

Schedule 13

Funding Request for the FY 2024-25 Budget Cycle

Health Care Policy and Financing

Request Title

S-14 Legal Services Increase
BA-14 Legal Services Increase

Dept. Approval By:  X **Supplemental FY 2023-24**

OSPB Approval By:  X **Budget Amendment FY 2024-25**

Summary Information	Fund	FY 2023-24		FY 2024-25		FY 2025-26
		Initial Appropriation	Supplemental Request	Base Request	Budget Amendment	Continuation Request
	Total	\$64,691,844	\$329,500	\$36,784,388	\$237,200	\$237,200
	FTE	0.4	0.0	0.4	0.0	0.0
Total of All Line Items Impacted by Change Request	GF	\$14,481,195	\$148,850	\$13,479,152	\$71,160	\$71,160
	CF	\$16,353,499	\$15,900	\$2,958,598	\$47,440	\$47,440
	RF	\$152,089	\$0	\$152,089	\$0	\$0
	FF	\$33,705,061	\$164,750	\$20,194,549	\$118,600	\$118,600

Line Item Information	Fund	FY 2023-24		FY 2024-25		FY 2025-26
		Initial Appropriation	Supplemental Request	Base Request	Budget Amendment	Continuation Request
Total		\$62,877,160	\$250,000	\$34,123,691	\$0	\$0
01. Executive Director's Office, (A) General Administration, (1)	FTE	0.0	0.0	0.0	0.0	0.0
General Administration, General Professional Services and Special Projects	GF	\$13,811,567	\$125,000	\$12,477,539	\$0	\$0
	CF	\$16,155,462	\$0	\$2,665,692	\$0	\$0
	RF	\$81,000	\$0	\$81,000	\$0	\$0
	FF	\$32,829,131	\$125,000	\$18,899,460	\$0	\$0
Total		\$1,814,684	\$79,500	\$2,660,697	\$237,200	\$237,200
01. Executive Director's Office, (A) General Administration, (1)	FTE	0.4	0.0	0.4	0.0	0.0
General Administration, Legal Services	GF	\$669,628	\$23,850	\$1,001,613	\$71,160	\$71,160
	CF	\$198,037	\$15,900	\$292,906	\$47,440	\$47,440
	RF	\$71,089	\$0	\$71,089	\$0	\$0
	FF	\$875,930	\$39,750	\$1,295,089	\$118,600	\$118,600

Auxiliary Data			
Requires Legislation?	NO		
Type of Request?	Health Care Policy and Financing Prioritized Request	Interagency Approval or Related Schedule 13s:	Other



Department Priority: S-14/BA-14
Request Detail: Legal Services

Summary of Funding Change for FY 2023-24			
		Incremental Change	
	FY 2023-24 Appropriation	FY 2023-24 Request	FY 2024-25 Request
Total Funds	\$64,691,844	\$329,500	\$237,200
FTE	0.4	0.0	0.0
General Fund	\$14,481,195	\$148,850	\$71,160
Cash Funds	\$16,353,499	\$15,900	\$47,440
Reappropriated Funds	\$152,089	\$0	\$0
Federal Funds	\$33,705,061	\$164,750	\$118,600

Summary of Request

The Department requests a budget supplemental in FY 2023-24 of \$329,500 total funds comprised of \$148,850 General Fund, \$15,900 in Hospital Affordability & Sustainability (HAS) Fee cash funds, and \$164,750 federal funds with rollforward authority for \$250,000 in contract costs and a budget amendment in FY 2024-25 and ongoing of \$237,200 total funds comprised of \$71,160 General Fund, \$47,440 in HAS Fee cash funds, and \$118,600 in federal funds in the Department’s Legal Services common policy line item. The increase in legal services funding will be reappropriated to the Department of Law (Law) for increased legal services the Department is experiencing. Additionally, the contractor costs would be used to hire a monitor outlined in the G.A. vs. Bimestefer settlement agreement.

This represents an increase of less than 0.5% of the Department’s FY 2023-24 Long Bill total funds appropriation.

Requires Legislation	Evidence Level	Impacts Another Department?	Rolloff of ARPA Funds?	Statutory Authority
No	NA	Yes Department of Law	No	25.5-4-207, C.R.S.

Current Program

The Department administers Health First Colorado (Colorado’s Medicaid program), the Child Health Plan Plus (CHP+), and other public health care programs for Coloradans who qualify. The Department receives legal services, such as legal representation, legal advice and opinions, contract review, and rule writing assistance from the Department of Law. Additionally, Law investigates and prosecutes Medicaid provider fraud and patient abuse and pursues civil recoveries and damages from providers for fraud and overbilling. These services are funded through the Legal Services Common Policy line item. The Department is billed based on a blended attorney/paralegal hourly rate developed by Law through the annual budget process and then trued-up for actual hours used by staff.

Problem or Opportunity

Legal Services

Medicaid legal cases have increased significantly as a result of fraud and audit requirements. Provider fraud has risen from 209 case referrals in FY 2021-22 to 503 referrals in FY 2022-23.¹ Since FY 2018-19, the Department has seen an increase in Law caseload and a 50% increase in billable hours for work unrelated to the Public Health Emergency (PHE). While this is “trued-up” through the common policy adjustments annually, Law continues to struggle in keeping up with current demand and subsequently the Department does not have the funding to support the increase to ongoing and active cases. The Department had billable hours of 9,793 in FY 2020-21, 12,838 in FY 2021-22, and 14,979 in FY 2022-23. The budget was estimated at 9,161, 9,087, and 10,885 billable hours, respectively. It is anticipated that the billable hours will continue to increase as provider enrollment increases. In addition, the number of provider appeals has increased over time. In 2021 there were approximately 100 provider appeals filed at the Office of Administrative Courts (OAC). In 2022, that increased to over 200 provider appeals. In 2023, that number is expected to be well over 320 cases.

¹ Improving Medicaid Fraud Prosecution Report, November 2023.
<https://hcpf.colorado.gov/sites/hcpf/files/2023%20Improving%20Medicaid%20Fraud%20Prosecution%20Report.pdf>

Litigation Monitoring

On January 14, 2022, the United States Department of Justice (DOJ) filed a Statement of Interest, Case No. 1:21-cv-2381,² an action on behalf of children with mental health disabilities in Colorado who allege they have experienced a revolving door of institutionalization due to the Department's failure to arrange and provide for medically necessary care. The plaintiffs allege that they are currently segregated, or at risk of segregation in, institutions because of the State's failure to provide them with intensive home and community-based services, in violation of Title II of the American Disabilities Act of 1990 (ADA). As an alternative to the lawsuit, the courts have authorized a monitoring and improvement plan that requires plaintiff's oversight.

Proposed Solution and Anticipated Outcomes

The Department requests a budget supplemental in FY 2023-24 of \$329,500 total funds comprised of \$184,850 General Fund, \$15,900 in Hospital Affordability & Sustainability (HAS) Fee cash funds, and \$164,750 federal funds. Additionally, the Department requests a budget amendment in FY 2024-25 and ongoing of \$237,500 total funds comprised of \$71,160 General Fund, \$47,440 in HAS Fee cash funds, and \$118,600 in federal funds in the Department's Legal Services common policy line item. The funding will be reappropriated to the Department of Law (Law) for support related to increased legal services the Department is experiencing. This request is based on an additional projected 620 hours in FY 2023-24 and 1,850 hours in FY 2024-25 and ongoing at a rate of \$128.02 per hour.

Legal Services

The Department is requesting \$79,500 in FY 2023-24 and \$237,200 in FY 2024-25 and ongoing in Legal Services to fund the needed legal representation from Law to address provider audit appeals reviews that greatly exceed the current appropriation. With the funding, Law will hire additional legal support to address the increase demand and backlog in provider audit and Medicaid caseloads.

Litigation Monitoring

The Department is requesting \$250,000 in FY 2023-24 with rollforward authority in FY 2024-25 in General Professional Services for litigation monitoring of the settlement agreement. The Department requires a contractor to independently monitor and provide analysis that the Department is following the conditions and terms of the settlement agreement. The Law's litigation staff is not an independent party and is outside of the scope of litigation support currently required for this case. This funding would allow the Department to hire a contractor in FY 2023-24 continuing into FY 2024-25 until the terms of the settlement are completed. Failure to provide adequate legal monitoring may result in judgments against the Department and the state.

² <https://www.justice.gov/crt/case/aa-v-bimestefer>

If the request is not funded, the Department may not have adequate resources for legal matters which may result in adverse decisions to include civil penalties and injunctive relief.

Assumptions and Calculations

Detailed calculations for this request are included in Appendix A. Where applicable, notable assumptions for each calculation have been shown in the “Proposed Solution” section of this document.

Legal Service rates were calculated based on the anticipated number of hours for additional legal support times the blended common policy rate of \$128.20. Litigation costs were based on anticipated contractual estimates for this type of service.

The Department assumes all costs would be eligible for 50% federal financial participation (FFP). Fund sources are calculated using the Department’s estimated caseload projections and the state share would be 30% General Fund and 20% HAS Fee cash fund for Legal Services and 50% General Fund for Litigation Monitoring.

Supplemental, 1331 Supplemental

The request is the result of new data. The Department received new data from Law on the actual increase in provider audits and Medicaid caseloads which have updated the Department’s expectation on Legal Services which will exceed current spending authority. Additionally, there is an unforeseen contingency need to fund a current litigation against the Department in which there is no spending authority.

S-14 BA-14 Legal Services
Appendix A: Assumptions and Calculations

Table 1.0 Summary by Line Item FY 2023-24									
Row	Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	(1) Executive Director's Office; (A) General Administration; Legal Services	\$79,500	0.0	\$23,850	\$15,900	\$0	\$39,750	50.00%	Table 2.0 Row B
B	(1) Executive Director's Office; (A) General Administration; General Professional Services	\$250,000	0.0	\$125,000	\$0	\$0	\$125,000	50.00%	Table 2.0 Row C
C	Total Request	\$329,500	0.0	\$148,850	\$15,900	\$0	\$164,750	50.00%	Row A + Row B

Table 1.1 Summary by Line Item FY 2024-25									
Row	Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	(1) Executive Director's Office; (A) General Administration; Legal Services	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Table 2.1 Row B
B	(1) Executive Director's Office; (A) General Administration; General Professional Services	\$0	0.0	\$0	\$0	\$0	\$0	0.00%	Table 2.1 Row C
C	Total Request	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Row A + Row B

Table 1.2 Summary by Line Item FY 2025-26									
Row	Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	(1) Executive Director's Office; (A) General Administration; Legal Services	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Table 2.2 Row B
B	(1) Executive Director's Office; (A) General Administration; General Professional Services	\$0	0.0	\$0	\$0	\$0	\$0	0.00%	Table 2.2 Row C
C	Total Request	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Row A + Row B

Table 1.3 Summary by Line Item FY 2026-27 and Ongoing									
Row	Line Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	(1) Executive Director's Office; (A) General Administration; Legal Services	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Table 2.3 Row B
B	(1) Executive Director's Office; (A) General Administration; General Professional Services	\$0	0.0	\$0	\$0	\$0	\$0	0.00%	Table 2.3 Row C
C	Total Request	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Row A + Row B

Table 2.0 Summary by Initiative FY 2023-24									
Row	Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	Health Care Policy & Financing								
B	Legal Services	\$79,500	0.0	\$23,850	\$15,900	\$0	\$39,750	50.00%	Table 3 Row C
C	Litigation Services	\$250,000	0.0	\$125,000	\$0	\$0	\$125,000	50.00%	Table 3 Row E
D	Total Request	\$329,500	0.0	\$148,850	\$15,900	\$0	\$164,750	50.00%	Sum of Row B thru Row C
E	Department of Law								
F	Legal Services to State Agencies								
G	Personnel Services	\$79,500	0.3	\$0	\$0	\$79,500	\$0	0.00%	Table 3 Row C
H	Total Request	\$79,500	0.3	\$0	\$0	\$79,500	\$0	0.00%	Row G

Table 2.1 Summary by Initiative FY 2024-25									
Row	Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	Health Care Policy & Financing								
B	Legal Services	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Table 3 Row C
C	Litigation Services	\$0	0.0	\$0	\$0	\$0	\$0	0.00%	Table 3 Row E
D	Total Request	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Sum of Row B thru Row C
E	Department of Law								
F	Legal Services to State Agencies								
G	Personnel Services	\$237,200	1.0	\$0	\$0	\$237,200	\$0	0.00%	Table 3 Row C
H	Total Request	\$237,200	1.0	\$0	\$0	\$237,200	\$0	0.00%	Row G

Table 2.2 Summary by Initiative FY 2025-26									
Row	Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	Health Care Policy & Financing								
B	Legal Services	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Table 3 Row C
C	Litigation Services	\$0	0.0	\$0	\$0	\$0	\$0	0.00%	Table 3 Row E
D	Total Request	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Sum of Row B thru Row C
E	Department of Law								
F	Legal Services to State Agencies								
G	Personnel Services	\$237,200	1.0	\$0	\$0	\$237,200	\$0	0.00%	Table 3 Row C
H	Total Request	\$237,200	1.0	\$0	\$0	\$237,200	\$0	0.00%	Row G

Table 2.3 Summary by Initiative FY 2026-27 and Ongoing									
Row	Item	Total Funds	FTE	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FFP Rate	Notes/Calculations
A	Health Care Policy & Financing								
B	Legal Services	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Table 3 Row C
C	Litigation Services	\$0	0.0	\$0	\$0	\$0	\$0	0.00%	Table 3 Row E
D	Total Request	\$237,200	0.0	\$71,160	\$47,440	\$0	\$118,600	50.00%	Sum of Row B thru Row C
E	Department of Law								
F	Legal Services to State Agencies								
G	Personnel Services	\$237,200	1.0	\$0	\$0	\$237,200	\$0	0.00%	Table 3 Row C
H	Total Request	\$237,200	1.0	\$0	\$0	\$237,200	\$0	0.00%	Row G

S-14 BA-14 Legal Services
Appendix A: Assumptions and Calculations

Table 3 Legal Services Hours Calculation				
Row	Item	FY 2023-24	FY 2024-25 and Ongoing	Notes
Legal Services				
A	Legal Services Provider Appeal Hours	620	1,850	Additional legal support hours needed
B	Blended Legal Services Rate	\$128.20	\$128.20	Legal Services billing rates
C	Subtotal Legal Services Needed	\$79,500	\$237,200	Row A * Row B
Litigation Needs				
D	Litigation Monitoring Contractor	\$250,000	\$0	Contractor costs with Rollforward Authority
E	Subtotal Litigation Contractor Needed	\$250,000	\$0	Row D
F	Total Request	\$329,500	\$237,200	Row C + Row E