

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



INTERIM SUPPLEMENTAL REQUEST FOR FY 2010-11

DEPARTMENT OF HUMAN SERVICES

(Services for People with Disabilities)

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:
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September 20, 2010**

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| | FY 2009-10 | FY 2010-11 | Fiscal Year 2010-11 Interim Supplemental | | |
|--|------------|---------------|--|--------------------|-------------------------------|
| | Actual | Appropriation | Requested Change | Recommended Change | New Total with Recommendation |

DEPARTMENT OF HUMAN SERVICES
Executive Director - Karen Beye
Services for People with Disabilities

Interim Supplemental #1 - Funding Request for Trinidad State Nursing Home

(E) Homelake Domiciliary and State and Veterans Nursing Homes

| | | | | | |
|----------------------|--------------|--------------|------------|------------|--------------|
| Program Costs | 54,428,011 | 54,428,011 | 471,873 | 0 | 54,428,011 |
| FTE | <u>673.4</u> | <u>673.4</u> | <u>0.0</u> | <u>0.0</u> | <u>673.4</u> |
| General Fund | 0 | 0 | 471,873 | 0 | 0 |
| CF - client cash | 42,453,849 | 42,453,849 | 0 | 0 | 42,453,849 |
| RF/CFE - client cash | 0 | 0 | 0 | 0 | 0 |
| Federal Funds | 11,974,162 | 11,974,162 | 0 | 0 | 11,974,162 |

| | | | | | |
|---|----------------|----------------|------------|------------|----------------|
| Totals | | | | | |
| (9) TOTAL - SERVICES FOR PEOPLE WITH DISABILITIES | 554,064,624 | 555,822,985 | 471,873 | 0 | 555,822,985 |
| FTE | <u>1,945.3</u> | <u>1,896.2</u> | <u>0.0</u> | <u>0.0</u> | <u>1,896.2</u> |
| General Fund | 38,137,706 | 39,882,497 | 471,873 | 0 | 39,882,497 |
| Cash Funds | 86,412,165 | 87,727,807 | 0 | 0 | 87,727,807 |
| Cash Funds Exempt/Reappropriated Funds | 366,711,323 | 362,987,333 | 0 | 0 | 362,987,333 |
| Federal Funds | 62,803,430 | 65,225,348 | 0 | 0 | 65,225,348 |

Key:

"N.A." = Not Applicable or Not Available

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Interim Supplemental #1, Funding Request for Trinidad State Nursing Home

| | Request | Recommendation |
|---|------------|----------------|
| Homelake Domiciliary and State and Veterans Nursing Homes Program Costs | \$471,873 | \$0 |
| FTE | <u>0.0</u> | <u>0.0</u> |
| General Fund | 471,873 | 0 |
| Cash Funds | 0 | 0 |
| Reappropriated Funds | 0 | 0 |
| Federal Funds | 0 | 0 |

| | |
|--|------------|
| Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.] | YES |
| Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.] | YES |
| The request addresses an unforeseen contingency. The budget assumed that the operation of the Trinidad State Nursing Home would be transferred to another operator by December 2010, but the Department has made decisions that will likely delay that transfer date. | |

Department Request: The Department requests \$471,873 General Fund to continue operation of the Trinidad State Nursing Home through April of 2011, by which time the Department hopes to transfer the facility to another party. The currently projected transfer date is several months later than the December 2010 transfer date assumed when the Joint Budget Committee originally acted on the FY 2010-11 budget. Also, the Department is requesting General Fund, rather than the Central Fund, pay for the projected operating losses of the Trinidad nursing home.

Staff Recommendation: Staff recommends rejecting the proposed supplemental. During the 2010 legislative session the General Assembly considered bills to delay the transfer of the Trinidad

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nursing home and to substitute General Fund for money from the Central Fund to pay for the losses of the Trinidad nursing home. The General Assembly did not enact either of these bills.

Staff Analysis:

Operating at a loss

The Trinidad nursing home is unique from other nursing homes operated by the Department, because it serves non-veterans and therefore is not eligible for a per diem subsidy, or capital construction funds, from the federal Department of Veterans Affairs. Instead, the Trinidad nursing home gets the majority of its revenue from Medicaid.

Medicaid pays for approximately 91 percent of Trinidad's residents, compared to a statewide average of Medicaid paying for 60 percent of similar private nursing facility resident days. The Trinidad nursing home receives smaller amounts from private pay residents and Medicare. The blended average revenue per day, per resident, is \$201.66 (slightly more than the Medicaid daily rate of \$200.75). The revenue per resident per day for the Trinidad nursing home is lower than typical of private providers, although there are some private providers who accept an even higher ratio of Medicaid residents and would receive less.

For the past several years, expenditures have exceeded revenues at the Trinidad State Nursing Home. Expenditures per resident vary based on the number of residents and other factors, but for FY 2009-10 the average cost per day per resident was \$218.60, resulting in an average daily operating loss of \$16.94 per resident. All revenues and expenses for the Trinidad State Nursing Home and for the four veterans nursing homes operated by the Department are combined in the Central Fund for State Nursing Homes, but looked at in isolation the Trinidad nursing home has lost a cumulative total of \$3,744,715 since 1998. In only three of those 13 years has the Trinidad nursing home had more revenue than expenses.

The Department's ability to contain costs at the Trinidad nursing home is constrained by health and safety standards governing the minimum staff to resident ratios, and by the structured pay schedules associated with the state personnel system. Approximately 76.7 percent of the Trinidad nursing home's operating costs are related to salaries and benefits. Pay rates are based on industry salary surveys that include facilities with a larger percentage of private pay and Medicare residents than the Trinidad nursing home.

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The Department could increase revenue by attracting more residents, and particularly private pay and Medicare residents who contribute higher rates. The Department has worked with outside consultants to identify and implement strategies to increase occupancy. One of these strategies includes a partnership with the Colorado Mental Health Institute at Pueblo that has resulted in nine placements. Another strategy includes marketing to communities outside Trinidad. Despite these strategies the Trinidad nursing home has averaged a 78 percent occupancy level for the last five years. It is not clear to staff if the population in the community isn't sufficient to support more placements, or if the Department's strategies have been flawed, or if some other factors are at work leading to the low occupancy rates.

Timeline for transferring ownership

Senate Bill 09-056 authorized the Department to transfer ownership of the Trinidad State Nursing Home, provided they consult with Las Animas community and encourage bids that assure continuity of care for the residents and an employee retention plan. The Las Animas County Health District submitted a bid of \$400,000 for the home, but the Department had an October 2008 appraisal that valued the property at \$4.0 million and rejected the bid. In the fall of 2009 voters in the community rejected a tax measure that would have purchased the nursing home. The Department then issued a request for proposals and received four bids from private operators to purchase and continue operating the facility as a nursing home (these bids are confidential and staff does not know the value of the bids).

When the budget for FY 2010-11 was initially voted on by the Joint Budget Committee, the Department anticipated that the Trinidad State Nursing Home would be transferred to another operator in December of 2010. The Department anticipated that the Trinidad nursing home would continue to operate at a loss and draw on the Central Fund more than it would contribute for six months in FY 2010-11. This presents a potential conflict, because federal Veterans Administration per diem payments that are also deposited in the Central Fund are only supposed to support veterans' care. However, the commingling of money for the Trinidad nursing home and money for the veterans' nursing homes in the Central Fund has been the state's practice for several years. Also, a provision of S.B. 09-056 (Section 26-12-112 (5) (b), C.R.S.) requires that proceeds from a transfer of the Trinidad nursing home be deposited in the Central Fund, arguably repaying the Central Fund for any FY 2010-11 loan to cover Trinidad's operating loss.

During the 2010 legislative session two measures were introduced concerning the Trinidad State Nursing Home:

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- House Bill 10-1217 (McKinley/Kester) would have eliminated the Department's authority to transfer the property. The bill was later amended to restrict the Department's authority to transfer the property to a time period between April 30, 2011 and July 1, 2012, or a minimum of four months later than the Department anticipated in the FY 2010-11 budget request. This effort to halt or delay the transfer of the property failed.
- House Bill 10-1426 (Riesberg, Todd/Williams, Spence) would have removed the Trinidad State Nursing Home from the Central Fund that provides for the other veterans nursing homes operated by the state, removing any potential conflict with federal veterans' funds cross-subsidizing the operation of the Trinidad State Nursing Home. The bill would have transferred the burden for funding the operating loss at the nursing home (until the time it was sold) from the Central Fund to the General Fund, but it too failed.

The failure of these two bills could be interpreted as direction from the General Assembly to stay the course the Department was pursuing and to (1) sell the property by December 2010 and (2) continue to subsidize the operation of the nursing home from the Central Fund until such time. However, the Department interpreted these events otherwise. The Department's supplemental request indicates they were directed by members of the General Assembly to continue working with the local community on an alternative resolution.

In response, the Department allowed the pending private bids for the Trinidad nursing home to expire on September 16, 2010. This allows time for the Las Animas County Commissioners to consider whether to put a new tax initiative on the ballot for the 2010 election that would provide for acquisition of the facility. If the ballot initiative fails, the Department intends to transfer the property to a private vendor. In the supplemental request the Department indicated an intent to issue a new Request for Proposals and projected the date for the state to divest the property would be pushed back from the end of December 2010 to the end of April 2011.¹

Some of the factors that contribute to the Department's projection for when the facility could be transferred include: 45 days for a typical Request for Proposal process; 30 days for the parties to agree to final terms once a bid is awarded; 60-90 days for a layoff plan, depending on the number of employees who exercise bumping rights; time to address concerns of residents who may want to transfer; and, time for contingencies that may delay the process.

¹ In response to questions about the bid process, the Department noted that there is a possibility to extend the date for which the original bids are valid, if none of the bidders object.

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Adequacy of the projected sale proceeds to reimburse the Central Fund

After considering closing costs, the net proceeds to the Central Fund from the sale of the Trinidad nursing home may be less than the amount perceived as due to the Central Fund for prior operating subsidies provided to the Trinidad nursing home. Some believe the Central Fund is due \$3,744,715 for the cumulative operating losses at the Trinidad nursing home since 1998, when the current version of the Central Fund was created. This is before any additional operating losses that may or may not be subsidized from the Central Fund in FY 2010-11, depending on the disposition of this supplemental. Others may choose a different starting year for calculating cumulative losses and arrive at a different estimate, or argue that the Central Fund need not be repaid.

The Department will have some closing costs that will impact the net proceeds. As noted above, the 2008 appraisal commissioned by the Department estimated the value of the facility at \$4.0 million, but there is no guarantee that the Department could get that amount in today's market through a Request for Proposals. From whatever amount the Department receives, the fiscal note for H.B. 10-1426 estimated that the Department will need to pay \$850,000 in closing costs, including \$275,000 for employee accumulated leave and \$575,000 for an energy lease. In addition, the Department will owe some amount to the Community Colleges, because the title requires that the property revert to the Community Colleges if a nursing home is no longer operated by the state on the site. The Board of Governors for the Community Colleges recently voted to accept \$2.0 million to give up their claim to the property. The Board of Governors met in an executive session to determine this amount and staff does not know the basis they used to arrive at the dollar figure. Depending on the proceeds, the net deposit in the Central Fund may be viewed by some as inadequate.

Capacity of the Central Fund to continue subsidizing the Trinidad nursing home

As described previously, the per diem paid by the federal Veterans Administration is dedicated to services for veterans. Moneys from the federal per diem, from the Trinidad nursing home, and from miscellaneous smaller resident fees and enterprise activities of the veterans' homes are combined in the Central Fund. Also, the Central Fund retains and rolls forward money from prior years. Because the moneys are combined and rolled forward, including roll forwards from some years when the Trinidad nursing home made money, it isn't necessarily clear that a dollar spent from the Central Fund originated as a federal per diem dollar or not. However, the Department is concerned about potential accusations concerning the use of federal per diem revenues to subsidize the Trinidad nursing home.

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If the Department lost certification as a federal veterans' nursing home provider, due to a violation of the per diem regulations, it would lose approximately \$10.5 million in annual federal operating support for all veterans' nursing homes. Furthermore, the Department recently received \$10 million federal funds for construction at the Florence and Homelake veterans' facilities that might need to be repaid.

In addition to concerns about whether subsidies from the Central Fund to the Trinidad nursing home are appropriate, the Department indicates that the Central Fund may not have the revenue in FY 2010-11 to absorb an operating loss at the Trinidad nursing home. Construction renovations at the Florence and Homelake facilities are having temporary negative impacts on the census at those two facilities. Revenues are down at those two facilities, but expenditures are mostly unchanged as the Department has maintained a full compliment of staff for the residents who remain, and in anticipation of a return to normal occupancy levels upon the completion of construction. While the Department projects the Central Fund will be healthy in the long term, the short term cash flow problems created by the construction at the Florence and Homelake facilities caused the Department to recently request a loan from the State Controller to be repaid later in the fiscal year. The Department believes the Central Fund may not have the cash flow in FY 2010-11 to support an operating loss at the Trinidad nursing home.

Rationale for the staff recommendation

Staff has concerns about the Department's decision to allow the private bids for the Trinidad nursing home to expire. In H.B. 10-1217 and H.B. 10-1426 the General Assembly had an opportunity to vote on the two issues addressed in this request: delaying the transfer of the Trinidad nursing home, and substituting General Fund for money from the Central Fund to pay for the losses of the Trinidad nursing home. The Department may have been instructed by some members of the General Assembly to delay the sale of the home and to request General Fund for the operating losses of the home, but the majority of the General Assembly rejected H.B. 10-1217 and H.B. 10-1426.

Please note, however, that the General Assembly did not provide explicit instructions to the Department to transfer the facility, or to do it by a certain date, since the authority to dispose of the property that was granted to the Department in S.B. 09-056 was permissive, rather than mandatory. A case could be made that the General Assembly expected the Department to dispose of the facility by December 2010, but any instruction to do so was merely implicit in the budget assumptions, rather than a definitive directive in the form of a bill, resolution, footnote, or even a letter.

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The Department raised concerns that even if it wanted to subsidize the Trinidad nursing home from the Central Fund, the cash flow will not support it, due to the impact on the census of construction at the Florence and Homelake facilities. The Department worries that it could not get a cash flow loan from the State Controller because the Trinidad nursing home is not projected to earn revenues sufficient to repay the loan during FY 2010-11. However, the State Controller would not evaluate a cash flow loan based on the projected revenues and expenses for the Trinidad nursing home in isolation, but on the projected cash flow for the Central Fund as a whole. While one may want to evaluate the ability of the Trinidad nursing home to repay a cash flow loan in isolation of the other homes for policy reasons, the Trinidad nursing home does have a way to directly repay a cash flow loan, because S.B. 09-056 would deposit proceeds from the transfer of the home in the Central Fund.

It is possible that proceeds from the transfer of the Trinidad nursing home would be insufficient to repay a cash flow loan. The private bids that were submitted in response to the first Request for Proposals are confidential and staff does not know the value of those bids. Staff can't predict whether any of the private bidders will resubmit proposals in a second round, or if the county will be able to submit a viable bid. The Department has the 2008 appraisal that the property is worth \$4.0 million, but that appraisal is two years old, and an appraisal is an estimate that may or may not reflect actual market value. The \$850,000 in closing costs and the \$2.0 million requested by the Community Colleges for their interest in the property will diminish the net proceeds to the Central Fund. However, if the proceeds were so low as to be insufficient to repay a cash flow loan, then the General Assembly could address that through a supplemental during the 2011 session, and there would likely be pressure to do so from those who believe the Central Fund needs to be repaid for subsidizing the Trinidad nursing home in prior years.
