

D 026 09

EXECUTIVE ORDER

Continuing the Declaration that Insufficient Revenues Are Available for Expenditures and Ordering Suspension of Certain State Programs and Services in order to Meet a Revenue Shortfall in Fiscal Year 2009-10

Pursuant to the authority vested in the Office of the Governor of the State of Colorado, and in particular section 2 of Article IV of the Colorado Constitution and section 24-2-102(4) of the Colorado Revised Statutes, I, Bill Ritter, Jr., Governor of the State of Colorado, hereby issue this Executive Order continuing the declaration set forth in Executive Order D 017 09 that there are insufficient revenues available for expenditures and ordering the suspension of certain State programs or services in order to meet a revenue shortfall for fiscal year 2009-10.

I. Authority

Section 24-2-102 of the Colorado Revised Statutes provides:

If, during any fiscal period, there are not sufficient revenues available for expenditure during such period to carry on the functions of the state government and to support its agencies and institutions and such fact is made to appear to the governor, in the exercise of his discretion, by executive order, he may suspend or discontinue, in whole or in part, the functions or services of any department, board, bureau, or agency of the state government

C.R.S. § 24-2-102(4); *see also Getty v. Gaffy*, 44 P.2d 506, 507-08 (Colo. 1935). That section goes on to provide:

Such discontinuance or suspension shall become effective upon the first day of the calendar month following the entry of such executive order and shall continue for such period of time, not to exceed three months, as shall be determined by such executive order. If, during any such period of time, it again appears to the governor that such deficiency of revenues still persists, from time to time, he may extend the

operation of such executive order for a like period of time not to exceed three months; but the state shall not be liable for the payment of any claim for salaries or expenses purporting to have accrued against any such department, board, bureau, or agency during any such period of suspension, and the controller shall not issue nor may the state treasurer honor any warrant therefor.

See C.R.S. § 24-2-102(4).

II. Background and Purpose

Based on the June revenue forecast and the preliminary 2008-09 fiscal year closing figures, the State needed to close a \$318 million. To that end, on August 25, 2009, my administration presented its plan to balance Colorado's General Fund budget for FY 2009-10 to the Joint Budget Committee. In order to fully implement that plan, I issued Executive Order D 017 09, which suspended or discontinued certain functions and services of state government pursuant to C.R.S. § 24-2-102(4). This Executive Order extends most of the reductions contained in Executive Order D 017 09. Furthermore, the State needed to close an additional \$271.4 million shortfall based on the revenue forecast issued in September 2009. On October 28, 2009, I announced the additional measures that were being taken in order to keep the fiscal year 2009-10 budget in balance.

In order to fully implement certain of the budget reduction measures contained in my administration's budget balancing plan, I must issue this executive order pursuant to C.R.S. § 24-2-102(4), which, as described above, authorizes me to suspend or discontinue, in whole or in part, the functions or services of any department, board, bureau, or agency of the state government during any fiscal period when there are not sufficient revenues available for expenditures. Because section 24-2-102(4) only authorizes this Order to be in effect for three months, this Order must expire on February 28, 2010; it is anticipated, however, that the service and program suspensions identified in this Executive Order will be extended and continued by subsequent Executive Orders issued periodically throughout the remainder of the fiscal year.

III. Directives

- A. I hereby continue to find that during fiscal year 2009-10 there are not sufficient revenues available for expenditure to carry on the functions of the state government and to support its agencies and institutions such that the suspension of programs and services set forth in this Executive Order are necessary.
- B. The following functions of state government are suspended or discontinued for the duration of this Executive Order:

1. Department of Health Care Policy and Financing
 - a. Medicaid Provider Reimbursement Rates: The Long Bill contains an appropriation for Medicaid provider reimbursements. A portion of the appropriation for reimbursement of Medicaid providers in the amount of \$28,117,504, of which \$12,125,281 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding Medicaid provider reimbursements. This reduction in the appropriation for reimbursement of Medicaid providers is greater than the reduction contained in paragraph III(B)(1)(a) of Executive Order D 017 09 by \$8,501,862, of which \$3,135,048 is General Fund. Therefore, for the duration of this Executive Order, Medicaid provider reimbursement rates for these services shall be reduced accordingly, in an amount and on a schedule as determined pursuant to statute.
 - b. Federally Qualified Health Center (“FQHC”) Reimbursement Rates: The Long Bill contains an appropriation for the reimbursement of FQHCs at a rate above the minimum required under federal law. A portion of the appropriation for reimbursement of FQHCs in the amount of \$3,915,491, of which \$1,957,745 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of reimbursing FQHCs. Therefore, for the duration of this Executive Order, reimbursement of FQHC shall be reduced accordingly, in an amount determined pursuant to state and federal law.
 - c. Behavioral Health Organization (“BHO”) Reimbursement Rates: The Long Bill contains an appropriation for the reimbursement of BHOs. A portion of the appropriation for reimbursement of BHOs in the amount of \$4,445,268, of which \$2,046,487 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of reimbursing BHOs. Therefore, for the duration of this Executive Order, reimbursement of BHOs shall be reduced accordingly, in an amount determined pursuant to statute.

- d. Pharmacy Reimbursement Rates: The Long Bill contains an appropriation for the reimbursement of pharmacies. A portion of the appropriation for reimbursement of pharmacies in the amount of \$3,489,218, of which \$1,744,609 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of reimbursing pharmacies. Therefore, for the duration of this Executive Order, reimbursement of pharmacies shall be reduced accordingly in an amount determined pursuant to statute.
- e. Telehealth Disease Management Contract: The Long Bill contains an appropriation for a Telehealth Disease Management contract. A portion of the appropriation for the Telehealth Disease Management in the amount of \$317,500, of which \$158,750 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding for the Telehealth Disease Management contract. Therefore, the Telehealth Disease Management contract is hereby suspended and discontinued for the duration of this Executive Order.
- f. Medicaid Management Information System (“MMIS”) contract: The Long Bill contains an appropriation for the MMIS contract. A portion of that appropriation in the amount of \$510,000, of which \$127,500 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding the MMIS contract, as described at C.R.S. § 25.5-4-204.
- g. School-Based Medical Assistance Sites Pilot Project: The School-Based Medical Assistance Sites Pilot Project, established at C.R.S. § 25.5-4-205(1)(a.5), is hereby suspended and discontinued for the duration of this Executive Order, and the appropriation for this pilot project is not available for expenditure for the duration of this Executive Order.
- h. Safety Net Provider Payments: The Long Bill contains an appropriation for Safety Net Provider Payments. A portion of the appropriation for Safety Net Provider Payments in the amount of \$15,634,320, of which \$7,817,160 is General

Fund, is hereby suspended and discontinued for the duration of this Executive Order. Therefore, these funds are no longer available for the purpose of reimbursement to hospitals that participate in the Colorado Indigent Care Program, and this portion of the appropriation is not available for expenditure for the duration of this Executive Order.

- i. Colorado Health Care Services Fund: Expenditure from the Colorado Health Care Services Fund is hereby suspended and discontinued for the duration of this Executive Order, and the appropriation from this fund is not available for expenditure for the duration of this Executive Order.
- j. Comprehensive Primary and Preventive Care Grants: The Long Bill contains an appropriation for the Comprehensive Primary and Preventive Care Grants, which is created in C.R.S. § 25.5-3-201, *et seq.*, and funded pursuant to C.R.S. § 24-75-1104.5(1)(b). The cash fund portion of the appropriation for Comprehensive Primary and Preventive Care Grants in the amount of \$639,082 is hereby suspended and discontinued for the duration of this Executive Order. Therefore, these funds are no longer available for the purpose of Comprehensive Primary and Preventive Care Grants, and this portion of the appropriation is not available for expenditure for the duration of this Executive Order.
- k. Comprehensive Primary and Preventive Care Rural and Public Hospital Grant Program: The Long Bill contains an appropriation for the Comprehensive Primary and Preventive Care Rural and Public Hospital Grant Program, which is created in C.R.S. § 25.5-3-207. A portion of the appropriation for Comprehensive Primary and Preventive Care Rural and Public Hospital Grant Program in the amount of \$3,981,000, of which \$1,990,500 is cash funds, is hereby suspended and discontinued for the duration of this Executive Order. Therefore, these funds are no longer available for the purpose of reimbursing rural and public hospitals participating in the Colorado Indigent Care Program, and this portion of the appropriation is not available for expenditure for the duration of this Executive Order.

2. Department of Human Services

- a. Reduction to the Child Welfare Services Block: The Long Bill contains a Child Welfare Services Block appropriation. A portion of that appropriation in the amount of \$8,413,972, of which \$2,527,611 is General Fund and \$2,119,361 is Medicaid General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding Child Welfare Services Block Grants for the duration of this Executive Order.
- b. Enhanced Mental Health Pilot Services for Detained Youth: The Enhanced Mental Health Pilot Services for Detained Youth, which is jointly administered by the Division of Behavioral Health and the Division of Youth Corrections, is hereby suspended and discontinued effective October 1, 2009 for the duration of this Executive Order. Effective October 1, 2009, the General Fund appropriation for this program shall not be available for expenditure for the duration of this Executive Order.
- c. Mental Health Institutes: The Long Bill contains an appropriation for the State Mental Health Institutes, including the Colorado Mental Health Institute at Fort Logan. A portion of the appropriations for the Colorado Mental Health Institute at Fort Logan in the amount of \$3,933,751, of which \$1,237,285 is General Fund and \$128,812 is Medicaid General Fund, are hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding the Colorado Mental Health Institute at Fort Logan. Therefore, beginning January 1, 2010, the capacity at the Colorado Mental Health Institute at Fort Logan shall be reduced by 59 beds and the staffing level at that institute shall be reduced by 48.4 FTEs.
- d. State Veterans Nursing Homes Consulting Services: The Long Bill contains an appropriation to the State Veterans Nursing Homes for nursing home consulting services contracts, as authorized by C.R.S. § 26-12-119(1). The General Fund appropriation for this purpose in the amount of \$195,627 is hereby suspended and discontinued for the duration of this Executive Order, making these funds no

longer available for the purpose of funding nursing home consulting services contracts.

- e. Medicaid Waivers Provider Rate: The Long Bill contains an appropriation for Medicaid provider reimbursements for the following programs: Adult Medicaid Comprehensive Services; Adult Medicaid Supported Living Services; Children's Extensive Support; and Targeted Case Management Services. Effective October 1, 2009, a portion of the appropriation for reimbursement of providers of these services in the amount of \$5,888,663, of which \$2,933,459 is General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding provider reimbursements for the programs identified above. Therefore, effective October 1, 2009 and for the duration of this Executive Order, provider reimbursement rates for these services shall be reduced by an average of approximately 2.5%, as determined pursuant to statute.
- f. Division of Youth Corrections – Boulder County Integrated Managed Partnership for Adolescent Community Treatment (“IMPACT”) Project: The Long Bill contains an appropriation for a Managed Care Pilot Project to assist Boulder County in developing local commitment and placement alternatives, which is referred to as the Boulder County IMPACT Project. A portion of that appropriation in the amount of \$271,421 is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding the Boulder County IMPACT Project.
- g. Division of Youth Corrections – Restriction of Funds Available for Third-Party Contractors Providing Private Treatment Beds: The Long Bill contains an appropriation for contractors providing private treatment beds to the Division of Youth Corrections. A portion of that appropriation in the amount of \$3,895,450, of which \$3,729,204 is General Fund and \$83,123 is Medicaid General Fund, is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of paying third-party contractors that provide private treatment beds to Department of Youth Corrections, pursuant to C.R.S.

§§ 19-2-403(3) and 19-2-410(1). Therefore, for the duration of this Executive Order, the Division of Youth Corrections shall increase the number of state facility beds for committed use from 434.5 to 521.4 in order to meet the demand in state facility beds that will result from this suspension of funding.

- h. Division of Youth Corrections – Cost of Living Adjustment for Contract Services: The Long Bill contains an appropriation for contractors providing services to the Division of Youth Corrections. A portion of that appropriation in the amount of \$691,102 is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding contractors providing client services for the Department of Youth Corrections, as described at C.R.S. § 19-2-410(1). Therefore, for the duration of this Executive Order, provider rates for such contractors shall be reduced accordingly, in an amount and on a schedule as determined pursuant to statute.
 - i. County Tax Base Relief: The Long Bill contains an appropriation for county tax base relief. A portion of that General Fund appropriation in the amount of \$2,826,327 is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding county tax base relief, as described at C.R.S. § 26-1-126(2). Therefore, for the duration of this Executive Order, the formula for allocating funds out of the County Tax Base Relief Fund shall be adjusted in accord with C.R.S. § 26-1-126.
3. Department of Personnel and Administration – Noxious Weed Abatement Program: The Noxious Weed Abatement Program for the abatement of noxious weeds at Camp George West, authorized at C.R.S. § 35-5.5-110, is hereby suspended and discontinued for the duration of this Executive Order, and the General Fund appropriation for this program in the amount of \$44,187 is not available for expenditure for the duration of this Executive Order.
 4. Department of Public Health and Environment
 - a. Dental Assistance Program for Seniors: Except for expenditures associated with necessary treatment that is already underway as of the effective date of this Executive

Order and personal services costs, the Dental Assistance Program for Seniors, described at C.R.S. § 25-21-104, is hereby suspended and discontinued for the duration of this Executive Order, and the General Fund appropriation for this program is not available for expenditure for the duration of this Executive Order.

- b. Tobacco Education Programs Fund: Expenditure of \$7 million in the Tobacco Education Programs Fund, described at C.R.S. § 24-22-117(2)(c)(I), is hereby suspended and discontinued for the duration of this Executive Order, and the appropriations for grants and programs funded by this portion of the Tobacco Education Programs Fund are not available for expenditure for the duration of this Executive Order.
 - c. Prevention, Early Detection, and Treatment Fund: Expenditure of \$7 million in the Prevention, Early Detection, and Treatment Fund, described at C.R.S. § 24-22-117(2)(d)(I), is hereby suspended and discontinued for the duration of this Executive Order, and the appropriations for grants and programs funded by this portion of the Prevention, Early Detection, and Treatment Fund are not available for expenditure for the duration of this Executive Order.
 - d. Heath Disparities Grant Program Fund: Expenditure of \$1 million in the Heath Disparities Grant Program Fund, described at C.R.S. § 24-22-117(2)(f), is hereby suspended and discontinued for the duration of this Executive Order, and the appropriations for grants and programs funded by this portion of the Heath Disparities Grant Program Fund are not available for expenditure for the duration of this Executive Order.
 - e. Tony Grampsas Youth Services Program: The \$1 million General Fund appropriation to fund the Tony Grampsas Youth Services program, described at C.R.S. § 25-20.5-201, *et seq.*, is hereby suspended and discontinued for the duration of this Executive Order, and the General Fund appropriation for this program is not available for expenditure for the duration of this Executive Order.
5. Department of Public Safety – Funding for the Office of Research Statistics: The requirement that the Division of Criminal Justice

develop objective parole criteria and collect and publish parole decisions and report the results of such data collection on a quarterly basis, as set forth in C.R.S. § 17-22.5-404(6)(b) and (d), is hereby suspended and discontinued for the duration of this Executive Order, and the appropriation for these purposes is not available for expenditure for the duration of this Executive Order.

6. Department of Revenue
 - a. Annex Security Contract: The Long Bill contains an appropriation for an armed security officer in the Capitol Annex building. A portion of that appropriation in the amount of \$35,200 is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding an armed security officer in the Capitol Annex building.
 - b. Conservation Easements Appraisals: The Long Bill contains an appropriation for third-party vendor contracts for conservation easement appraisal services. A portion of that appropriation in the amount of \$90,750 is hereby suspended and discontinued for the duration of this Executive Order, making these funds no longer available for the purpose of funding third-party vendor contracts for conservation easement appraisal services.
7. Department of the Treasury – Waste Tire Recycling Development Cash Fund: The appropriation and expenditures authorized by C.R.S. § 25-17-202(3)(b)(I) from the Waste Tire Recycling Development Cash Fund, which was established pursuant to C.R.S. § 25-17-202(3)(a), are hereby suspended and discontinued for the duration of this Executive Order.
8. Governor’s Office – Office of Economic Development and International Trade – Business Development Reorganization: The Long Bill contains appropriations for Business Development, the Minority Business Office, and the International Trade Office, all within the Office of Economic Development and International Trade (“OEDIT”). A portion of the OEDIT appropriation is hereby suspended and discontinued for the duration of this Executive Order, as follows: \$111,183 from Business Development; \$34,989 from the Minority Business Office; and \$56,976 from the International Trade Office. Therefore, the funds identified above will not be available for expenditure for the duration of this Executive Order.

- C. Decisions made in connection with implementing this Executive Order are not subject to review or appeal, except for those claims expressly provided a right of review or appeal in the State Constitution or under State statute.
- D. The Colorado Constitution and Colorado statutes provide the grounds for a grievance or appeal of an adverse employment decision. This Executive Order neither expands nor diminishes those grounds for a grievance or appeal of an adverse employment decision. Any state employee who wishes to pursue an appeal or grievance in connection with this Executive Order should follow the procedures set forth in the State Personnel Board Rules. As provided in Personnel Board Rule 8-8, “an employee must initiate the grievance process within 10 days of the action or occurrence being grieved.”

III. Duration

This Executive Order shall take effect on December 1, 2009 and remain in force until February 28, 2010, unless modified or rescinded by future Executive Order of the Governor. Executive Order D 017 09 shall remain in effect until its expiration on November 30, 2009.

GIVEN under my hand and the
Executive Seal of the State of
Colorado this thirteenth day of
November, 2009.

Bill Ritter, Jr.
Governor