable to collect or obligate at least $100.0 million in federal funding in the last five years due to limited capacity.

RECOMMENDATION

Staff recommends approval of the request as the purpose of the request appears to be distinct from the request submitted by DOLA and aligns with the roles of each agency as outlined in the SEOP. Staff recommends approval of the request without centrally appropriated line items for new staff, pursuant to Committee common policy. The staff recommendation also reflects new FTE at the minimum of the salary range following the COWINS agreement, which is higher than the minimum salary range included in the initial request.

R15 REQUEST AND RECOMMENDATION						
	FY 2023-24			FY 2024-25		
	REQUEST	REC.	DIFFERENCE	REQUEST	REC.	DIFFERENCE
Existing FTE	4.5	4.5	0.0	4.5	4.5	0.0
Personal services	$469,294	$469,294	-	$469,294	$469,294	-
Centrally approp. costs	92,303	92,303	-	91,863	91,863	-
Standard operating	5,675	5,675	-	5,675	5,675	-
EM Grants Pro Maintenance	73,700	73,700	-	73,701	73,701	-
Existing FTE Subtotal	*$640,972*	*$640,972*	-	*$640,532*	*$640,532*	-
			-			-
New FTE	1.8	1.8	-	2.0	2.0	-
Personal services	$138,089	$141,018	$2,929	$150,097	$153,838	$3,741
Centrally approp. costs	32,281	0	(32,281)	35,567	38,599	3,032
Standard operating	16,270	16,270	-	2,270	2,270	-
New FTE Subtotal	*$186,640*	*$157,288*	*$(29,352)*	*$187,934*	*$194,707*	*$6,773*
			-			-
TOTAL	**$827,612**	**$798,260**	**($29,352)**	**$828,467**	**$835,239**	**$6,773**

➔ FTE TECHNICAL CORRECTIONS

Following the initial staff figure setting, the Department determined that staff calculations for some FTE requests were prorated incorrectly, primarily for cash funded requests. Staff agrees with the Department and recommends the corrections as outlined in the following table.

FTE CALCULATION CORRECTIONS					
	REQUEST	INITIAL REC.	CORRECTED REC.	DIFFERENCE	FUND SOURCE
R8 Threat assessment	$321,034	$299,265	$303,408	$4,143	General Fund
R17 CSP Records	461,138	384,421	411,752	27,331	HUTF
R20 CSP Equip.	244,879	194,151	212,098	17,947	HUTF
R23 License Behav. Health	457,689	374,822	392,131	17,309	Health License CF
Total	**$1,484,740**	**$1,252,659**	**$1,319,389**	**$66,730**	

ⓘ INFORMATIONAL ONLY: EMERGENCY ALERT SYSTEMS

The Committee has already approved the staff recommendation for $110,638 General Fund and 0.9 FTE to assist local agencies with emergency alert implementation. However, the Committee requested additional information on the number of alert systems that currently exist across the state, and to what extent systems are coordinated.

The Department indicates that the State Emergency Operations Center (SEOC) has the authority to issue alerts anywhere in the state. Additionally, the SEOC works with FEMA for local entities to become alerting authorities under the Integrated Public Alert & Warning System (IPAWS).

Eleven venders currently provide opt-in alert and warning systems for 64 counties and the SEOC. Fifty-four counties and the SEOC are IPAWS designated alerting authorities. Ten counties are covered by more than one IPAWS alerting authority. The SEOC can send IPAWS alerts to all counties upon request and coordination.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Jon Catlett, JBC Staff (303-866-4386)
DATE	March 13, 2023
SUBJECT	Figure Setting Comeback DMVA R4 Technical Funding Adjustment - Real Estate Proceeds Cash Fund

During figure setting for the Department of Military & Veterans Affairs, the JBC approved staff's recommendation for the drafting of legislation clarifying the ability of the Adjutant General to direct any available funds within the Real Estate Proceeds Cash Fund to buy or sell land, conduct appraisals, environmental studies, or other impact studies related to real estate transactions. After consulting with the Office of Legislative and Legal Services and the JBC staff capital analyst, staff recommends that the Committee reconsider this request and not proceed with sponsoring legislation.

DEPARTMENT REQUEST: The Department's request includes a statutory change to clarify the ability of the Adjutant General to direct any available funds within the Real Estate Proceeds Cash Fund to **buy or sell land**, conduct appraisals, environmental studies, or other impact studies. The Department states that this is not intended to bypass or circumvent established processes for approval from the Office of the State Architect, Capital Development Committee (CDC), Joint Budget Committee, and the General Assembly.

ORIGINAL RECOMMENDATION: Staff requests permission to work with the Office of Legislative Legal Services on drafting this legislation.

REVISED RECOMMENDATION: **Staff recommends that the JBC deny the request and decline to sponsor the requested legislation.**

ANALYSIS: The request presents this item as a "technical funding adjustment" that requires statutory changes to the Real Estate Proceeds Cash Fund[1]. After consultation with the JBC staff capital analyst, staff has come to the conclusion that this is a significant change that would effectively provide continuous appropriation to the Department of Military and Veterans Affairs for real estate transactions and would, in fact, circumvent the CDC process. While it is true that there is occasionally enough money in the Real Estate Proceeds Cash Fund for the Department to make a land purchase without assistance from the Capital Construction Fund/General Fund, the actual construction of armories regularly results in a request for Capital Construction Fund/General Fund support in addition to the federal match dollars received for those projects. The projects are within the CDC's purview, and staff does not think it would be appropriate to introduce this legislation without input or approval from the CDC. To staff's knowledge, the CDC was not made aware of this proposal.

The request states that, *"It is not uncommon for DMVA to have to wait one to two years before they can execute funds, by which point the price has since gone up or the opportunity is gone altogether"*. Given that a request to purchase land could be approved at any point during the legislative session or during a CDC summer meeting and JBC June or September meetings, it is unclear to staff how the DMVA would end up waiting one or two years to get an appropriation approved to use the Real Estate Proceeds Fund for

[1] Section 28-3-106 (1)(s)(I), C.R.S.

a land purchase. The Department did not provide any examples of the CDC and/or JBC denying a regular or supplemental request to use cash funds for a land purchase. Additionally, the Department reports that it has not lost any real-estate projects due to the existing oversight process.

REAL ESTATE PROCEEDS CASH FUND (ORIGINAL ANALYSIS)

The Department is requesting statutory language to clarify the ability of the Adjutant General to direct any available funds within the Real Estate Proceeds Cash Fund to buy or sell land, conduct appraisals, environmental studies, or impact studies. The Department states that this is not intended to bypass or circumvent established processes for approval from the Office of the State Architect, Capital Development Committee, Joint Budget Committee, and the General Assembly.

According to the Department, providing the Adjutant General with this discretion will better allow them to respond to changes in the real estate market to maximize return on state dollars and capitalize on opportunities as they arise. The Department states that leaving statute as currently written puts the Department and the State at a significant disadvantage when bidding for real estate in a competitive market. It also puts the State at risk of paying considerably more for parcels of land due to the lengthy process currently in place that inhibits expedient purchases and sales.

REAL ESTATE PROCEEDS CASH FUND					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
Beginning Balance	$10,593,311	$9,674,694	$9,892,820	$10,112,720	$5,209,611
Revenue	185,526	218,288	219,999	249,066	55,360
Expenditures	(1,104,143)	(162)	(148)	(243,780)	(504,169)
Cash Sweep				(4,908,395)	
Ending Fund Balance	**$9,674,694**	**$9,892,820**	**$10,112,671**	**$5,209,611**	**$4,760,802**

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Mitch Burmeister, JBC Staff (303-866-3147)
DATE	March 13, 2023
SUBJECT	Treasury R1 Administration Division Needs Appropriation Adjustment

In staff's figure setting recommendation for the Department of the Treasury's R1 Administration Division Needs request item, staff recommended a slightly smaller number than what should have been recommended. The reason for this is that the updated spreadsheet for calculating FTE had not been finalized yet, so staff did not have access to the exact numbers to be used for the various pay ranges for FY 2023-24. Staff tried his best to approximate what the salary ranges would be, but was short by about $500 on both of the positions in this request. This resulted in a recommendation that is short by $1,119 General Fund according to the updated calculations for new FTE for FY 2023-24.

The following tables outline the changes.

Original recommendation:

TREASURY R1 ADMINISTRATION DIVISION NEEDS REQUEST AND RECOMMENDATION						
	FY 2023-24 REQUEST		FY 2023-24 RECOMMENDATION		FY 2024-25 R1 REC. ANNUALIZ.	
	FTE	Cost	FTE	Cost	FTE	Cost
Personal Services						
Budget Analyst II	1.0	$88,156	1.0	$80,495	1.0	$80,495
MKTG & Comm Spec II	1.0	70,072	1.0	57,199	1.0	57,199
Subtotal - Personal Services	**2.0**	**$158,228**	**2.0**	**$137,694**	**2.0**	**137,694**
Employee Benefits		$42,382		$37,741		$37,741
Standard Operating Expenses		1,900		1,900		1,900
Capital Outlay		4,000		4,000		0
Totals	**2.0**	**$206,510**	**2.0**	**$181,335**	**2.0**	**$177,335**

Amended recommendation:

TREASURY R1 ADMINISTRATION DIVISION NEEDS REQUEST AND RECOMMENDATION						
	FY 2023-24 REQUEST		FY 2023-24 RECOMMENDATION		FY 2024-25 R1 REC. ANNUALIZ.	
	FTE	Cost	FTE	Cost	FTE	Cost
Personal Services						
Budget Analyst II	1.0	$88,156	1.0	$81,095	1.0	$81,095
MKTG & Comm Spec II	1.0	70,072	1.0	57,625	1.0	57,625
Subtotal - Personal Services	**2.0**	**$158,228**	**2.0**	**$138,720**	**2.0**	**138,720**
Employee Benefits		$42,382		$37,834		$38,387
Standard Operating Expenses		1,900		1,900		1,900
Capital Outlay		4,000		4,000		0
Totals	**2.0**	**$206,510**	**2.0**	**$182,454**	**2.0**	**$179,007**

Staff recommends approving an increase to the approved appropriation of $1,119 General Fund for FY 2023-24.