



Colorado
Legislative
Council
Staff

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MEMORANDUM

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TO: Interested Persons

FROM: Jason Schrock, Economist, 303-866-4720

SUBJECT: Forecast for State Tobacco Master Settlement Agreement Payments

The Tobacco Master Settlement Agreement (MSA) was signed in 1998 by 52 states and U.S. territories, including Colorado. As part of the agreement, states agreed to release participating tobacco manufacturers from health-related claims related to the use, manufacture, and marketing of tobacco products in return for perpetual annual payments from the manufacturers.

Colorado began receiving MSA payments in 1999. The state legislature has changed how it has used this money over time. Currently, most of the payments goes to programs in the Department of Health Care Policy and Financing and the Department of Public Health and Environment, though other departments receive payments as well.

Table 1 shows the state's actual MSA payments in FY 2007-08 and FY 2008-09 and allocations to programs as well as the Legislative Council Staff forecast for the state's payments for this fiscal year through FY 2011-12. The table also includes the amount each program that is allocated tobacco settlement money is projected to receive through FY 2012-13.

Forecast Notes and Assumptions

2009 legislative adjustments to allocations of MSA payments. Senate Bills 09-210, 264, and 269 made adjustments to the allocations of MSA payments to certain programs. Table 1 reflects the reductions to the allocations of MSA payments to programs resulting from 2009 legislation. The additional MSA money made available as a result of these reductions was either credited to the General Fund in FY 2008-09 or will be in FY 2009-10 and FY 2010-11. It is important to note that the table only accounts for the adjustments to the MSA money allocated to programs; it does not account for transfers from tobacco programs' fund balances authorized in 2009 legislation to the General Fund if MSA money had already been allocated to the programs, nor does it account for the FY 2008-09 transfers of General Fund money to tobacco programs.¹

¹ For example, Table 1 does not show the \$4.4 million of the money in the Short-term Innovative Health Program Grant Fund transferred to the General Fund in FY 2008-09 authorized by SB 09-208, nor does it show the \$1.0 million transfer of General Fund money to the Children's Basic Health Plan Trust in FY 2008-09 authorized by SB 09-269.

"Acceleration" of use of \$65 million of MSA payment. Under the provisions of Senate Bill 09-269, \$65 million of the FY 2009-10 MSA payment will not be allocated to the tobacco programs, but will be credited to the General Fund to augment FY 2009-10 General Fund revenue. Before Senate Bill 09-269, this money would have been allocated to the tobacco programs in FY 2010-11. The change will not result in a \$65 million reduction in the allocation to tobacco programs in FY 2010-11 however because the programs will receive \$65 million of the FY 2010-11 payment. The use of \$65 million in MSA payments for tobacco programs in the year it is received, rather than using the money in the fiscal year after it is received, will continue indefinitely under the provisions of Senate Bill 09-269.

MSA dispute and withholding of payments. One provision of the MSA allows participating manufacturers to reduce their payments to a state if it is found that they have been losing a certain amount of market share to manufacturers that are not part of the agreement, that the MSA was a significant contributing factor to the market share loss, and if the state is found to not have been upholding certain legal obligations under the agreement. This is called the "nonparticipating manufacturers adjustment."

Some tobacco manufacturers have been withholding a portion of their payments in recent years despite the fact that the full legal process that must occur for the manufacturers to adjust their payments has not run its course. The withheld amounts have been deposited into a separate disputed payments account during the legal process. The payment forecast in Table 1 assumes that tobacco manufacturers will continue the same withholding patterns they have exhibited in recent years.

Risks to the MSA forecast. Several factors, outlined below, could alter the amount the state receives from future payments resulting in either larger or smaller amounts than forecast.

- MSA payments are largely based on the volume of cigarettes distributed nationwide and inflation rates, which are difficult to predict. The forecasted decline in the MSA payments this fiscal year and next primarily reflects expected sizable decreases in cigarette volume in 2009 and 2010 and low inflation rates.
- Manufacturers may change their pattern of withholding payments. If all participating manufacturers choose to withhold payments this fiscal year rather than just some, the state's payment is projected to decrease by around \$3 million from the forecast amount. In addition, some manufacturers may go out of business or file bankruptcy, and some manufacturers do not pay what is due each year, both of which would serve to reduce the amount of payments the state receives.
- The circumstances surrounding the aforementioned dispute, such as a resolution at some point in the future or a determination regarding whether Colorado has been upholding its legal duties surrounding the MSA, will affect the amounts paid to the state.

Table 1. Tobacco Settlement Payments and Distribution

(In Millions)

Fiscal Years 2007-08 and 2008-09 Payments Actual
Pursuant to 24-75-1104.5, C.R.S.

Amount Received from Tobacco MSA Settlement		2007-08	2008-09	2009-10	2010-11	2011-12
Tobacco MSA Payment Received (Payments provide funding for programs both in the fiscal year received and in the following year)		\$103.6	\$112.8	\$96.2	\$92.3	\$92.8
General Fund		2007-08	2008-09	2009-10	2010-11	2011-12
General Fund	FY 2008-09 only: All Tobacco MSA payments above \$100 million (SB 09-269)	-	\$12.8	-	-	-
	FY 2009-10 only: \$65 million of Tobacco MSA payments received in fiscal year (SB-09-269)	-	-	\$65.0	-	-
	Diversion of Reduced Transfers to Tobacco Programs (SBs 09-210, 264, and 269)	-	\$2.3	\$3.5	\$0.6	-
	Total to General Fund	NA	\$15.2	\$68.5	\$0.6	-
First Tier Program Allocations		2008-09	2009-10	2010-11	2011-12	2012-13
Department of Health Care Policy and Financing						
Children's Basic Health Plan Trust	24% up to \$30 million and... If that amount is less than \$17.5 million, the difference is appropriated from the money for the second tier programs before it is allocated:	\$24.9	\$24.0	\$23.1	\$22.2	\$22.3
Primary and Preventative Care	3% up to \$5 million ¹	\$3.1	\$0.6	\$2.9	\$2.8	\$2.8
Children with Autism	\$1 million	\$1.0	\$1.0	\$1.0	\$1.0	\$1.0
Breast and Cervical Cancer Prevention	Interest earnings in the Tobacco Settlement Cash Fund	Between \$1 million and \$2.5 million annually				
Department of Public Health and Environment						
Dental Loan Repayment	\$200,000	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2
Tony Grampas Youth Services	4% up to \$5 million	\$4.1	\$4.0	\$3.8	\$3.7	\$3.7
HIV Prevention	2% up to \$2 million	\$2.0	\$2.0	\$1.9	\$1.8	\$1.9
AIDS Drug Assistance	3.5% up to \$5 million ²	\$3.6	\$3.5	\$3.4	\$3.2	\$3.2
Departments of Health Care Policy and Financing and Public Health and Environment						
Nurse Home Visitors	FY 2008-09 and FY 2009-10: 13% % of Payment Increases by 1% each year until % reaches 19% in FY 2016-17 The Payment cannot exceed \$19 million a year	\$13.5	\$13.0	\$13.5	\$13.8	\$14.8
Departments of Health Care Policy and Financing and Human Services						
Children's Mental Health Treatment	\$300,000	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Capital Construction						
Fitzsimons Trust Fund	The lesser of: 8% up to \$8 million and what's required for Fitzsimons for debt service	\$8.0	\$8.0	\$7.7	\$7.4	\$7.4
Department of Military Affairs and Veterans						
Veterans Trust Fund	1% up to \$1 million	\$1.0	\$1.0	\$1.0	\$0.9	\$0.9
Department of Education						
Read to Achieve	5% up to \$8 million	\$5.2	\$5.0	\$4.8	\$4.6	\$4.6
Total to First Tier Programs (Excluding Breast and Cervical Cancer Prevention)		\$66.8	\$62.6	\$63.6	\$62.0	\$63.2
Second Tier Program (SB07-97) Allocations		2008-09	2009-10	2010-11	2011-12	2012-13
Department of Health Care Policy and Financing						
Children's Hospital	1% of amount remaining after first tier programs are funded. ³	\$0.3	\$0.3	\$0.3	\$0.3	\$0.3
Indigent Health Care Provided by Rural and Public Hospitals	8.5% of amount remaining after first tier programs are funded. ⁴	\$2.1	\$2.0	\$2.2	\$2.6	\$2.5
Increase Eligibility for the Children's Basic Health Plan to 205% of the FPL	5% of amount remaining after first tier programs are funded.	\$1.8	\$1.8	\$1.6	\$1.5	\$1.5
Department of Higher Education						
CU Health Sciences Center	49% of amount remaining after first tier programs are funded.	\$18.0	\$17.2	\$16.0	\$14.9	\$14.5
Department of Human Services						
Offender Mental Health Services	12% of amount remaining after first tier programs are funded.	\$4.4	\$4.2	\$3.9	\$3.6	\$3.6
Alcohol and Drug Abuse programs	3% of amount remaining after first tier programs are funded.	\$1.1	\$1.1	\$1.0	\$0.9	\$0.9
Department of Personnel and Administration						
Supplement State Employee Insurance Plans	4.5% of amount remaining after first tier programs are funded.	\$1.7	\$1.6	\$1.5	\$1.4	\$1.3
Department of Public Health and Environment						
Public Health Services	7% of amount remaining after first tier programs are funded. ⁵	\$2.4	\$2.5	\$2.3	\$2.1	\$2.1
Immunizations	4% of amount remaining after first tier programs are funded.	\$1.5	\$1.4	\$1.3	\$1.2	\$1.2
Innovative Health Programs	6% of amount remaining after first tier programs are funded, plus interest earnings from most second tier program funds, and with certain exceptions, the amount of tobacco settlement money that is not used by the tobacco programs in each fiscal year. The interest earnings and unused amounts are not included in allocation amounts. ⁶	\$2.2	\$1.0	\$2.0	\$1.8	\$1.8
Total to Second Tier Programs		\$35.6	\$32.8	\$32.1	\$30.4	\$29.6
Total Allocated to All Programs (Excluding General Fund and Breast and Cervical Cancer Prevention)		\$102.4	\$95.4	\$95.7	\$92.3	\$92.8

¹ SB 09-210 reduced the MSA money transferred to the Primary and Preventive Care program by \$2.4 million in FY 2009-10 and diverted the same amount to the General Fund.

² SB 09-210 reduced the MSA money transferred to the AIDS Drug Assistance program by \$65,000 in FY 2008-09 and diverted the same amount to the General Fund.

³ SB 09-264 reduced the MSA money transferred to the Children's Hospital to \$317,000 for FY 2008-09, \$283,000 for FY 2009-10, and \$307,000 for FY 2010-11.

The difference between the amounts that would have been transferred under the allocation formula and the actual amounts transferred in each fiscal year was, or will be, diverted to the General Fund.

⁴ SB 09-210 reduced the MSA money transferred to the Indigent Health Care program by \$977,356 for FY 2008-09, while SB 09-264 reduced the transfer to \$1,990,500 for FY 2009-10 and \$2,245,000 for FY 2010-11.

The difference between the amounts that would have been transferred under the allocation formula and the actual amounts transferred in each fiscal year was, or will be, diverted to the General Fund.

⁵ SB 09-210 reduced the MSA money transferred to the Public Health Services program by \$149,000 in FY 2008-09 and diverted the same amount to the General Fund.

⁶ SB 09-269 transferred \$1.1 million of MSA money to the General Fund in FY 2008-09 and reduced the allocation to the Innovative Health Programs fund by the same amount in FY 2009-10.