

STATE OF COLORADO FY 2010-11 BUDGET REQUEST CYCLE: DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

Schedule 13											
Change Request for FY 2010-11 Budget Request Cycle											
Decision Item FY 2010-11	<input checked="" type="checkbox"/>	Base Reduction Item FY 2010-11	<input type="checkbox"/>	Supplemental FY 2009-10	<input type="checkbox"/>	Budget Amendment FY 2010-11	<input type="checkbox"/>				
Request Title:	Funding for Federally Mandated Audit of Disproportionate Share Hospital Expenditures										
Department:	Health Care Policy and Financing			Dept. Approval by:	John Bartholomew <i>JB</i>			Date:	November 2, 2009 <i>10/15/09</i>		
Priority Number:	DI-6			OSPB Approval:	<i>[Signature]</i>			Date:	<i>10-30-09</i>		
		1	2	3	4	5	6	7	8	9	10
		Prior-Year		Supplemental	Total	Base	Decision/	November 1	Budget	Total	Change
		Actual	Appropriation	Request	Revised	Request	Base	Request	Amendment	Revised	from Base
	Fund	FY 2008-09	FY 2009-10	FY 2009-10	FY 2009-10	FY 2010-11	Reduction	FY 2010-11	FY 2010-11	FY 2010-11	(Column 5)
											FY 2011-12
Total of All Line Items	Total	1,817,491	2,272,266	0	2,272,266	3,640,513	100,000	3,740,513	0	3,740,513	100,000
	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	GF	836,446	919,283	0	919,283	1,206,281	50,000	1,256,281	0	1,256,281	50,000
	GFE	0	0	0	0	0	0	0	0	0	0
	CF	72,300	0	0	0	352,988	0	352,988	0	352,988	0
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	908,745	1,352,983	0	1,352,983	2,081,244	50,000	2,131,244	0	2,131,244	50,000
(f) Executive Director's Office;	Total	1,817,491	2,272,266	0	2,272,266	3,640,513	100,000	3,740,513	0	3,740,513	100,000
(F) Provider Audits and	FTE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0
Services, Professional Audit	GF	836,446	919,283	0	919,283	1,206,281	50,000	1,256,281	0	1,256,281	50,000
Contracts	GFE	0	0	0	0	0	0	0	0	0	0
	CF	72,300	0	0	0	352,988	0	352,988	0	352,988	0
	CFE/RF	0	0	0	0	0	0	0	0	0	0
	FF	908,745	1,352,983	0	1,352,983	2,081,244	50,000	2,131,244	0	2,131,244	50,000
Non-Line Item Request:	None.										
Letternote Revised Text:	None.										
Cash or Federal Fund Name and COFRS Fund Number:	FF: Title XIX										
Reappropriated Funds Source, by Department and Line Item Name:	None.										
Approval by OIT?	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>	N/A: <input checked="" type="checkbox"/>								
Schedule 13s from Affected Departments:	None.										

CHANGE REQUEST for FY 2010-11 BUDGET REQUEST CYCLE

Department:	Health Care Policy and Financing
Priority Number:	DI-6
Change Request Title:	Funding for Federally Mandated Audit of Disproportionate Share Hospital Expenditures

SELECT ONE (click on box):

- Decision Item FY 2010-11
- Base Reduction Item FY 2010-11
- Supplemental Request FY 2009-10
- Budget Request Amendment FY 2010-11

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 \$100,000 total funds beginning in FY 2010-11 to contract with a certified independent auditor. This contractor would be responsible for auditing the Department's Disproportionate Share Hospital (DSH) expenditures on an annual basis pursuant to reporting requirements mandated by the federal Centers for Medicare and Medicaid Services (CMS) in a recently released rule (CMS-2198-F). This rule, which went into effect on January 19th, 2009 makes federal financial participation in the DSH payment program dependent upon compliance with new reporting and informational deadlines and requirements.

Background and Appropriation History:

On a national level, the Disproportionate Share Hospital (DSH) payment program began in 1987 when amendments to Title XIX of the Social Security Act ("the Act") required states to make enhanced payments to "safety net" hospitals that provide services to disproportionate numbers of uninsured and underinsured individuals. DSH payments are intended to offset the uncompensated costs of providing medical services to uninsured and underinsured patients. These payments assist in securing the hospitals' financial viability

and preserving access to care for Medicaid and low-income clients, while reducing the shift in costs to private payers. States were initially given considerable flexibility in the design and implementation of their DSH plans. Due to the corresponding impact on the federal budget, regulations were subsequently put into effect to limit states' discretion in using provider fees and contributions for the purposes of drawing down federal funds for distribution to DSH hospitals. Most notably, state-specific and provider-specific caps, broadly based on individual states' total and provider-specific uncompensated care costs, were placed on the total amount of DSH payments states can utilize. Within Colorado's DSH allotment, three payments are currently authorized:

- **Low-Income Payment:** This payment is used to distribute federal funds available under the DSH allotment to hospitals that participate in the Colorado Indigent Care Program (CICP). This is the main vehicle for the reimbursement of eligible hospitals through the DSH payment and typically accounts for the vast majority of payments made under the DSH allotment. Recipients are publicly and privately-owned hospital providers; however, as privately-owned providers cannot certify public expenditures, the State match for payments to privately-owned providers is General Fund.
- **Bad Debt Payment:** This payment is made to publicly-owned hospitals with 200 or more beds participating in the CICP, but whose uncompensated costs are insufficient to exhaust the provider-specific DSH allotment, allowing the State to maximize reimbursement to hospitals treating relatively high numbers of Medicaid, low-income and uninsured patients.
- **Medicaid Shortfall Payment:** Fulfilling the requirement that states make enhanced payments to those hospitals that provide services to a disproportionate share of Medicaid and low-income patients, this payment is made to providers that do not participate in the CICP (that is, do not enroll or treat CICP clients) and therefore are not eligible for Low-Income or Bad Debt payments.

In order to be eligible for federal matching funds for DSH payments made by the state, that state must ensure that all of the hospitals meeting at least one of the minimum criteria

are designated DSH hospitals, although states have the option of designating additional hospitals that do not meet these minimum criteria as DSH hospitals. These criteria are: (i) a Medicaid inpatient utilization rate in excess of one standard deviation or more above the mean for all hospitals in the state, or (ii) a low-income utilization rate exceeding 25%.

The Department has been utilizing the Disproportionate Share Hospital payment to reimburse providers since the amendments to Title XIX of the Social Security Act were made in 1987. During FY 2007-08, the Department reimbursed DSH hospitals a total of \$82,253,901.¹ On February 17, 2009, the President signed into law House Resolution 1, also known as the American Recovery and Reinvestment Act. Section 5002 of this legislation made provision for temporary increases in states' DSH allotments during Federal Fiscal Years 2009 and 2010. In order to make use of this new funding, the Department was given increased spending authority during Figure Setting held on March 13, 2009. For FY 2009-10, the Department was appropriated \$94,619,485 for payments made to Disproportionate Share Hospitals.²

General Description of Request:

This request is for \$100,000 total funds beginning in FY 2010-11 to contract with a certified independent auditor. This auditor would be responsible for auditing the Department's Disproportionate Share Hospital (DSH) expenditures on an annual basis pursuant to reporting requirements mandated by the federal Centers for Medicare and Medicaid Services (CMS) in a recently released rule (CMS-2198-F DSH Audit Rule). This rule, which went into effect on January 19th, 2009, institutes new auditing requirements that will clarify allowable expenditures under the DSH program and help the Department prevent improper expenditure of DSH funds. The rule also requires states to submit an independent certified audit of their DSH expenditures on an annual basis to CMS, while specifying the data elements that need to be included in each submission.

¹ February 1, 2009 Medically Indigent and Colorado Indigent Care Program Fiscal Year 2007-08 Annual Report, p.32.

² Department Figure Setting, March 18, 2009, p.135. In the Long Bill, SB 09-259, this appropriation is consolidated with an estimate of High-Volume payments made under the Upper Payment Limit into the Cash Funds appropriation to the (4) Indigent Care Program, Safety Net Provider Payments line item.

Under hospital specific DSH limits set forth in section 1923 of the Social Security Act (“the Act”), a hospital's DSH payments may not exceed the costs incurred by that hospital in furnishing services during the year to Medicaid patients and the uninsured, less other Medicaid payments made to the hospital, and payments made by uninsured patients (“uncompensated care costs”). In addition, states are required to provide an annual report to the Secretary of the U.S. Department of Health and Human Services describing the payment adjustments made to each disproportionate share hospital.

Section 1001(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173, enacted on December 8, 2003) added Section 1923(j) to the Act to require states to report additional information about their DSH programs. This Section requires states to submit an annual report that includes the following, which the Department submits to CMS on a quarterly basis through the CMS-64 report:

- Identification of each DSH facility that received a DSH payment under the state's Medicaid program in the preceding fiscal year and the amount of DSH payments paid to that hospital in the same year.
- Such other information as the Secretary of Health and Human Services determines necessary to ensure the appropriateness of DSH payments.

The new section 1923(j)(2) of the Act, detailing the verifications required under the audit, also requires states to have their DSH payment programs independently audited and to submit the independent certified audit annually to the Secretary of the U.S. Department of Health and Human Services. The certified independent audit must verify:

- the extent to which hospitals in the state have reduced uncompensated care costs to reflect the total amount of claimed expenditures made under Section 1923 of the Act;
- DSH payments to each hospital comply with the applicable hospital-specific DSH payment limit;
- only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and uninsured individuals are included in the calculation of the hospital-specific limits;

- the state included all Medicaid payments, including supplemental payments, in the calculation of such hospital-specific limits; and
- the state has separately documented and retained a record of all its costs under the Medicaid program, claimed expenditures under the Medicaid program, uninsured costs in determining DSH payment adjustments, and any payments made on behalf of the uninsured from DSH payment adjustments.

In addition to these new reporting requirements, this Section makes federal matching payments contingent upon a state's submission of the annual DSH report and independent certified audit. The Department is pursuing this request in order to secure continued federal financial participation in the Colorado Indigent Care Program (CICP), which is vital to the successful operation of the program.

This audit requirement enacted through the new rule (CMS-2198-F) is retroactive, which means that certain years of historical data will need to be audited and reports submitted to CMS as a first step towards compliance. While the deadline for submission of these reports was initially expected to be December 31, 2009, CMS recently issued guidance indicating their intent to implement a flexible enforcement strategy with respect to the submission of audited cost reports for State Plan Rate years 2005 and 2006. This was done in response to concerns among several States (including Colorado) that despite best faith efforts they were unlikely to be able to meet the auditing and reporting deadlines for the retroactive State Plan year DSH payments. CMS will not find states out of compliance with the new rule until December 31, 2010 with respect to the submission of the first audit reports covering State Plan rate years 2005 and 2006.

The Department recognizes that a request for additional General Fund dollars comes at an inopportune time for the State. The Department proposes to integrate the generation of these cost reports with the implementation of the Health Care Affordability Act, HB 09-1293, also known as the Hospital Provider Fee. This legislation may increase reimbursement to hospital providers up to federally established upper payment limits and up to 100% of cost for care provided to uninsured, low-income individuals. To ensure that hospitals are reimbursed equitably and accurately, the Department has been allocated

a portion of the Hospital Provider Fee to create cost reports and verify the costs and payments for hospital providers. The Department believes that this goal is similar to that required by the DSH Audit rule. The Department, therefore, proposes to use these administrative funds to collect the data and build the specified cost reports as required under the DSH Audit Rule, as well as to meet the Department's financial responsibility under the recently enacted state law.

Consequences if Not Funded:

Were this request to be denied, the Department would risk being out of compliance with the recently instituted federal mandate. Under Section 1923(j) of the Social Security Act, federal matching payments for a state's DSH expenditures are contingent upon a State's submission of the annual DSH report and independent certified audit. At risk are all federal matching funds included in the federal DSH allotment, which is \$94,619,485 for FY 2009-10. Such a loss of funding would not be easily absorbed by Colorado's Safety Net hospitals that not only treat Colorado Indigent Care Program clients, but also facilitate the continued operation of Colorado's Medicaid program by accepting its clients.

Calculations for Request:

Summary of Request FY 2010-11	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Total Request	\$100,000	\$50,000	\$0	\$0	\$50,000
(1) Executive Director's Office; (F) Provider Audits and Services, Professional Audit Contracts	\$100,000	\$50,000	\$0	\$0	\$50,000

Summary of Request FY 2011-12	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
Total Request	\$100,000	\$50,000	\$0	\$0	\$50,000

Summary of Request FY 2011-12	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds
(1) Executive Director's Office; (F) Provider Audits and Services, Professional Audit Contracts	\$100,000	\$50,000	\$0	\$0	\$50,000

Cash Funds Projections: Not applicable.

Assumptions for Calculations: CMS has advised states that there are a wide number of arrangements which could be acceptable to meet the requirements of this audit that may be less burdensome and costly than the use of a private auditing firm, such as use of state government auditing agencies. While the Department does not know at this time the arrangement it will use to meet the audit requirement, estimates are based on the Department's current audit contract for cost and rate data audits for hospitals, FQHCs, and RHCs that participate in Medicaid, which includes services by both senior and junior auditors. The Department assumes that the hourly cost will average \$80, and that 1,250 hours will be required for work specific to the DSH audit. In order to limit the overall cost of the request, the Department has leveraged similar audit work being competed under HB 09-1293 and factored the cost offset into the request calculations. The Department assumes that 46 hospital providers (the number of hospital providers receiving DSH payments in FY 2008-09) will need to be audited in order to fulfill the requirement that the audit be exhaustive with regards to hospitals receiving those payments. This figure is not expected to increase by more than one or two by the end of the estimate period FY 2011-12. The Department will manage to any increased workload within the requested funding.

Impact on Other Government Agencies: None.

Cost Benefit Analysis:

	Costs	Benefits
Approval	The amount of funding requested, \$100,000 total funds comprised of \$50,000 General Fund and \$50,000 federal funds for an independent auditor is the primary cost associated with this request. Minor administrative costs will be absorbed by the Department.	In addition to ensuring continued federal financial participation for Disproportionate Share Hospital payments made by the Department, approval of this request would also provide increased assurance that the Department is reimbursing Colorado Indigent Care Program providers in line with federal regulations.
Denial	Federal financial participation in the approximate amount of \$94,619,485 would be put at risk. The DSH audit rule makes this federal financial participation in states' DSH payment programs contingent on compliance with the regulations.	\$50,000 General Fund would be saved.

Implementation Schedule:

Task	Tentative Date
<i>First Procurement Phase - Cost Report Development</i>	
Vendor Begins Work	October 1, 2009
Develop the Requirements to Report Data	October 1, 2009 – March 31, 2010
Provider Submit Required Data	April 1, 2010 – June 30, 2010
Department Compile and Review Data	July 1, 2010 – September 30, 2010
Department to Compile the Data Report and Prepare Draft Report for CMS	September 30, 2010
<i>Second Procurement Phase - Certified, Independent DSH Audit</i>	
Vendor Begins Work	October 1, 2010
Independent Audit of Data, Cost Reports and Report for CMS	October 1, 2010 – December 31, 2010
Final, Audited Report Submitted to CMS	December 31, 2010

Note: Only the work detailed in the “Second Procurement Phase” would be financed using the funding included in this request. The work detailed in the “First Procurement Phase” will be completed using Hospital Provider Fee Funds, but is given here in order to relate the full timeline of work associated with this compliance effort.

Statutory and Federal Authority:

Sec. 1923 of the Social Security Act. [42 U.S.C. 1396r-4]

(j) Annual Reports and Other Requirements Regarding Payment Adjustments.—With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1903(a)(1) with respect to a payment adjustment made under this section, to do the following:

(1) Report.—The State shall submit an annual report that includes the following:

(A) An identification of each disproportionate share hospital that received a payment adjustment under this section for the preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year.

(B) Such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.

(2) Independent certified audit.—The State shall annually submit to the Secretary an independent certified audit that verifies each of the following:

(A) The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the total amount of claimed expenditures made under this section.

(B) Payments under this section to hospitals that comply with the requirements of subsection (g).

(C) Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection are included in the calculation of the hospital-specific limits under such subsection.

(D) The State included all payments under this title, including supplemental payments, in the calculation of such hospital-specific limits.

(E) The State has separately documented and retained a record of all of its costs under this title, claimed expenditures under this title, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.

Performance Measures:

Increased monitoring of the Department's DSH expenditures via an independent audit of those expenditures would contribute to fulfillment of the objective associated with the following performance measure:

- Actively audit expenditures to decrease fraud and abuse and increase recoveries.