

STATE OF COLORADO

DEPARTMENT OF HEALTH CARE POLICY & FINANCING

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Bill Owens
Governor

Stephen C. Tool
Executive Director

November 1, 2006

The Honorable Bernie Buescher, Chairman
Joint Budget Committee
200 East 14th Avenue, Third Floor
Denver, CO 80203

Dear Representative Buescher:

Enclosed please find a report to the Joint Budget Committee on the status of Health Care Policy and Financing's third party recoveries. This report is provided pursuant to Footnote 20a of the Long Bill, HB 06-1385:

It is the intent of the General Assembly that the Department comply with federal regulations that the Medicaid program be the payer of last resort to the fullest extent possible (42 CFR 433.138 and 42 CFR 433.139). If the State Auditor finds that the Department is deficient in collecting from third party payers, the Department is authorized to seek federal waiver authority to pay providers first and then seek reimbursement from the obligated third party payer. The Department is requested to submit a report to the Joint Budget Committee by November 1, 2006, on the effectiveness of its third party collections and how the Department plans to address any recommendations contained in the State Auditor's review of this issue. The Department is also requested to include a cost benefit analysis of when it is in the state's interest to pursue third party recovery.

The enclosed report includes a short summary of the types of third party recoveries performed by the Benefits Coordination Section of the Department. In addition, the report shows the progress made by the Department in recoveries from fiscal year 2005 to fiscal year 2006. Finally, the report explains the analysis undertaken to determine when it is in the interests of the State to pursue third party recoveries. The Department has not seen any recommendations yet from the State Auditor's review of the Department's third party recovery efforts. The Department believes the review is ongoing. The Department intends, however, to seriously review and address each recommendation addressed by the State Auditor.

Honorable Bernie Buescher

November 1, 2006

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Questions regarding the *footnote 20a* report can be addressed to John Bartholomew, Budget Director. His telephone number is (303) 866-2854.

Sincerely,

Stephen C. Tool
Executive Director

SCT:gha

Enclosure(s)

Honorable Bernie Buescher

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Cc: Senator Abel Tapia, Vice-Chairman, Joint Budget Committee
Senator Moe Keller, Joint Budget Committee
Senator Dave Owen, Joint Budget Committee
Representative Jack Pommer, Joint Budget Committee
Representative Dale Hall, Joint Budget Committee
Senator Joan Fitz-Gerald, President of the Senate
Senator Ken Gordon, Senate Majority Leader
Senator Andy McElhany, Senate Minority Leader
Representative Andrew Romanoff, Speaker of the House
Representative Alice Madden, House Majority Leader
Representative Mike May, House Minority Leader
John Ziegler, JBC Staff Director
Melodie Beck, JBC Analyst
Henry Sobanet, Director, Office of State Planning and Budgeting
Luke Huwar, Budget Analyst, OSPB
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John Bartholomew, Budget Director
Lisa Esgar, Operations and Finance Office
Barbara Prehmus, Medical Assistance Office
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HCPF Budget Data Library, HCPF Division

COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

BENEFITS COORDINATION SECTION THIRD PARTY RECOVERIES

The Benefits Coordination Section of the Colorado Department of Health Care Policy and Financing diligently strives to recover monies from responsible third parties that had a priority responsibility to pay these costs before Medicaid. The primary kinds of recoveries include: (1) tort and casualty; (2) trust recovery and repayment of Medicaid expenditures from trusts; (3) estate recovery; and (4) post pay recoveries and retractions from providers and Medicare. Each of these areas are discussed below and include information on the most recent fiscal year recoveries and the cost benefit analysis used by the Benefits Coordination Section in determining which third party recoveries are in the State's best interests.

Tort/Casualty Recovery

The Medicaid program attempts to recover payments it has made on behalf of an individual injured or harmed by a third party. The third party may be responsible for causing an automobile accident, bicycle or pedestrian accident, slip and fall, product liability injury, job related injury, medical malpractice or several other types of accidents and injuries where the third party is at fault. Frequently, these responsible third parties have some type of insurance that may help satisfy some portion of the medical costs related to the injury or accident. Benefits Coordination staff manages these recovery activities and confer with the Colorado Attorney General's staff in difficult legal cases. As a result of these efforts, the program recovered **\$3,383,297** in FY 05-06.

In addition, the Department utilizes a contractor to pursue tort recoveries previously unknown to the Department, as well as assume the responsibility for the non-reported workers' compensation cases. The contractor is paid a contingency fee of 8.25% of the amount it recovers under the tort/casualty program. This contract recovered the gross amount of **\$118,857** in FY 05-06. The total amount recovered from tort /casualty in FY 05-06 was **\$3,502,154**.

The Medicaid program attempts to recover payments from all responsible third parties and their insurers who are liable for torts and casualties. Benefits Coordination staff generally do not seek recovery from cases with recovery liens under \$300. The staff also do not pursue litigation that may result in significant fees and costs to the State with little chance of recovery. The most likely example of this situation is a product liability case involving expensive experts and other costs with very little chance for likelihood of success on its merits. These decisions are made by the Department management after consultation from the Attorney General's Office and the Benefits Coordination staff.

Trust Recovery and Repayment of Medicaid Expenditures

Income and disability qualifying trusts provide a mechanism for individuals, whose incomes and/or assets would otherwise make them ineligible, to qualify for Medicaid. For income trusts, the client's income is placed in a trust. The trustee distributes the trust assets according to the rules defining these types of trusts. These disbursements include patient payment to nursing facilities, patient allowances, spousal allowances, and other approved expenditures. The Department is the beneficiary of these trusts. When the trust is no longer required for Medicaid eligibility the balance of the trust is paid to Medicaid. Disability trusts are created from settlement agreements and/or client's assets to provide a resource for the client's use for non-Medicaid covered services. The Medicaid program pays for the client's medical care and is the beneficiary of the trust monies when the trust is no longer required for Medicaid eligibility. The repayments of Medicaid expenditures also include a client's voluntary repayment from excess resources as part of spend down to meet eligibility resource requirements to retain Medicaid eligibility. In FY 05-06, **\$3,036,906** was recovered. The Benefits Coordination Section administers the approval, closing, and accounting for these trusts.

The Medicaid program attempts to recover all trust amounts up to the total cost of medical expenditures when the trust is no longer needed for Colorado Medicaid. There are limited times when the amount of potential recovery from a trust is less than the cost to track it down and do the recovery. When the cost out-weighs the benefits, the Benefits Coordination staff may elect to forgo the potential recovery.

Estate Recovery

The estate recovery program, operated by a contractor under the supervision of Benefits Coordination staff, recovers funds from estates and places Tax Equity and Financial Responsibility Act of 1992 liens on real property held by Medicaid clients in nursing facilities. This program is a federally mandated program that requires the State to recover the cost of benefits paid on behalf of a Medicaid client from their estate. The Contractor places liens on property owned by the Medicaid client if it has been determined that this individual is unlikely to return home from a nursing facility. In addition, upon the death of certain Medicaid clients, the contractor files a claim against the estate of this client for the Medicaid benefits paid on behalf of the client. The contractor is paid a contingency fee of 10.90% of the amount it recovers under estate recovery program. The total estate recoveries for FY 05-06 were **\$5,740,617**.

Pursuant to the Colorado State Plan, cases for recovery under \$500 are not pursued. If the public administrator, personal representative or executor identifies the State as a creditor and makes notification of probate filing, a claim may be made even if under the \$500 threshold.

Post Pay Recoveries and Retractions

Third party liability post-pay recovery utilizes a contractor to recover the cost of benefits paid on behalf of a Medicaid client where a third party was liable for these payments. This post-pay recovery contract encompasses several separate and distinct recovery programs. The Contractor administers the following post-pay recovery projects under this contract:

- Medicare recoveries
- Commercial insurance recoveries
- Provider retractions
- Cost avoidance

The State, through its fiscal agent, retracts the value of Medicaid-paid claims if a third party is later identified as a primary payer. These recoveries, known as credits or retractions, are collected from providers when other health coverage is discovered subsequent to payment by the Medicaid program.

The State contracts with a contingency-based contractor to identify recovery opportunities through the use of expanded data matches. The State retracts the value of Medicaid-paid claims if a third party is later identified as a primary payer. The contractor is paid a contingency fee of 6.15% of the amount it recoups under the post pay recoupment program. This contract recouped a gross amount of **\$12,446,404** in FY 05-06.

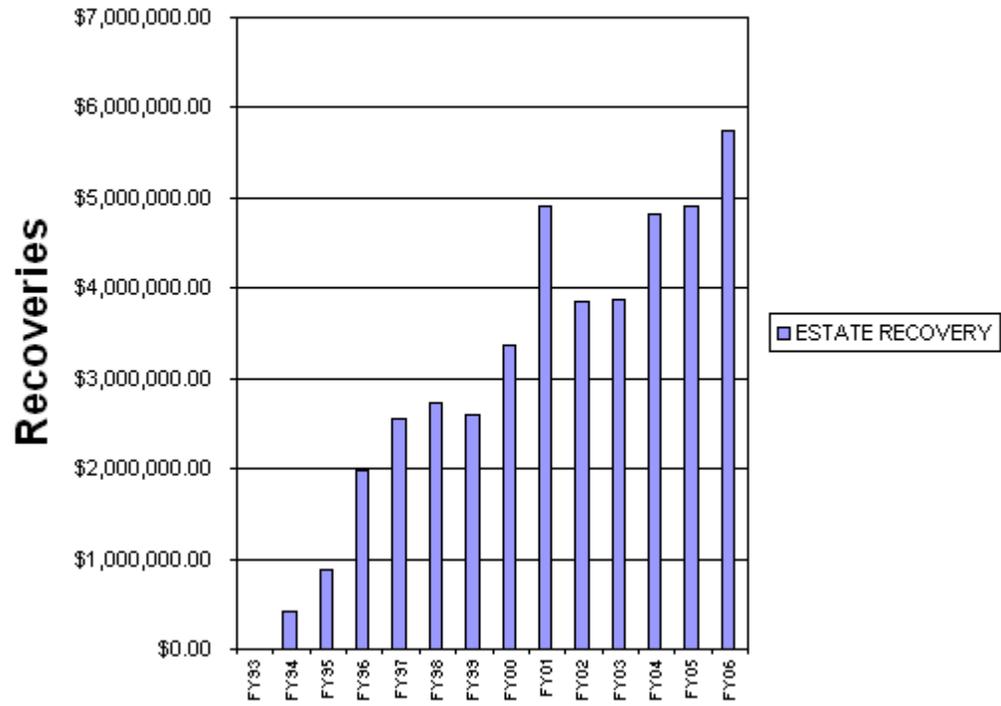
Summary of Recoveries for FY 04-05 and FY 05-06

Below is a summary of the recoveries for FY 04-05 and FY 05-06:

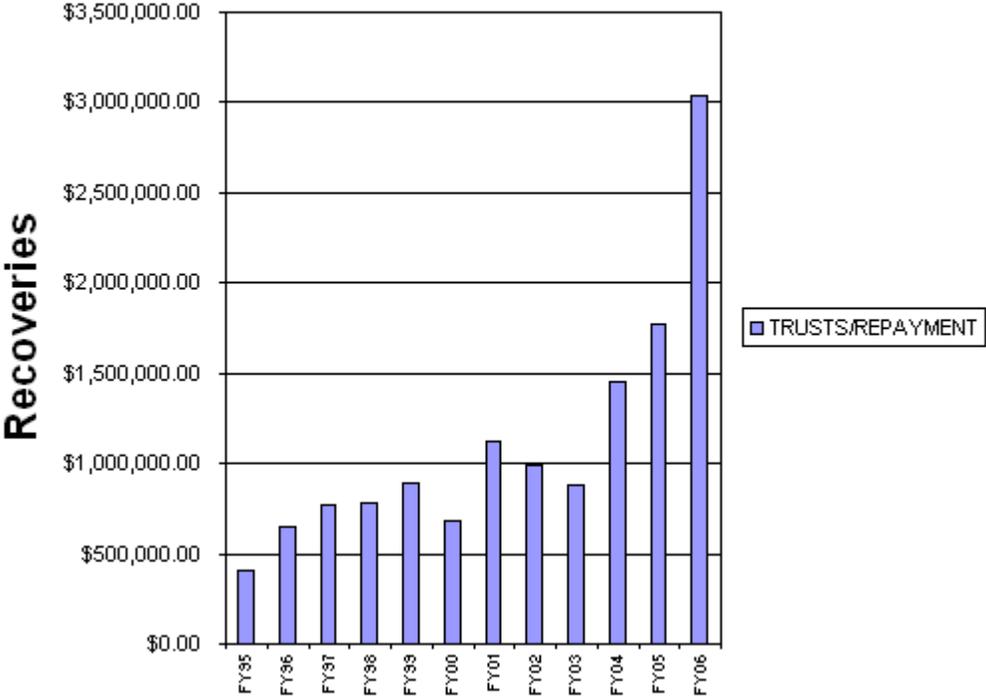
Program	FY 04-05	FY 05-06
Tort/Casualty Recovery	\$3,072,421	\$3,502,154
Trusts Recovery	\$1,766,756	\$3,036,906
Estate Recovery	\$4,918,434	\$5,740,617
Post-Pay Recovery	\$8,393,451	\$12,446,404
TOTAL	\$18,151,062	\$24,726,081

Total recoveries for FY 05-06 have increased by a total of \$6,575,019 or 36% above total recoveries for FY 04-05. The additional recoveries in FY 05-06 have been incorporated into the Department's Budget Request for Medical Services Premiums for FY 06-07. The attached charts demonstrate the progress of the recovery programs.

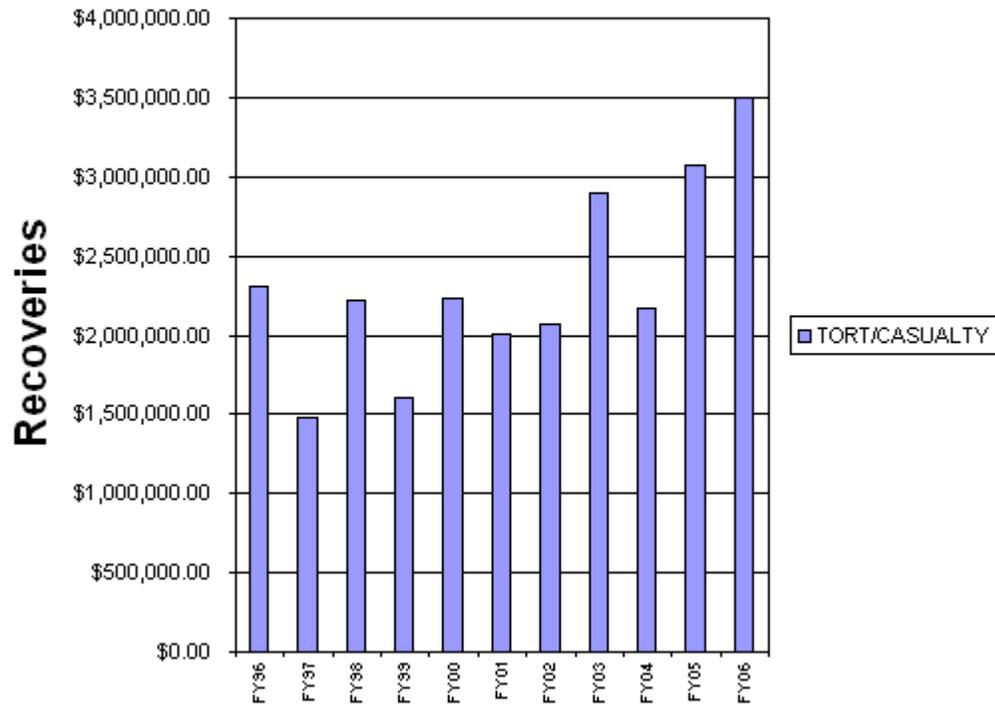
ESTATE RECOVERY

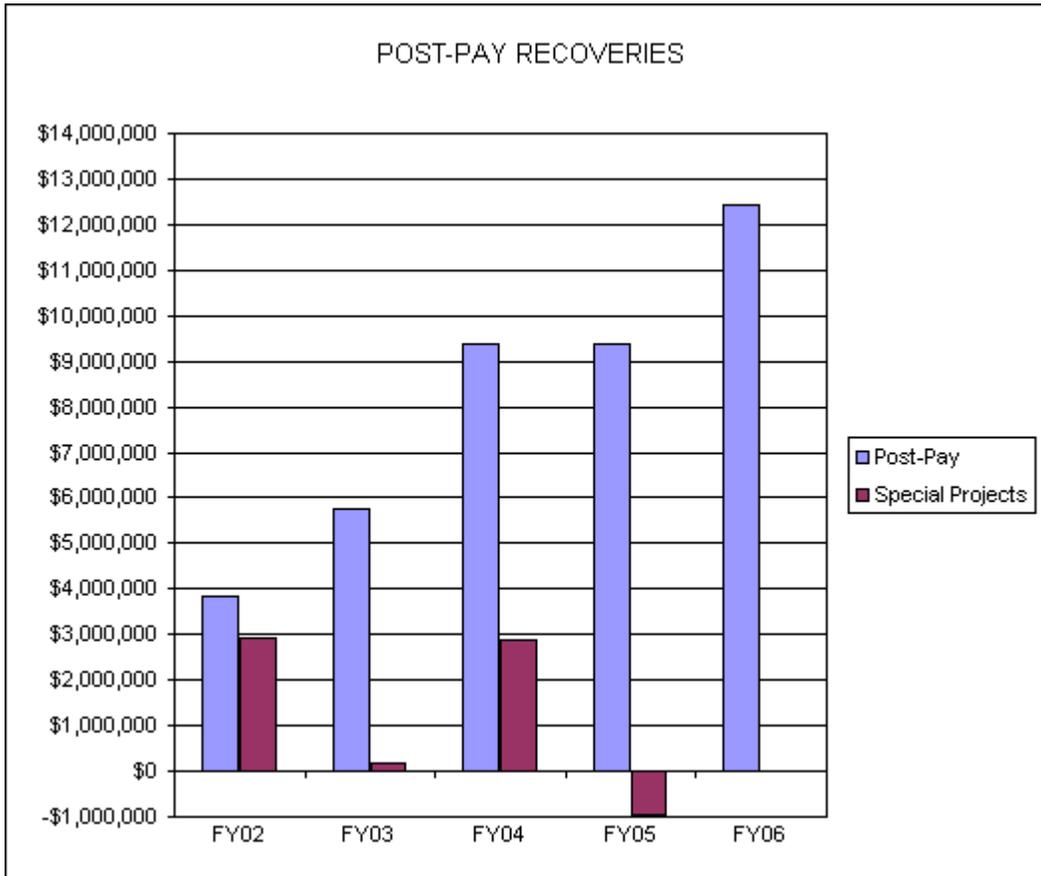


TRUSTS/REPAYMENT



TORT/CASUALTY





- 2002 Special Projects – FFP maximization of Family Planning Expenditures **\$2,928,111** adjusted/recovery from CMS.
- 2003 Special Projects – Date-of-Death Project recoveries **\$155,964**.
- 2004 Special Projects – FFP maximization of Family Planning Expenditures **\$2,901,733** adjustment/recovery from CMS.
- 2005 Special Projects – CMS disallowed **\$971,689** of 2002 FFP maximization of Family Planning Expenditures adjustment/recovery recognized in 2002.