

# NEBRASKA HEALTH CARE CASH FUND AND RELATED FUNDS

Prepared for the LR 517 Interim Study 2016

# **A Report on the Nebraska Health Care Cash Fund and the Related Medicaid Intergovernmental Trust Fund and the Tobacco Settlement Trust Fund**

## **Purpose**

This report provides an overview of the Nebraska Health Care Cash Fund and related funds, the Nebraska Tobacco Settlement Trust Fund and the Nebraska Medicaid Intergovernmental Transfer Trust Fund.

## **The Health Care Cash Fund**

The Nebraska Health Care Cash Fund receives funds from two sources -- the Nebraska Tobacco Settlement Trust Fund and the Nebraska Intergovernmental Transfer Trust Fund. These funds will be described later in this report.

LB 692 passed in the 2001 Legislative Session provided the current policy framework for the use of the Nebraska Health Care Cash Fund and established the tobacco settlement and intergovernmental transfer funds as the two sources of revenue for the fund. The intent of LB 692 was to use the funds for health-related purposes.

Section 71-7606 states the purpose of the Nebraska Health Care Cash Fund:

*(1) The purpose of the Nebraska Health Care Funding Act is to provide for the use of dedicated revenue for health-care-related expenditures.*

*(2) Any funds appropriated or distributed under the act shall not be considered ongoing entitlements or obligations on the part of the State of Nebraska and shall not be used to replace existing funding for existing programs.*

*(3) No funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion, or research or activity of any kind involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells or for the purpose of obtaining other funding for such use.*

*(4) The Department of Health and Human Services shall report annually to the Legislature and the Governor regarding the use of funds appropriated under the act and the outcomes achieved from such use.*

The state investment officer is charged with the responsibility of deciding the amounts to be transferred from each fund, equal to the amount specified in statute. Every even-numbered year, the State Investment Officer is also charged with reporting to the Legislature information on the sustainability of the fund

The Legislature establishes in statute the amount in total to be transferred into the Nebraska Health Care Cash Fund annually. The amount transferred is based on statutory requirements and the appropriations set by the Legislature. In FY 17, the transfer amount is \$60.3 million. LB 969 passed in the 2012 Session harmonized the handling of the funds in the Tobacco Settlement Fund, Medicaid Intergovernmental Fund and the Health Care Cash Fund. Prior to the passage of LB 969, the Tobacco Settlement Fund, Medicaid Intergovernmental Transfer Fund and Health Care Cash Fund were handled in different and disjointed ways; some through transfers into cash funds and others through appropriations. The different way in which funding was accessed led to confusion when discussing the funds with policymakers. With the passage of LB 969, the transfers were eliminated and all distributions are handled through appropriations from the Health Care Cash Fund.

A new source of revenue was enacted in 2015. Cigarette tax that was earmarked for the Nebraska Public Safety System was partially redirected to the Health Care Cash Fund when those funds were no longer needed for the system. The allocation to the Health Care Cash Fund is \$1,250,000. Of that amount, one million was added to the biomedical research funding and \$250,000 is transferred to the University of Nebraska Medical Center for public health workforce training.

## **Related Funds**

***Although the tobacco settlement and intergovernmental funds are called trust funds in statute, they are not trust funds. Trust funds are assets held in trust and their use is governed by the conditions of the trust. Neither the tobacco settlement nor the intergovernmental transfer fund is governed by the conditions of a trust. Use of the funds is strictly the prerogative of the Legislature.***

## **Nebraska Tobacco Settlement Trust Fund**

In 1998, Nebraska along with more than 40 other states and territories entered into a settlement agreement with tobacco manufacturers. The basis of the settlement was reimbursement to the states for additional Medicaid costs the states incurred treating smoking-related illnesses and diseases.

The terms and conditions of the settlement are contained in the Master Settlement Agreement. This agreement contains a schedule of payments the participating manufacturers are required to make to each of the states in perpetuity. Payments are adjusted based on an annual inflation and volume adjustment. Those payments are deposited in this Nebraska Tobacco Settlement Trust Fund. The annual revenue from the settlement is approximately \$36 to \$37 million per year.

The state must meet certain conditions of compliance contained in the Master Settlement Agreement. The Attorney General is responsible for ensuring compliance. The Department of Revenue assists with the compliance activity. ***Once the state receives the funds, there are no restrictions on the use of the funds.***

All states are required to enforce provisions of the settlement relating to Non-Participating Manufacturers (NPM). Failure to comply with this provision can result in the loss of up to the entire MSA payment for any given year when a state has been determined to have not met the enforcement requirements.

The balance in the fund as of June 30, 2016, is \$356.8 million.

### **Nebraska Medicaid Intergovernmental Transfer Trust Fund**

Until 2005, the federal government allowed states to establish disproportionate share pools for publicly owned nursing facilities. Payments to the facilities in the pool were allowed to be reimbursed up to the aggregate amount allowed under the Medicare upper payment limit. Since Nebraska reimbursed the facilities at a rate lower than aggregate amount allowed under the upper limit, a process was established to return the excess payments to the state. The State General Fund was reimbursed in full. Each participating facility received \$10,000 to cover administrative costs and for an incentive to participate in the intergovernmental transfer process.

The excess federal funds were placed in the Nebraska Medicaid Intergovernmental Trust Fund. Since this loophole allowed states to receive more federal Medicaid funds than the states' respective match rates, the federal government phased out the process that enabled states to take advantage of this loophole. Since the loophole was closed in 2005, the only revenue source for this fund is investment earnings.

The balance in the fund as of June 30, 2016, is \$82.2 million.

### **Sustainability Projections**

The state investment officer is required to report to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. The latest report by the Investment Council is attached to this report or can be accessed on the Clerk of the Legislature's website at:

[http://www.nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Investment\\_Council/139\\_20160915-171323.pdf](http://www.nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Investment_Council/139_20160915-171323.pdf)

In 2016, Investment Council report to the Legislature showed the sustainability of the fund to be at-risk at the current expenditure levels. LB 969 passed in the 2012 Session amended the transfers into the Health Care Cash Fund, decreasing the amounts by five percent each year starting in FY 14 through FY 16 then remaining at that level, thereafter. The bill also stated Legislative intent that no new programs be funded through the Health Care Cash Fund until all programs with an appropriation in FY 13 are restored to those funding levels. The transfer amount was not decreased and the statute was amended to remove the language.

The Legislature will need to establish priorities for the fund and reduce the total amount of spending from the Health Care Cash Fund if it is to address the sustainability issue provided by the Investment Council.

### **Programs Funded Through the Health Care Cash Fund**

The programs funded by the Health Care Cash Fund by budget programs in the FY 2016-17 biennium are shown below:

Health Care Cash Fund Appropriation				FY 16	FY 17
AG	Prog	Activity			
1	3	122	Legislative Council	75,000	75,000
2	11	507	Attorney General	395,807	395,807
3	16	102	Revenue Auditor	316,482	316,482
4	16	164	Gamblers' Assistance	250,000	250,000
5	25	30	Tobacco Settlement and Control	2,570,000	2,570,000
6	25	33	Administration	450,331	450,331
7	25	38	Behavioral Health	10,599,660	10,599,660
8	25	179	Public Health Staff	320,000	320,000
9	25	250	Office of Juvenile Services	1,000,000	1,000,000
10	25	344	Children's Health Insurance	6,835,700	6,835,700
11	25	347	Public Assistance	810,000	810,000
12	25	348	Medicaid	5,215,896	5,215,896
13	25	354	Behavioral Health Rate Increase	2,734,444	2,734,444
14	25	424	Developmental Disability	5,000,000	5,000,000
15	25	502	Public Health	9,030,000	9,030,000
16	25	514	Health Aid	200,000	200,000
17	25	621	Stem Cell Research	450,000	450,000
18	25	623	Biomedical Research	14,000,000	14,000,000
19	51	781	Canabis Study	250,000	250,000
			Total	60,503,320	60,503,320
			Transfer Amount	60,300,000	60,300,000
			Balance	(203,320)	(203,320)
			From the cigarttee tax:		1,250,000
20	25	623	Biomedical research		1,000,000
21	502	502	Public Health Departments		200,000
22	51		UNMC Public Health Workforce Training (Funds Bill Transfer)		50,000

The following describes the programs funded by the Health Care Cash Fund by programmatic area:

**Legislative Council:** This funding is provided for ongoing health-related research and public policy development conducted by the Health and Human Services Committee. Such funds may be used for, but shall not be limited to, hiring temporary legal research assistance, consulting and research contracts. (Agency 3, Program 122) \$75,000

**Attorney General:** The Attorney General is responsible for enforcement of the provision of the Master Settlement Agreement. These funds are used to ensure compliance. (Agency 12, Program 507) \$395,807

**Revenue Auditor:** Similar to the funding provided to the Attorney General, the revenue auditor ensures compliance with the Master Settlement Agreement. (Agency 16, Program 102) \$316,482

**Gamblers' Assistance:** use. T The program was moved to the Department of Revenue in 2013.(Agency 16, Program 164) \$250,000

**Tobacco Prevention and Control:** The funding is used for a comprehensive statewide tobacco-related public health program which includes, but is not limited to (1) community programs to reduce tobacco use, (2) chronic disease programs, (3) school programs, (4) statewide programs, (5) enforcement, (6) counter marketing, (7) cessation programs, (8) surveillance and evaluation and (9) administration. (Agency 25, Program 30) \$2,750,000

**Respite Care:** Aid to the six regional services area is provided for coordination of respite services and direct funding of services as well. Of the \$1,214,643 in total funds, \$404,643 is provided to the regional service areas for personnel and \$810,000 for aid. (Agency 25, Programs 033 and 347) \$1,214,643

**EMS Technicians:** LB 1033 passed in 2002, authorized emergency medical technicians-intermediate, emergency medical technicians and-paramedics to perform out-of-hospital procedures in a health clinic or hospital when supervised by a registered nurse, physician or physician assistant. An additional part-time investigator was funded from the Health Care Cash Fund to handle additional investigations. (Agency 25, Program 33) \$13,688

**Parkinson's Disease Registry:** The registry is the only statewide Parkinson's registry in the country. Originally funded with general funds, state law was changed in 2001 prohibiting general fund support and authorizing cash funds to pay for the registry. A grant from the Michael J. Fox Foundation and another source covered the cost of operations until it was exhausted. In 2009, an appropriation from the Health Care Cash Fund was provided to cover the operating costs. (Agency 25, Program 33) \$26,000

**Behavioral Health Provider Rates:** Behavioral health provider rates were increased in Medicaid, the regions, juvenile justice and child welfare in FY 2002 and FY 2003 using the Health Care Cash Fund. Since that time, no additional increase has been provided from the HCCF. The original amounts are part of the base funding for each of these programs. (Agency 25, Programs 38, 348, and 354) \$10,100,000

**Mental Health and Substance Abuse Treatment Service Capacity:** This funding was provided to increase service capacity by the mental health and substance abuse regions and in the juvenile justice area. One million a year is earmarked for juvenile justice and \$6.5 million for the regions. It is now part of the base for both programs. (Agency 25, Programs 38 and 250) \$7,500,000

**Emergency Protective Custody:**Funding is provided to the forprotective(Agency 25, Program 38)

**Public Health:** Funding is distributed on a formula basis to the 18 local public health departments to provide core public health functions include assessment and policy

development, prevention of illness and disease, and assurance of services including public health nursing, health education, and environmental health services. The distribution formula is as follows:

- a) \$100,000 for three-county departments with a total population of 30,000 to 50,000
- b) 125,000 to single-county departments or multiple-county departments with three or more counties departments with a total population of more than 50,000 up to 100,000
- c) \$150,000 to departments with a total population of more than 100,000.
- d) Any funding not distributed under the formula shall be equally distributed among all departments receiving funding under the above formula distribution.

Funding cannot be used to replace existing county funding.

There is \$100,000 for staff and operating expenses. The appropriation increased by \$200,000 for state aid from the cigarette tax revenue. (Agency 25, Program 33 and 502) \$5,705,000

**Minority Health:** Minority health funding is for initiatives that target, but is not limited to, infant mortality, cardiovascular disease, obesity, diabetes and asthma. It is distributed in the following manner:

- a) \$1,526,000 is for counties in the first and third congressional districts with a minority population equal to or exceeding 5%
- b) \$1,349,000 is divided equally among federally qualified health centers (FQHCs in the Second Congressional District.
- c) \$220,000 is also provided for minority health satellite offices in the second and third congressional districts.

(Agency 25, Program 33 and 502) \$3,095,000

**Federally Qualified Health Centers:** This funding is for the seven community health centers funded through Federal Program 330, Public Law 104-299, the federal Health Centers Consolidation Act of 1996. Each center is to receive an amount to be distributed proportionally based on the previous fiscal year's number of uninsured clients as reported on the Uniform Data System Report provided to the United States Department of Health and Human Services Bureau of Primary Health Care. (Agency 258, Program 502) \$750,000

**Children's Health Insurance Program (CHIP):** The state match for CHIP was initially funded with \$25 million from the Health Care Cash Fund. As the initial \$25 million was exhausted, the Legislature in FY 04 provided \$1.3 million from the HCCF to bring the total to \$5 million. In subsequent years the appropriation was increased to \$6,835,700 and is part of the base. Increases in the appropriations above this amount in the state's share of the program are picked up by the General Fund. (Agency 25, Program 344) \$6,835,700

**Medicaid Smoking Cessation:** LB 959 passed in 2008, appropriated funds to the Medicaid Program for a state plan amendment to include smoking cessation as a Medicaid-covered service. Although the bill saved general fund dollars beginning in 2010, the initial funding needed to provide the services was paid from the Health Care Cash Fund and is now part of the base. (Agency 25, Program 348) \$450,000

**Autism Treatment:** One million dollars a year for five years was to be used for intensive behavioral services under Medicaid for children with autism. The transfer of up to \$1 million a year for five years was contingent upon the receipt of no less than one dollar of private funds for every two dollars from the Health Care Cash Fund. The organization that had intended to contribute private matching dollars informed the state that no matching funds will be donated, so this funding has not and will not be used for this purpose. (Agency 25, Program 348) \$0

**Developmentally Disabled Services:** (Agency 25, Program 424) \$5,000,000

**Stem Cell Research:** LB 606 passed in 2008, created the Stem Cell Research Act. Grants are awarded to Nebraska institutions or researchers for the purpose of conducting non-embryonic stem cell research. Originally the funding was \$500,000. This was reduced in 2010 to \$450,000. (Agency 25, Program 621) \$450,000

**Biomedical Research:** The University of Nebraska Medical Center, Creighton Medical Center, the University of Nebraska and Boys Town Research Hospital are eligible for this funding. Twenty-four percent of the appropriated funds shall be distributed annually to the University of Nebraska, sixteen percent to Creighton and Boys Town combined. Sixty percent is distributed to the eligible institutions based on the percentage of all funds expended by such institutions from the National Institutes of Health of the United States Department of Health and Human Services in the prior year as contained in a certified report of such excluding any such funds expended for research involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells. At least \$700,000 of such appropriated funds shall be used annually for research to improve racial and ethnic minority health. In 2015, the amount increased by \$1 million from the cigarette tax. (Agency 25, Program 623) \$15,000,000

**Poison Control Center:** The funding from the Health Care Cash Fund provides \$200,000 for the Poison Control Center at the University of Nebraska Medical Center. Until 2003, Children's Hospital covered the costs of operating the center. After they decided they could no longer support it, the operations were moved to UNMC. Initially, funding was provided from federal bioterrorism grants, Creighton Medical Center and UNMC. When the bioterrorism funding decreased and Creighton withdrew support, attempts were made to secure funding from other hospitals and insurance companies. However, the other entities declined to contribute. UNMC requested funding from the state so the poison control center could continue to operate. The services are provided to individuals, medical professionals and hospitals free of charge and are documented to save health care dollars through avoidance of emergency room visits and getting the appropriate treatment to patients who are poisoned. (Agency 51, Program 781) \$200,000

**Medical Cannabidiol Pilot Study:** LB 390 passed in the 2016 Session requires the University of Nebraska Medical Center to study the efficacy of cannabidiol to treat patients with intractable seizures and treatment resistant seizures. (Agency 51, Program 751) \$250,000

**Public Health Workforce Training:** This funding is provide to the College of Public Health at the University of Nebraska Medical Center for workforce training. It was added from the cigarette tax revenue. (Agency 51, Program 751) \$50,000