Schedule 13

Change Request for FY 2009-10 Budget Request Cycle

Decision Item FY 2009-10 ☑ | Base Reduction Item FY 2009-10 ☐ | Supplemental FY 2008-09 ☐ | Budget Amendment FY 2009-10 ☐

Request Title: Medicaid Modernization Act State Contribution Payment

Department: Health Care Policy and Financing | **Dept. Approval by:** John Bartholomew | **Date:** November 3, 2008

Priority Number: DI-4 | **OSPB Approval:** | **Date:** 10-7-08

	Fund	1 Prior-Year Actual FY 2007-08	2 Appropriation FY 2008-09	3 Supplemental Request FY 2008-09	4 Total Revised Request FY 2008-09	5 Base Request FY 2009-10	6 Decision/ Base Reduction FY 2009-10	7 November 1 Request FY 2009-10	8 Budget Amendment FY 2009-10	9 Total Revised Request FY 2009-10	10 Change from Base (Column 5) FY 2010-11
Total of All Line Items	Total	71,350,801	81,155,195	0	81,155,195	81,155,195	5,310,019	86,465,214	0	86,465,214	5,310,019
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	71,350,801	81,155,195	0	81,155,195	81,155,195	5,310,019	86,465,214	0	86,465,214	5,310,019
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0
(5) Other Medical Services; Medicare Modernization Act of 2003 State Contribution Payment	Total	71,350,801	81,155,195	0	81,155,195	81,155,195	5,310,019	86,465,214	0	86,465,214	5,310,019
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	71,350,801	81,155,195	0	81,155,195	81,155,195	5,310,019	86,465,214	0	86,465,214	5,310,019
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	0	0	0	0	0	0	0	0	0	0
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	0	0	0	0	0	0	0	0	0	0

Non-Line Item Request: None

Letternote Revised Text: None

Cash or Federal Fund Name and COFRS Fund Number: N/A

Reappropriated Funds Source, by Department and Line Item Name: N/A

Approval by OIT? Yes: ☐ No: ☐ N/A: ☑

Schedule 13s from Affected Departments: N/A

CHANGE REQUEST for FY 2009-10 BUDGET REQUEST CYCLE

Department:	Health Care Policy and Financing
Priority Number:	DI-4
Change Request Title:	Medicaid Modernization Act State Contribution Payment

SELECT ONE (click on box):

- ☒ Decision Item FY 2009-10
- ☐ Base Reduction Item FY 2009-10
- ☐ Supplemental Request FY 2008-09
- ☐ Budget Request Amendment FY 2009-10

SELECT ONE (click on box):

Supplemental or Budget Request Amendment Criterion:

- ☒ Not a Supplemental or Budget Request Amendment
- ☐ An emergency
- ☐ A technical error which has a substantial effect on the operation of the program
- ☐ New data resulting in substantial changes in funding needs
- ☐ Unforeseen contingency such as a significant workload change

Short Summary of Request: This Request is for an additional $5,310,019 General Fund in FY 2009-10 for the (5) Other Medical Services, Medicare Modernization Act of 2003 State Contribution Payment line item. The additional funds are needed to keep up with an expected increase in the projected caseload of dual eligible individuals and a projected increase in the per per-client per-month rate paid by the State, per federal regulations.

Background and Appropriation History: On January 1, 2006, the federal Centers for Medicare and Medicaid Services (CMS) assumed responsibility for the Part D prescription drug benefit replacing the Medicaid prescription drug coverage for dual eligible clients. In lieu of the states' obligation to cover prescription drugs for this population, the federal Centers for Medicare and Medicaid Services began requiring states to pay a portion of what their anticipated dual eligible drug cost would have been had this cost shift not occurred. In January 2006, states began to pay the Centers for Medicare and Medicaid Services these "clawback" payments. The payments were calculated by taking 90% of the federal portion of each state's average per-client per-month dual eligible drug benefit from calendar year 2003,

inflated to 2006 using the average growth rate from the National Health Expenditure per capita drug expenditures. This inflated per-client per-month amount is multiplied by the number of dual eligible clients including retroactive clients back to January 2006. As each calendar year passes, the 90% factor is lowered by 1.67% each year, which is known as the phasedown percentage, until it reaches 75%, where it will remain starting in 2015. In addition, the Centers for Medicare and Medicaid Services inflate each state's per-client per-month rates based on either the National Health Expenditures' growth or actual growth in Part D expenditures.

In FY 2005-06, the Department expended $31,461,626 for 6 months of payments. In FY 2006-07 the Department expended $72,494,301 for a full year of payments. SB 07-133 changed the accounting for the payment from accrual to cash resulting in a one-time savings by shifting the June 2008 payment, which is billed in July 2008, to FY 2008-09. In October 2007, due to a technical change in the system algorithm used to identify dual eligible clients, a significant number of additional dual eligible clients were identified in the October 2007 invoice. As a result of the system change, the Department submitted a supplemental Change Request for $2,548,557 in its FY 07-08 Supplemental Requests and FY 08-09 Budget Request Amendments, February 15, 2008 (page S.4-1). Consequently, in FY 2007-08, the Department expended $71,350,801 for 11 months of payments. Due to unexpected under-expenditures in FY 2007-08, the Department submitted an Emergency 1331 Change Request on June 23, 2008 that $744,209 be transferred to the Controlled Maintenance Trust Fund. The Department is currently appropriated $81,155,195 General Fund for FY 2008-09 in the Long Bill (HB 08-1375).

General Description of Request:

The Department currently estimates that the total FY 2009-10 Clawback payment will equal $86,465,214 which is $5,310,019 above the FY 2009-10 continuation Base Budget. This information is based on revised projections of the per-client per-month rate, dual eligible caseload, and the anticipated level of retroactivity.

The Clawback payment is estimated to increase by $4,883,538 in FY 2009-10 due only to expected increases in the per-client per-month rates. The Centers for Medicare and

Medicaid Services provided the Department a per-client per-month rate of $120.03 for January through September 2008. The Department assumes that the per-client per-month rate will remain unchanged throughout the remainder of calendar year 2008. The Centers for Medicare and Medicaid Services used a growth factor of 1.69%, which was offset by a change in the phasedown percentage from 88.33% to 86.67%, resulting in a net reduction of 0.23%. In order to estimate the per-client per-month rate for calendar year 2009 and beyond, the Department used the growth factor from the 2007 National Health Expenditure report for drug expenditures. The Department notes that the projection of per-client per-month rates is based on the growth in the National Health Expenditures drug expenditures; however, federal law states the growth factor for 2007 and succeeding years will equal the annual percentage increase in average per capita aggregate expenditures for covered Part D drugs in the United States for Part D eligible individuals during the 12-month period ending in July of the previous year. Since actual expenditure data is not available to the Department, the actual per capita rate growth may differ from the Department's projection. The Department forecasts that the per-client per-month rate will be $124.98 in calendar year 2009 and $130.77 in calendar year 2010 (see Table 3).

The Clawback payment is estimated to increase by $426,481 in FY 2009-10 due only to changes in the dual eligible caseload. The Department estimates that the total dual eligible caseload, including retroactivity, in the invoice for June 2009 will equal 56,092. The Department estimates that by the invoice for May 2010 the same caseload count will equal 57,192. These estimates are based on both the historic growth rate in the billed-month caseload and the level of caseload retroactivity. The dual eligible caseload is comprised of a subset of the Medicaid eligibility categories Adults 65 and Older (OAP-A), Disabled Adults 60 to 64 (OAP-B), and Disabled Individuals to 59 (AND/AB). The caseload data provided to the Centers for Medicare and Medicaid Services by the Department is obtained through the Medicaid Management Information System.

The Department forecasts the Medicaid caseload to show a small increase in FY 2009-10. In addition, the eligibility categories related to dual eligible clients are projected to increase. The overall Medicaid caseload is projected to increase by 3.17% in FY 2009-10. The Department assumes that during FY 2009-10 the dual eligible clients will

continue to increase due to the continuing retirement of the "baby boomers." The Colorado State Demography Office projects the annual growth rates of the Colorado population 65 years and older for 2008 through 2010 will range from 3.74% to 3.79% per year, with an average annual growth rate over that period of 3.77%.

Consequences if Not Funded:

If the Department does not receive an additional appropriation and subsequently cannot make the required payment, the Department is at risk of having the amount due for the Clawback payment, plus interest, deducted from the federal funds received for the Medicaid program. Such a deduction could cause the Department to be under funded to provide medical services in FY 2009-10 and would necessitate a General Fund appropriation to make up the difference.

Calculations for Request:

Summary of Request FY 2009-10	Total Funds	General Fund
Total Request	$86,465,214	$86,465,214
Decision Item Request	$5,310,019	$5,310,019
(5) Other Medical Services; Medicare Modernization Act of 2003 State Contribution Payment	$81,155,195	$81,155,195

Summary of Request FY 2010-11	Total Funds	General Fund
Total Request	$86,465,214	$86,465,214
Decision Item Request	$5,310,019	$5,310,019
(5) Other Medical Services; Medicare Modernization Act of 2003 State Contribution Payment	$81,155,195	$81,155,195

Table 1: National Health Expenditures 2007 Projections for 2003-2010 Prescription Drug Expenditures		
Calendar Year:	**Per Capita** (in dollars)	**Percent Change**
2003	$598	
2004	$642	7.36%
2005	$673	4.83%
2006	$723	7.43%
2007	$766	5.95%
2008	$812	6.01%
2009	$862	6.16%
2010	$920	6.73%

Table 2: Phasedown Percentage from the Medicare Modernization Act of 2003	
Phasedown Percent Per Calendar Year:	**Percentage**
2006	90.00%
2007	88.33%
2008	86.67%
2009	85.00%
2010	83.33%
2011	81.67%
2012	80.00%
2013	78.33%
2014	76.67%
2015 and all future years	75.00%

Table 3: Estimates of Calendar Year 2009 and 2010 Per-Client Per-Month Rates	
Actual Calendar Year 2008 Per-Client Per-Month Rate	$120.03
Calendar Year 2008 Phasedown Percent (from Table 2)	86.67%
Calendar Year 2008 Per-Client Per-Month Rate before Phasedown Percent ($120.03 / 86.67%)	$138.50
Prescription Drug Expenditure Growth Rate for CY 2009 (from Table 1)	6.16%
Projected 2009 Per-Client Per-Month Rate before Phasedown Percent ($138.50 * (1 + 6.16%))	$147.03
Calendar Year 2009 Phasedown Percent (from Table 2)	85.00%
Projected Calendar Year 2009 Per-Client Per-Month Rate ($147.03 * 85.00%)	**$124.98**
Prescription Drug Expenditure Growth Rate for CY 2010 (from Table 1)	6.73%
Projected 2010 Per-Client Per-Month Rate before Phasedown Percent ($147.03* (1 + 6.73%))	$156.93
Calendar Year 2010 Phasedown Percent (from Table 2)	83.33%
Projected Calendar Year 2010 Per-Client Per-Month Rate ($156.93 * 83.33%)	**$130.77**

Table 4: Estimated Decay Factors Related to Caseload Retroactivity	
Months Prior to the Current Caseload	**Decay Rate (As Percentage of Current Month)**
1st Month	1.80%
2nd Month	1.11%
3rd Month	0.85%
4th Month	0.62%
5th Month	0.49%
6th Month	0.42%
7th Month	0.36%
8th Month	0.32%
9th Month	0.30%
10th Month	0.27%
11th Month	0.21%
12th Month	0.18%
13th Month	0.17%
14th Month	0.15%
15th Month	0.14%
16th Month	0.12%
17th Month	0.12%
18th Month	0.09%
19th Month	0.09%
20th Month	0.08%
21st Month	0.08%
22nd Month	0.02%
23rd Month	0.01%

	Table 5: Invoices to be Paid in FY 2009-10											
Dual Eligible Attributed to Each Month	**Jun 2009 Estimate**	**Jul 2009 Estimate**	**Aug 2009 Estimate**	**Sep 2009 Estimate**	**Oct 2009 Estimate**	**Nov 2009 Estimate**	**Dec 2009 Estimate**	**Jan 2010 Estimate**	**Feb 2010 Estimate**	**Mar 2010 Estimate**	**Apr 2010 Estimate**	**May 2010 Estimate**
Jan - Dec 2007 duals	190	142	96	54	13	5	0	0	0	0	0	0
Jan - Dec 2008 duals	1,438	1,271	1,132	1,009	893	762	656	561	471	395	322	257
Jan - May 2009 duals	2,523	1,810	1,424	1,152	988	876	770	676	599	518	452	406
Jun 2009 duals	51,941	935	578	442	323	256	219	190	169	159	142	113
Jul 2009 duals	0	52,032	937	579	443	324	257	219	191	169	160	142
Aug 2009 duals	0	0	52,124	938	580	443	324	257	220	191	169	160
Sep 2009 duals	0	0	0	52,216	940	581	444	325	258	220	191	169
Oct 2009 duals	0	0	0	0	52,309	942	582	445	326	258	220	192
Nov 2009 duals	0	0	0	0	0	52,401	943	583	446	326	259	221
Dec 2009 duals	0	0	0	0	0	0	52,493	945	584	446	327	259
Jan 2010 duals	0	0	0	0	0	0	0	52,586	947	585	447	327
Feb 2010 duals	0	0	0	0	0	0	0	0	52,679	948	586	448
Mar 2010 duals	0	0	0	0	0	0	0	0	0	52,772	950	587
Apr 2010 duals	0	0	0	0	0	0	0	0	0	0	52,865	952
May 2010 duals	0	0	0	0	0	0	0	0	0	0	0	52,959
Total duals from invoice	56,092	56,190	56,291	56,390	56,489	56,590	56,688	56,787	56,890	56,987	57,090	57,192
CY 2007 Rate	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30	$120.30
CY 2008 Rate	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03	$120.03
CY 2009 Rate	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98	$124.98
CY 2010 Rate	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77	$130.77
Monthly Payment	$7,002,332	$7,015,721	$7,029,232	$7,042,415	$7,055,455	$7,068,809	$7,081,671	$7,398,949	$7,418,270	$7,434,704	$7,451,106	$7,466,551
Total Payment												$86,465,214

Note: To calculate the Monthly Payment, take each calendar year's rate and multiply it by the respective caseload shown for that calendar year. Numbers may not exactly add due to rounding.

Cash Funds Projections: Not Applicable

Assumptions for Calculations: The Department assumes the changes in the per-client per-month rate paid by the Department will be based on the growth in the 2007 National Health Expenditures' prescription drug per capita estimates, as shown in Table 1, and offset by the phasedown percent shown in Table 2. Per 42 CFR 423.902 (4), the growth factor for 2007 and succeeding years will equal the annual percentage increase in average per capita aggregate expenditures for covered Part D drugs in the United States for Part D eligible individuals for the 12-month period ending in July of the previous year. Since the Department does not have the data to project the Part D drug expenditures, the Department has used the 2007 National Health Expenditures forecasts for years past calendar year 2008 as a proxy for the annual growth in the per capita rate.

Tables 1 through 3 provide the relevant information for calculating the per-client per-month rates for calendar year 2008, 2009, and 2010. For the entire calendar year 2008, the Department used the per-client per-month rate through September 2008, provided by the Centers for Medicare and Medicaid Services of $120.03. The Department estimates a per-client per-month rate of $124.98 in calendar year 2009, and $130.77 in calendar year 2010, as shown in Table 3. This estimate is based on the estimates contained in the 2007 National Health Expenditures per capita drug expenditures published in January 2008 and shown in Table 1. In addition, the projection is also based on the phasedown percentage which is detailed in 42 CFR 423.908 and shown in Table 2.

The Department assumes that the average growth rate in current month caseload from June 2007 through May 2008, excluding October 2007, will remain unchanged through FY 2009-10. The growth rate for October 2007 was unusually high due to the implementation of a systems change, and is thus not comparable. The Department assumes that the dual eligible caseload will grow at monthly rate of 0.18%, and hence an annual growth rate of 2.14%. In addition, the Department estimates that the retroactive caseload counts for a given month are a fraction of the current month's caseload. The

fractions range from 1.80% for the previous month to 0.01% for 23 months prior to the current month. The estimates are based on the weighted average of the rate of decay for the entire historical Clawback caseload data.

Table 5 shows the projected caseload, level of retroactivity, and expenditures by month for FY 2009-10. Using the assumptions detailed in Tables 3 and 4, as well as the estimated monthly growth rate of 0.18%, Table 5 displays the impact of those assumptions on the calculations for the estimated caseload and retroactivity.

Impact on Other Government Agencies: Not Applicable

Cost Benefit Analysis:

FY 2009-10 Cost Benefit Analysis	Costs	Benefits
Request	The cost of this request includes $5,310,019 in General Fund to pay for the increase in the projected caseload of dual eligible individuals and a projected increase in the per-client per-month rate paid by the State, per federal regulations.	This request would allow the Department to meet its obligations to the federal government and ensure the Department would not have the amount of payment plus interest deducted from the federal funds received for the Medicaid program.
Consequences if not Funded	The cost of not funding the request would be the potential deduction in federal funds received by the Medicaid program equal to the amount owed for the payment plus interest. This would equal an amount greater than $5,310,019.	There are no benefits to the Department because the savings of General Fund would be offset by greater loss of federal funds that would need to be backfilled with General Fund for the Medicaid program.

Implementation Schedule:	Not Applicable
Statutory and Federal Authority:	42 CFR 423.908: *Phased-down State contribution to drug benefit costs assumed by Medicare. This subpart sets forth the requirements for State contributions for Part D drug benefits based on full-benefit dual eligible individual drug expenditures.*
	42 CFR 423.910 (a) General rule: *Each of the 50 States and the District of Columbia is required to provide for payment to CMS a phased-down contribution to defray a portion of the Medicare drug expenditures for individuals whose projected Medicaid drug coverage is assumed by Medicare Part D.*
	42 CFR 423.910 (b) (2) Method of payment*: Payments for the phased down State contribution begins in January 2006, and are made on a monthly basis for each subsequent month. State payment must be made in a manner specified by CMS that is similar to the manner in which State payments are made under the State Buy-in Program except that all payments must be deposited into the Medicare Prescription Drug Account in the Federal Supplementary Medical Insurance Trust Fund. The policy on collection of the Phased-down State contribution payment is the same as the policy that governs collection of Part A and Part B Medicare premiums for State Buy-in.*
	42 CFR 423.910 (g) Annual per capita drug expenditures. *CMS notifies each State no later than October 15 before each calendar year, beginning October 15, 2005, of their annual per capita drug payment expenditure amount for the next year.*
	25.5-4-105, C.R.S. (2008) *Nothing in this article or articles 5 and 6 of this title shall prevent the state department from complying with federal requirements for a program of medical assistance in order for the state of Colorado to qualify for federal funds under Title XIX of the social security act and to maintain a program within the limits of available appropriations.*

25.5-5-503, C.R.S. (2008) *(1) The state department is authorized to ensure the participation of Colorado medical assistance recipients, who are also eligible for medicare, in any federal prescription drug benefit enacted for medicare recipients. (2) Prescribed drugs shall not be a covered benefit under the medical assistance program for a recipient who is eligible for a prescription drug benefit program under medicare; except that, if a prescribed drug is not a covered Part D drug as defined in the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", Pub.L. 108-173, the prescribed drug may be a covered benefit if it is otherwise covered under the medical assistance program and federal financial participation is available.*

Performance Measures:

This request would assist the Department in achieving many of its performance measures, including the following:

- Increase the number of clients served through targeted, integrated care management programs.
- Increase the number of children served through a dedicated medical home service delivery model.
- Maintain or reduce the difference between the Department's spending authority and actual expenditures for Medicaid services.

If the Department does not receive an additional appropriation, and subsequently cannot make the required payment, the Department is at risk of having the amount due for the Clawback payment plus interest deducted from the federal funds received for the Medicaid program. This deduction would hinder the Department's ability to achieve all performance measures requiring State and matching federal funding.