Schedule 13
Funding Request for the 2013-14 Budget Cycle

Department: Health Care Policy and Financing

Request Title: Nursing Facility Appeals

Priority Number: S-16

Dept. Approval by: John Bartholomew 12/31/12 Date

OSPB Approval by: 12/31/12 Date

- [ ] Decision Item FY 2013-14
- [ ] Base Reduction Item FY 2013-14
- [x] Supplemental FY 2012-13
- [ ] Budget Amendment FY 2013-14

Line Item Information		FY 2012-13		FY 2013-14		FY 2014-15
		1	2	3	4	5
	Fund	Appropriation FY 2012-13	Supplemental Request FY 2012-13	Base Request FY 2013-14	Funding Change Request FY 2013-14	Continuation Amount FY 2014-15
Total of All Line Items	Total	$3,985,613,386	$506,922	$4,026,532,673	$0	$0
	FTE	0.0	0.0	0.0	0.0	0.0
	GF	$1,050,603,677	$253,461	$1,092,869,207	$0	$0
	GFE	$312,202,624	$0	$312,202,624	$0	$0
	CF	$651,181,857	$0	$626,082,971	$0	$0
	RF	$3,215,340	$0	$1,215,340	$0	$0
	FF	$1,968,409,888	$253,461	$1,994,162,531	$0	$0
(2) Medical Services Premiums	Total	$3,985,613,386	$506,922	$4,026,532,673	$0	$0
	FTE	0.0	0.0	0.0	0.0	0.0
	GF	$1,050,603,677	$253,461	$1,092,869,207	$0	$0
	GFE	$312,202,624	$0	$312,202,624	$0	$0
	CF	$651,181,857	$0	$626,082,971	$0	$0
	RF	$3,215,340	$0	$1,215,340	$0	$0
	FF	$1,968,409,888	$253,461	$1,994,162,531	$0	$0

Letternote Text Revision Required? Yes: No: ✓ If yes, describe the Letternote Text Revision:

Cash or Federal Fund Name and COFRS Fund Number: FF: Title XIX

Reappropriated Funds Source, by Department and Line Item Name: Not Applicable

Approval by OIT? Yes: No: Not Required: ☑

Schedule 13s from Affected Departments: Not Applicable

Other Information: Not Applicable

DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

FY 2012-13 Supplemental Request
January 2, 2013

John W. Hickenlooper
Governor

Susan E. Birch
Executive Director

Bartholomew for Sue Birch 12/31/12
Signature Date

Department Priority: S-16
Nursing Facility Rate Appeal Settlement

Summary of Incremental Funding Change for FY 2012-13	Total Funds	General Fund	FTE
Nursing Facility Rate Appeal Settlement	$506,922	$253,461	0.0

Request Summary:
The Department requests $506,922 total funds, $253,461 General Fund, to settle rate appeals for class I nursing facility providers.

Problem or Opportunity:
As the result of a nursing facility rate appeal settlement regarding appraisal of fair rental value, the Department has incurred a financial obligation to 31 nursing facility providers. Due to conflicting statutory obligations, there is no apparent funding source to support this legal obligation.

Brief Background:
Every four years, the Department conducts a depreciated replacement appraisal of nursing facilities to determine the 'fair rental allowance' (a component in determining class I nursing facility per diem reimbursement); the most recent appraisal occurred in 2010 and is to be effective from July 1, 2010 to June 30, 2014.

Thirty-one nursing facilities filed formal appeals of the 2010 appraisal results. These appeals are predicated on contests to both the determination of land value and to the determination of 'depreciation and building effective age' based on site improvements and building condition. While there were originally 35 nursing facilities party to the litigation. Four withdrew upon discovery that the adjustments to the rate-calculation methodology proposed in the settlement agreement would have led to a lower level of reimbursement for their facility.

The Department began making settlement offers in pursuant negotiations with appealing providers in April 2012 and received counter-offers from providers beginning in July 2012. The Department reached an agreement in principle with the appealing nursing facility providers on December 5, 2012.

The estimated settlement amount related to FY 2011-12 reimbursement is equal to the difference between what was actually paid to providers for nursing facility services in FY 2011-12 and what would have been paid were the fair rental allowance for capital-related assets calculated as proposed in the settlement agreement. The Department's current estimate may vary slightly from the final settlement amount. Additionally, while there is an impact on FY 2012-13 reimbursement under the settlement agreement, the standard nursing facility reimbursement methodology is available to the Department for

this portion of the settlement agreement; no incremental funding is necessary.

Proposed Solution:
The Department proposes funding the FY 2011-12 portion of the settlement with General Fund, independent of the class I nursing facility rate methodology. This would prevent a violation of the General Fund growth cap that would occur if prior-year rates were retroactively adjusted, ensure the full settlement amount is funded, and holds other providers that participate in the nursing facility provider fee program harmless, thereby reducing the likelihood of subsequent litigation by additional parties.

Alternatives:
The Department is required to make payments to nursing facility providers as the result of litigation. The alternative to funding the settlement with General Fund, independent of the rate methodology, would be to fund the settlement via the Medicaid Nursing Facility Cash Fund. However, this option is likely to generate additional litigation.

The Medicaid Nursing Facility Cash Fund collects fees from nursing facility providers for the purpose of making supplemental payments to nursing facilities for per diem growth over the General Fund cap, quality incentives, and to incentivize care for clients with special needs. There is no language in statute that would allow the cash fund to be used for the purpose of funding rate appeal settlements or judgments. This is true even if the cash fund would have been the original funding source, as was the case in the fair rental value settlement.

Additionally, because supplemental payments are funded from a cash fund with a limited revenue source, utilizing the cash fund to resolve the settlement would negatively impact providers not party to the litigation. Consequently, the Department anticipates that financing the settlement with the Medicaid Nursing Facility Cash Fund would expose the State to additional litigation.

Anticipated Outcomes:
The Department would use the requested funds to make payments to nursing facilities as stipulated in the settlement agreement.

Assumptions for Calculations:
The estimated value of the settlement is the difference between what was paid to the relevant providers in FY 2011-12 and what would have been paid had the fair rental allowance for capital-related assets been calculated as agreed to in the settlement agreement.

Provider fee contribution to the Medicaid Nursing Facility Cash Fund is limited both by state and federal statute. In FY 2011-12, the provider fee program collected the maximum allowable amount of fees, as defined in section 25.5-6-203(1)(a)(II), C.R.S. (2012). As the total available funding for supplemental payments to nursing facility providers is restricted by the amount of available funding, the Department is only able to make partial payments for growth over the General Fund using a discount rate that is determined each fiscal year. The Department uses the FY 2011-12 discount rate where needed for the purposes of these calculations

Under the recalculated fair rental allowance for capital-related assets, four of the 31 providers would have had a different MMIS-loaded rate, the total impact of which would have been an increase of General Fund and federal funds payments by $54,932. An additional $452,013 of supplemental payments, funded with provider fee and federal funds, would have been distributed across the 31 providers.

See Table 1 for calculations.

Consequences if not Funded:
The Department is legally obligated to make the agreed-upon payments to nursing facility providers. In the event that the Department does not satisfy the terms of the settlement agreement, additional actions against the Department, including the pursuit of a judgment by other parties to the agreement, are possible.

Relation to Performance Measures:
This supplemental request serves the Department's initiative to contain health care costs by reducing the likelihood of further legal expenses related to these reimbursement appeals, and potential further litigation that may result were the Department to fund the settlement via the nursing facility provider fee cash fund.

Supplemental, 1331 Supplemental, or Budget Amendment Criteria:
This request is necessary due to newly available information; the Department was unable to anticipate the outcome of the litigation discussed in this request prior to its resolution on December 5, 2012.

Current Statutory Authority or Needed Statutory Change:
The Colorado statute pertaining to the General Fund growth cap is section 25.5-6-202(9)(b)(I), C.R.S. (2012). Section 25.5-6-203, C.R.S. (2012) governs the nursing facility provider fee payments; the restrictions on revenues collected are detailed in section 25.5-6-203(1)(a)(II), C.R.S. (2012).

Table 1: Calculation of Estimated Settlement Amount for FY 2011-12 Fair Rental Value Appeals

Row	Item	Payments Made Under Nursing Facility Per Diem Rates (1)	Growth Over the General Fund Cap (2)	Notes
A	Payment Under Original Methodology	$119,931,168	$15,222,413	
B	Payment Under Settlement Methodology	$119,986,101	$16,056,495	
C	Difference	$54,933	$834,082	Row B - Row A
D	Discount Rate	100.00%	54.19%	
E	Estimated Settlement Amount	$54,933	$451,989	Row C * Row D
F	Estimated Total Settlement Amount			Sum of entries in Row E

(1) General Fund and federal funds
(2) Supplemental payments funded by the Medicaid Nursing Facility Cash Fund and federal funds