



Colorado  
Legislative  
Council  
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**MEMORANDUM**

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**TO:** Interested Persons

**FROM:** Larson Silbaugh, 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 go to programs in the Department of Health Care Policy and Financing, the Department of Public Health and Environment, and the Department of Higher Education, though other departments receive payments as well.

Table 1 shows the state's actual MSA payments in FY 2009-10 and FY 2010-11 and the Legislative Council Staff forecast for the state's payments for this fiscal year through FY 2013-14. The table also includes the amount each program that is allocated tobacco settlement money is projected to receive through FY 2014-15.

**Forecast Notes and Assumptions**

***2009, 2010, and 2011 legislative adjustments to allocations of MSA payments.*** Legislation passed in recent legislative sessions adjusted the allocations of MSA payments to certain programs. Table 1 has a summary of bills passed in the 2009, 2010, and 2011 sessions. Table 2 reflects the reductions and other changes to the allocations of MSA payments to programs resulting from this legislation. The additional MSA money made available as a result of these reductions and changes was either credited to the General Fund or allocated to another program that receives MSA money.

**Table 1**  
**Recent Bills Affecting MSA Distributions**

<b>2009 Session</b>	
SB 09-210	Diverted money from three MSA funded programs to the State General Fund.
SB 09-264	Reduced MSA distributions to the Children's Hospital in FY 2008-09, FY 2009-10 and FY 2010-11, and diverted this money to the state General Fund.
SB 09-269	Accelerated \$65 million dollar payment and diverted money from MSA funded programs to the State General Fund.
<b>2010 Session</b>	
HB 10-1123	Transferred money from the Primary Preventive Care fund to the State General Fund.
<b>2011 Session</b>	
SB 11-216	Increases funding for Children's Basic Health Plan by redistributing MSA funding from other programs.
HB 11-1281	Transferred \$250,000 from the Innovative Health Programs to the Colorado Health Services Corps.

It is important to note that Table 2 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 legislation to the General Fund if MSA money had already been allocated to the programs, nor does it account for the transfers of General Fund money to tobacco programs.<sup>1</sup>

***"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 was allocated to the tobacco programs, but was 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 does 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.*** 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."

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<sup>1</sup> For example, Table 2 does not show the \$4.4 million transferred from the Short-term Innovative Health Program Grant Fund 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.

Certain tobacco manufacturers have been withholding a portion of their annual payments since 2006 relating to annual disputes beginning in 2003. Payments have been withheld despite the fact that the full legal process that must occur for the manufacturers to adjust their payments has not run its course. These amounts either have not been paid by manufacturers or have been deposited into a separate disputed payments account during the legal process. The payment forecast in Table 2 assumes that tobacco manufacturers will continue the same patterns regarding their payments under this dispute that 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 the projection for flat payments over the forecast period primarily reflects continued decreases in cigarette volume and low inflation rates.
- Manufacturers may change their pattern of withholding payments. Consistent with the 2011 payment, it is assumed that the largest cigarette manufacturers will withhold payments throughout the forecast period. 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, most notably a determination regarding whether Colorado has been upholding its legal duties surrounding the MSA, will affect the amounts paid to the state.

The legal process regarding the dispute is lengthy. The ultimate impact of the first 2003 dispute on Colorado's payments will not be known until it has been resolved for each of the 52 states and districts participating in the MSA. Resolution of this dispute likely will not occur until at least 2013.

If it is determined that Colorado upheld its legal duties under the MSA for the 2003 dispute, Colorado will receive the money that was withheld for that dispute, approximately \$10.3 million. If not, Colorado will lose MSA money along with any other states and districts that are found to have not been compliant. Any money that the state will lose cannot be determined at this time because it depends on how many and which states are found to have been in noncompliance. While the amount may be substantial, it is capped at \$86.1 million (including the \$10.3 million in payments that was already withheld). The outcome of subsequent year disputes, and thus the impact on the state's future MSA payments, will likely take less time to resolve than for the 2003 dispute.

**Table 2. Tobacco Settlement Payments and Distribution**

(In Millions)

Fiscal Years 2009-10 and 2010-11 Payments Actual  
Pursuant to 24-75-1104.5, C.R.S.

Amount Received from Tobacco MSA Settlement		2009-10	2010-11	2011-12	2012-13	2013-14
Tobacco MSA Payment Received (Payments provide funding for programs both in the fiscal year received and in the following year)		\$94.6	\$89.1	\$89.2	\$88.8	\$87.8
General Fund		2009-10	2010-11	2011-12	2012-13	2013-14
General Fund	FY 2008-09 only: All Tobacco MSA payments above \$100 million (SB 09-269)	-	-	-	-	-
	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; HB 10-1323; and SBs 11-224 and 225)	\$5.8	\$2.9	\$2.3	\$1.5	\$1.8
	<b>Total to General Fund</b>	<b>\$70.8</b>	<b>\$2.9</b>	<b>\$2.3</b>	<b>\$1.5</b>	<b>\$1.8</b>
First Tier Program Allocations		2010-11	2011-12	2012-13	2013-14	2014-15
Department of Health Care Policy and Financing						
Children's Basic Health Plan Trust	24% up to \$30 million through FY 2010-11; 27% up to \$33 million beginning in FY 2011-12; 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; and	\$21.8	\$24.0	\$24.1	\$24.0	\$23.7
Primary and Preventative Care	3% up to \$5 million until FY 2011-12 <sup>1</sup>	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
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	Minimal- because of accelerated payment schedule, less than \$10 million is in the account for less than 3 months.				
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	\$3.8	\$3.6	\$3.6	\$3.6	\$3.5
HIV Prevention	2% up to \$2 million	\$1.9	\$1.8	\$1.8	\$1.8	\$1.8
AIDS Drug Assistance	3.5% up to \$5 million <sup>2</sup>	\$3.3	\$3.1	\$3.1	\$3.1	\$3.1
Departments of Health Care Policy and Financing and Public Health and Environment						
Nurse Home Visitors	FY 2008-09 and FY 2009-10: 13% FY 2010-11 through FY 2012-13: 14% % of Payment Increases by 1% each year until % reaches 19% in FY 2017-18 The Payment cannot exceed \$19 million a year	\$13.2	\$12.7	\$12.7	\$13.3	\$14.0
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	\$7.6	\$7.1	\$7.1	\$7.1	\$7.0
Department of Military Affairs and Veterans						
Veterans Trust Fund	1% up to \$1 million	\$0.9	\$0.9	\$0.9	\$0.9	\$0.9
Department of Education						
Read to Achieve	5% up to \$8 million	\$4.7	\$4.5	\$4.5	\$4.4	\$4.4
<b>Total to First Tier Programs (Excluding Breast and Cervical Cancer Prevention)</b>		<b>\$58.7</b>	<b>\$59.2</b>	<b>\$59.3</b>	<b>\$59.7</b>	<b>\$59.9</b>
Second Tier Program (SB07-97) Allocations		2010-11	2011-12	2012-13	2013-14	2013-14
Department of Health Care Policy and Financing						
Children's Hospital	1% of amount remaining after first tier programs are funded. <sup>3</sup>	\$0.3				
Increase Eligibility for the Children's Basic Health Plan to 205% of the FPL	5% of amount remaining after first tier programs are funded through FY 2009-10 13.5% in FY 2010-11; and 14.5 percent beginning in FY 2011-12.	\$4.5	\$4.2	\$4.1	\$4.0	\$3.8
Department of Higher Education						
CU Health Sciences Center	49% of amount remaining after first tier programs are funded.	\$16.2	\$14.3	\$13.9	\$13.4	\$12.8
Department of Human Services						
Offender Mental Health Services	12% of amount remaining after first tier programs are funded.	\$4.0	\$3.5	\$3.4	\$3.3	\$3.1
Alcohol and Drug Abuse programs	3% of amount remaining after first tier programs are funded.	\$1.0	\$0.9	\$0.9	\$0.8	\$0.8
Department of Personnel and Administration						
Supplement State Employee Insurance Plans	4.5% of amount remaining after first tier programs are funded.	\$1.5	\$1.3	\$1.3	\$1.2	\$1.2
Department of Public Health and Environment						
Public Health Services	7% of amount remaining after first tier programs are funded. <sup>4</sup>	\$2.3	\$2.0	\$2.0	\$1.9	\$1.8
Immunizations	4% of amount remaining after first tier programs are funded.	\$1.3	\$1.2	\$1.1	\$1.1	\$1.0
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 the allocation amounts. <sup>5,6</sup>	\$2.0	\$1.5	\$1.5	\$1.4	\$1.3
Colorado Health Services Corps	\$250,000 starting in FY 2012-11. <sup>6</sup>		\$0.3	\$0.3	\$0.3	\$0.3
<b>Total to Second Tier Programs</b>		<b>\$33.0</b>	<b>\$29.0</b>	<b>\$28.1</b>	<b>\$27.1</b>	<b>\$25.9</b>
<b>Total Allocated to All Programs (Excluding General Fund and Breast and Cervical Cancer Prevention)</b>		<b>\$91.7</b>	<b>\$88.2</b>	<b>\$87.4</b>	<b>\$86.8</b>	<b>\$85.7</b>

<sup>1</sup> 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. SB 11-216 eliminated MSA funding to this program beginning FY 2012-13.

<sup>2</sup> HB 10-1323 diverted the MSA money scheduled to be allocated to the program in FY 2010-11 to the General Fund.

<sup>3</sup> 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.

<sup>4</sup> 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 diverted to the General Fund.

<sup>5</sup> SB 11-216 eliminated funding from the MSA to this program beginning in FY 2011-12.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> HB11-1281 transferred \$250,000 from the Innovative Health Programs to the Colorado Health Services Corps starting in FY 2011-12.