

DPHHS: Budget Status Reports/ Potential for Supplemental Request

Prepared for the
Legislative Finance Committee
by

Lois Steinbeck, Senior Fiscal Analyst
Pat Gervais, Associate Fiscal Analyst
March 8, 2000



INTRODUCTION

The most recent budget status report from the Department of Public Health and Human Services (DPHHS) projects a reversion of \$135,858 general fund in fiscal year 2000. This projection is substantially more optimistic than earlier estimates, which anticipated general fund cost over runs up to \$10 million.¹

Several key assumptions support the projected general fund surplus. The assumptions are noted in a February 14 memorandum written by Mike Billings, Administrator of the Operations and Technology Division to Dave Lewis, Director, Office of Budget and Program Planning:

“A few weeks ago it appeared as if DPHHS might be projecting a deficit condition in the general fund for FY2000. However, based on the assumptions (1) that we are required to spend TANF funds before spending general funds to offset Title XX cuts (state law overrides HB-2 language), (2) CHIP funds will be used per SB81 language to cover Medicaid costs arising from implementation of the CHIP program, and (3) tobacco program implementation will continue for the rest of the fiscal year at rates that will leave about \$2 million unexpended in FY2000 (it is noted that the full \$3.5 million appropriated for FY2001 is expected to be spent, as prevention activity is gaining adequate momentum for that level of expenditure).”

Each of these assumptions will be discussed separately. In addition, this report raises issues related to:

- general fund base budget adjustments for the 2003 biennium budget;
- the Temporary Assistance for Needy families (TANF) block grant maintenance of effort (MOE) shortfall;
- identification of other ways that DPHHS can offset general fund costs; and
- the potential for general fund cost overruns in fiscal 2001.

BUDGET STATUS ISSUES

There are several key assumptions made by DPHHS in its most recent budget status report. The report projects an ending general fund surplus of about 6/100 of 1 percent of the general fund appropriated to DPHHS. Therefore, the margin of error is very slim.

There are issues related to the assumptions made by DPHHS to cover anticipated general fund shortfalls.

¹¹ Dave Lewis, Director, Office of Budget and Program Planning, personal conversation, February 18, 2000.

Title XX Transfer

In the event that the Title XX grant was cut, HB 2 language directed the department to transfer both general fund from Medicaid appropriations and federal TANF block grant funds to the Disability Services Division (DSD) to maintain the appropriation level for expenditures. HB 2 further stated that the department was to use all of the \$2.3 million in general fund money from Medicaid appropriations before using any transferred TANF funds. The department has chosen to use \$1.3 million of TANF funds rather than general fund in the DSD to mitigate the Title XX grant reduction.² It is the opinion of DPHHS legal office that this HB 2 language conflicts with 17-2-108 MCA, which requires all branches of state government to apply expenditures against appropriated non-general fund money whenever possible before using general fund appropriations.

The 2001 biennium budget includes an appropriation of \$5.7 million of TANF funds for the biennium, which are to be used in the Child and Family Services Division (CFSD) for foster care services. Transfers from the TANF block grant to Title XX are currently limited to 10 percent of the TANF block grant.³ Although the department is restricted by the federally allowable maximum transfers from TANF to Title XX, it has adequate transfer authority between TANF and Title XX available so that it is possible that the required transfer to foster care (\$5.7 million for the biennium) can be made and funds also transferred to DSD equivalent to the biennial reduction in the Title XX grant (approximately \$3.7 million for the biennium).⁴

HB 2 provided for a transfer of \$2.3 million in general fund from Medicaid appropriations and up to \$2.8 million in federal TANF funds or a total transfer of \$5.1 million. If the agency chose to make the maximum transfer allowed by HB 2 (\$2.3 million general fund and \$2.8 million in TANF) the total funds transferred would exceed the reduction in the Title XX grant. Thus, if the department transfers the full \$5.1 million, DSD services would be expanded beyond the level previously supported by the Title XX grant. (In order for this service expansion to be maintained, additional general fund will be required in future years.)

Use of Tobacco Control and CHIP Appropriations

After reviewing a draft of this report, DPHHS stated that it *may* use tobacco and CHIP funds as indicated in the two budget status reports completed for fiscal year 2000, with the most recent one released March 3. However, DPHHS has not indicated what other appropriation surpluses it will use to fund \$3.3 million in general fund shortfalls covered by the tobacco control and CHIP appropriations. General fund appropriations are not

² December 1999 DPHHS budget status report for Disability Services Division (DSD) note indicates use of TANF to replace Title XX.

³ The allowable transfer from TANF to Title XX decreases from 10 percent to 4.25 percent beginning in federal fiscal 2001.

⁴ Due to restrictions regarding the use of the TANF reserves contained in the final TANF regulations, the timely of these transfers would have to be carefully planned and executed.

sufficient to cover estimated costs if DPHHS does not use tobacco control and SB 81 funds to cover shortfalls and does not identify other sources of excess general fund.

Use of SB 81 Appropriation

SB 81 established the CHIP program and appropriated \$8 million general fund over the 2001 biennium to fund the state match for CHIP and for an increase in Medicaid costs resulting from CHIP outreach. Language appropriating funds in SB 81 did not distinguish the amount appropriated for CHIP separately from the amount appropriated for Medicaid increases. The legislature appropriated the matching federal funds for CHIP and the rest of Medicaid costs (including \$101.2 million general fund) in HB 2.

In the SB 81 fiscal note, DPHHS estimated that Medicaid expansion due to CHIP outreach would cost \$1.2 million general fund in fiscal 2000. In the January budget status report, DPHHS anticipates using \$1.3 million. If DPHHS were to use the fiscal note estimate of Medicaid expansion cost, it would reduce SB 81 general fund counted toward Medicaid costs by \$144,524, eliminating the general fund excess currently projected.

CHIP Enrollment Lower than Projected

The SB 81 appropriation was based on enrollment of 10,200 children in CHIP. As of the end of February 2000 there were 3,700. Enrollment is expected to increase between 600 and 700 children per month, reaching full enrollment as early as December 2000. There will be excess general fund in the amount appropriated for CHIP due to lower than projected enrollment.

At this point in time, DPHHS does not have the capability to track which children who applied for CHIP were subsequently determined to be eligible for and enrolled in the Medicaid program. System capability to produce such data is expected to be available just prior to the close of fiscal year 2000. The system will be able to track all CHIP applicants since October 1, 1999. DPHHS will never be able to determine the number of children whose families intended to apply for CHIP, but were advised by outreach advocates to apply for Medicaid instead and so bypassed an initial CHIP application.

These circumstances raised several questions about how much of the SB 81 general fund appropriation could be applied to Medicaid costs and whether the general fund appropriation from SB 81 could be transferred to fund general fund shortfalls in programs appropriated in HB 2.

Legal Opinion Requested

Legislative Fiscal Division (LFD) staff requested an opinion from Legislative Services Division regarding several issues related to the SB 81 appropriation. The issues are:

- 1) Can DPHHS use the \$1.2 million general fund appropriation anticipated in the fiscal note to be spent for Medicaid costs if it cannot verify the amount of costs related to CHIP outreach?
- 2) Can DPHHS use more of the \$8 million general fund appropriation in SB 81 for Medicaid costs than anticipated in the fiscal note?
- 3) Can DPHHS use the \$8 million general fund appropriation in SB 81 for costs other than CHIP and Medicaid expansion due to CHIP outreach? Can the appropriation for SB 81 be transferred to other programs within DPHHS? If so, can transferred funds be used to support other program costs unrelated to Medicaid or CHIP?

SB 81 Issues

The legal opinion regarding questions related to use of the appropriation authorized in SB 81 is attached. The legal opinion was requested based on LFD staff research and issues that arose as a result of that research. DPHHS has not indicated that it intends to use any funds from the SB 81 appropriation for expenses other than CHIP and Medicaid expansion due to CHIP outreach.

In summary, the conclusions of the legal opinion are:

- DPHHS has the burden to demonstrate, in some manner, that the amount of the SB 81 appropriation used for Medicaid costs are due to CHIP outreach; and
- Once the conditions of the SB 81 appropriation are met (funding CHIP and Medicaid expansion due to CHIP outreach), DPHHS can transfer any remaining general fund from the SB 81 appropriation to any other program, including programs funded from HB 2.

Based on this legal opinion, DPHHS needs to provide some method to estimate Medicaid costs related to CHIP outreach in order to demonstrate that the conditions of the SB 81 appropriation are being met.

Broader Implication of Legal Opinion

This legal opinion raises several issues related to transfer of appropriation authority included in bills other than HB 2. There appears to be a long-standing assumption by

fiscal managers and the legislature that “cat and dog” appropriations bills⁵ are a separate source of appropriation authority that cannot be used to fund ongoing program costs usually funded in HB 2. However, the recent legal opinion indicates that assumption may not be supported by current statutes. Staff will examine further the statewide implications of this issue, with options for LFC consideration.

TANF MOE

Table 4 on page B-7 of the Legislative Fiscal Report for the 2001 Biennium shows a potential general fund TANF Block Grant MOE shortfall of \$2.1 million in fiscal 2000. The \$2.1 million shortfall consists of \$1.4 million in childcare matching funds, \$600,000 in cost allocation shift, and \$130,000 related to HB 676, which capped nonassumed county contributions to TANF MOE at fiscal 1996 levels. In addition to the anticipated general fund shortfall in TANF MOE, final TANF rules prohibit the state from using expenditures for child welfare costs toward TANF MOE. Approximately \$1.1 million of general fund spent on child welfare expenditures can no longer be counted toward the TANF MOE, thus raising the potential MOE shortfall from \$2.1 million to \$3.2 million.

The January 2000 budget status report shows an estimated TANF MOE shortfall of approximately \$400,000 and a general fund surplus in this division of approximately \$500,000. If this \$500,000 general fund surplus is offset against the \$400,000 TANF MOE shortfall, there is no remaining TANF MOE shortfall.

Child Care Matching

While DPHHS did not provide specific details regarding how it has been able to mitigate the shortfall caused by the inability to count \$1.4 million in child care matching funds as TANF MOE, department staff indicated the division is managing general fund in other non-TANF areas to count toward MOE.⁶ LFD staff will continue to monitor this issue.

Cost Allocation and HB 676 County Contributions to TANF

Expenditures or costs are allocated to various programs and activities within DPHHS based on a statistical sampling of how much time staff spend working on various programs and activities. The statistical sampling method used to determine how many costs may be allocated to a program and thus how many costs may be charged to the TANF MOE, is the Random Moment Time Study (RMTS). DPHHS is pursuing changes and corrections to the RMTS which are expected to eliminate the projected TANF MOE shortfall caused by changes in cost allocation. These RMTS changes and corrections

⁵ A “cat and dog” appropriation bill is a bill passed by the legislature that includes an appropriation. The overwhelming majority of appropriations that support state government operations are made in the general appropriations act – HB 2.

⁶ Memo dated March 1, 2000 from Mike Billings, Administrator, Operations and Technology Division

may result in a cost allocation shift large enough to also mitigate the TANF MOE shortfall caused by other factors. (Current TANF MOE projections are based on the RMTS for the fourth quarter of fiscal 1999, with the expectation that RMTS for fiscal 2000 will result in a similar allocation.)

Child Welfare Costs

Final TANF rules allow the state to continue to spend TANF funds on activities such as child welfare if they were previously included in the state plan. However, general fund spent on these activities cannot be used as TANF MOE. To mitigate this change in regulation, DPHHS replaced the \$1.1 million general fund previously spent on child welfare, and counted as TANF MOE, with TANF funds. The general fund, previously spent on child welfare services, was transferred to the Human and Community Services Division (HCSO) and will be spent on activities that can be counted toward TANF MOE.

If the DPHHS projection of the TANF MOE is inaccurate, a number of significant issues could arise including: 1) a TANF MOE general fund shortfall; and 2) if the state does not meet the TANF MOE requirement, it will be subject to reductions in the TANF grant and increased required state expenditures in the TANF program.⁷

BASE BUDGET ADJUSTMENTS

The legislature may receive a request for at least \$4.8 million general fund in base budget adjustments for the 2003 biennium to cover spending adjustments identified in the DPHHS budget status report. Base budget adjustments will be necessary unless DPHHS plans on reducing programs or services or has identified other means to offset general fund costs.

Title XX

The amount of TANF block grant transferred to Title XX to fund disability services and foster care services during fiscal 2000 will exceed the amount that can be transferred during each year of the 2003 biennium due to changes in federal regulations. The annual amount of TANF transferred to Title XX (to be used in the DSD and the CFSD) is estimated to be \$4.1 million in fiscal 2000 (\$2.8 million in foster care and \$1.3 million in developmental disability services), the base budget year for the 2003 biennium. Beginning fiscal 2002, only \$1.9 million of TANF block grant can be transferred to Title XX.

⁷ For additional information refer to TANF: Final Rule, prepared for the Legislative Finance Committee by Lorene Thorson, September 23, 1999

Since fiscal 2000 is the base year budget, DPHHS will either need to: 1) request an increase of at least \$3.1 million⁸ (but may need to request as much as \$9.4 million⁹ general fund over the 2003 biennium); 2) reduce services for the developmentally disabled and/or foster care services; or 3) reduce spending or services in other programs and reallocate general fund to cover Title XX shortfalls. LFD staff has asked DPHHS to identify for the LFC how it will cover the Title XX shortfalls in the 2003 biennium.

Tobacco Control

DPHHS has indicated that the tobacco control program will be fully established in fiscal 2001 and will spend the entire \$3.5 million general fund appropriation. However, expenditures for the base year (fiscal 2000), and consequently base level funding, are estimated to be about \$1.5 million. In order to continue the program at its fiscal 2001 level DPHHS will need to either: 1) request an increase of \$4 million general fund over the 2003 biennium; or 2) reduce spending in other programs and reallocate general fund to tobacco prevention and control. LFD staff has asked DPHHS to identify whether it will continue the general fund portion of the tobacco control and prevention program at the \$3.5 million expenditure level, and if so, whether it will request additional general fund for the 2003 biennium.

TANF MOE

The TANF MOE requirement must be met on a federal fiscal year basis. Thus it is possible to shift TANF MOE expenditures between state fiscal years and meet MOE on a federal fiscal year basis but not on a state fiscal year basis. The department offset general fund expenditures in fiscal 2000 by taking TANF MOE expenditures for the fourth quarter of federal fiscal 1999 (July – September, 1999), and charging them against fourth quarter state fiscal 1999 appropriations. Because expenditures for the July – September 1999 quarter were charged against state fiscal 1999 appropriations, the expenditures for state fiscal 2000 (the base budget level for the 2001 biennium) were reduced. It is possible that the department could choose to adjust general fund spending during the July – September 2000 quarter, which could impact expenditures for fiscal 2001. Spending TANF MOE unevenly during the fiscal year, or adjusting TANF MOE expenditures during the April – June and July – September quarters of fiscal years, could result in a base budget for the 2003 biennium that is not equal to the TANF MOE the state is required to expend. DPHHS may need to request a base budget adjustment to increase or decrease the general fund needed to meet the TANF MOE requirement.

⁸ \$2.8 million transferred to CFSD each year of the biennium plus \$1.3 million transferred to DSD in fiscal 2000 less \$1.9 million per year or \$3.8 million per biennium maximum transfer.

⁹ \$5.7 million transfer to CFSD plus \$3.7 million transfer to DSD equivalent to the cut in the Title XX grant for the 2001 biennium, with no offsetting transfer to Title XX.

Possible Fiscal 2001 Supplemental

Several factors increase the likelihood that DPHHS will need a supplemental appropriation in fiscal 2001: 1) it is highly unlikely that Medicaid costs will decline from fiscal 2000 levels, unless DPHHS takes some action to either reduce services or eligibility; and 2) the \$2 million general fund from tobacco control appropriations that DPHHS will use to cover fiscal 2000 shortfalls will not be available in fiscal 2001.

POTENTIAL GENERAL FUND OFFSETS

There are several ways that DPHHS can offset current general fund expenditures with federal funds and reduce the likelihood of the necessity for additional general fund resources in this biennium. These options were identified through LFD staff research in maximizing the flexibility in funding mental health services for the HJR 35 subcommittee studying public mental health services.¹⁰ These options could be used to offset current general fund spending to: 1) allow more general fund to be used to develop appropriate community mental health services (the HJR 35 subcommittee study focus); 2) help offset current general fund shortfalls, particularly the one related to mental health services (\$1.5 million); 3) reduce the amount of base budget adjustments that might be necessary to continue services at the level funded in fiscal 2001; and 4) reduce other general fund shortfalls. Admittedly, the first use of funds freed up by offsetting general fund conflicts with the third and fourth purposes. However, offsetting current general fund spending for mental health services could prevent service reductions in mental health services if DPHHS were inclined to reduce services to help offset estimated general fund shortfalls.

TANF

Under final federal rules, published September 1999, TANF funds to be used for some services related to mental health needs or some of the state general fund expended for the Mental Health Services Plan (MHSP) may be able to be counted towards MOE required to receive the TANF grant.

MHSP expenditures may be able to be counted toward the TANF MOE, since the general fund supporting MHSP pays for services for children and families with incomes under 150 percent of the federal poverty level, and is a separate state funded program. Statutory changes would be needed, and DPHHS would need to amend the TANF state plan to include MHSP as MOE expenditure.

Using MHSP related expenditures toward TANF MOE would allow current general fund costs to be counted toward MOE without expanding state spending. The most recent budget status report prepared by DPHHS projects a general fund shortfall of about

¹⁰ These options are discussed more fully in the LFD staff report "Funding Flexibility for Mental Health Services".

\$400,000 in TANF MOE. Counting eligible MHSP costs toward MOE could help offset the MOE shortfall or the mental health services general fund shortfall.

CHIP

Most children eligible for MHSP would also be eligible for CHIP. MHSP has a richer array of services than CHIP, so when a dual eligible child needs services not covered by CHIP, those services are covered by MHSP. Since CHIP is funded 80 percent from federal funds and 20 percent from the general fund, while MHSP is funded primarily from the general fund, covering MHSP costs from CHIP can offset current general fund outlays.

The state CHIP plan, which has received federal approval, would allow federal CHIP funds to be transferred to MHSP to pay 80 percent of mental health services provided by MHSP, for children who are eligible for both programs. Implementing this change would offset current MSHP general fund costs.

Transferring CHIP funds to provide mental health services through MHSP may however, conflict with other policy objectives. For instance, even though CHIP enrollment is lower than projected this fiscal year, coverage could be provided for a longer period of time or potentially extended to more children, if CHIP funds were not transferred to cover the cost of mental health services.

LEGISLATIVE FINANCE COMMITTEE OPTIONS

House Bill 2 Language

Chief Legal Counsel in the Legislative Services Division has determined that HB 2 language directing the transfer of \$2.3 million general fund to the Title XX grant can be accomplished through administrative means. DPHHS has determined that, due to questions about the legality of the language, it will not comply with HB 2. The LFC may wish to further examine the issues regarding the legality of the HB 2 language.

DPHHS Responses

Legislative staff has asked DPHHS to provide the following information to the LFC.

- Will DPHHS transfer general fund to cover Title XX shortfalls in fiscal 2001?
- Will DPHHS use more of the SB 81 appropriation to cover Medicaid costs for CHIP outreach than it can track and document?

- Will DPHHS request general fund base adjustments for: 1) the tobacco control and prevention program; 2) services funded by TANF transfers to Title XX in excess of the allowable transfer in the 2003 biennium; 3) CHIP state match; and 4) TANF MOE?
- If DPHHS does not request general fund base adjustments for programs, will services be reduced or how will fiscal 2001 service levels be maintained without adding general fund?
- Will DPHHS use TANF or CHIP funds to offset current general fund spending in MHSP?

Depending on DPHHS answers to these questions, the LFC may wish to direct staff to prepare follow-up information for the next meeting or it may wish to encourage DPHHS to take other actions. The HJR 35 subcommittee will consider some issues related to TANF and CHIP spending in its meeting the day prior to the presentation of this report. The LFC may wish to consider pertinent recommendations or actions taken by the HJR 35 subcommittee.

I:\DOCMGMT\POOL\LFD REPORTS\March 2000\DPHHS BSR REPORT MARCH 2000.DOC