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To: Members of the State Board of Health

From: Richard Hull, Budget Director *RH*
Administration and Support Division

Through: Chuck Bayard, Chief Financial Officer *CB*
Administration and Support Division

Date: June 17, 2015

Subject: Request for Rulemaking Hearing pertaining to the repeal of 6 CCR 1014-2,
Tobacco Settlement Monitoring and Reporting Rules.

The Division is proposing to repeal the rules pertaining to Tobacco Settlement Monitoring and Reporting. Senate Bill 15-189 repeals current law requiring the State Board of Health and the Department of Public Health and Environment (CDPHE) to monitor programs receiving funding from the state's annual Tobacco Master Settlement Agreement (MSA) payment. Under current law, the CDPHE is required to prepare a Tobacco MSA Programs Annual Report summarizing funding and operations of MSA programs and evaluating their effectiveness. The bill repeals the statute requiring the report, as well as the requirement that the Joint Budget Committee and the House and Senate Health and Human Services Committees meet to review the report. Senate Bill 15-189 was signed into law on April 16, 2015, and the Department is coordinating the repeal of this requirement with MSA recipient programs. Please note that although these monitoring and reporting requirements are being eliminated, state agencies housing MSA programs will continue to provide information through other reporting mechanisms.

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY

For Repeal of
6 CCR 1014-2, Rules Concerning Tobacco Settlement Monitoring and Reporting
June 17, 2015

Basis and Purpose:

The Tobacco Master Settlement Agreement (MSA) was signed in 1998 by 46 states, including Colorado. As part of the agreement, states consented to release participating tobacco manufacturers from health-related claims associated with the use, manufacture, and marketing of tobacco products in return for perpetual annual payments from the manufacturers. Since 2001, the CDPHE has prepared a report summarizing the funding and operations of each state program that receives funding from the annual MSA payment.

In the report for FY 2013-14 (dated January 15, 2015) the State Board of Health recommended that the report be eliminated. Senate Bill 15-189 repeals the requirement that the State Board of Health and the Department of Public Health and Environment (CDPHE) monitor and report on programs receiving funding from the state's annual Tobacco MSA payment.

The Rules concerning Tobacco Settlement Monitoring and Reporting were promulgated to support CDPHE's responsibilities for this requirement. Through SB 15-189, the Board of Health and the Department no longer have statutory authority for perform these duties and the Board of Health is no longer authorized to promulgate these rules.

Specific Statutory Authority:

The MSA Monitoring and Reporting rules are being repealed pursuant to SB15-189. The existing rules were promulgated pursuant to: Section 25-1-108.5, C.R.S. (repealed). Related statutes are:

Section 23-20-208, C.R.S. (amended);
Section 24-75-1105, C.R.S. (repealed);
Section 25-3.5-806, C.R.S. (amended);
Section 25.5-5-308, C.R.S. (amended);
Section 26-6.4-108, C.R.S. (amended), and;
Section 28-5-709, C.R.S. (repealed).

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes, the bill number is SB15-189; rules are authorized required.
 No

Is this rulemaking due to a federal statutory or regulatory change?

Yes
 No

Does this rule incorporate materials by reference?

Yes
 No

Does this rule create or modify fines or fees?

Yes
 No

REGULATORY ANALYSIS
For Proposed Repeal of
6 CCR 1014-2, Tobacco Settlement Monitoring and Reporting Rules
June 17, 2015

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The Tobacco Master Settlement Agreement (MSA) Programs annual report has been developed by the Department in collaboration with recipients of MSA funds since 2001. The repeal of this report removes a duplicative reporting burden across state agencies that receive MSA funds, eliminates the requirement for the Department to develop the report and eliminates the State Board of Health's obligation to review and enter recommendations concerning the use of MSA funds. State agencies will continue to report to the General Assembly, including the Joint Budget Committee, and the Office of State Planning and Budgeting as they would with other fiscal matters. The repeal of the rules does not negatively impact any classes.

2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

The repeal of this report and the related rule is efficient. State agencies, including the Colorado Department of Public Health and Environment, can report on the use of MSA funds similarly to other fiscal reporting. The repeal of the report and the related rule eliminates the Department's obligation to compile the data of numerous state agencies and removes the obligation placed on the State Board of Health to evaluate whether state agencies were appropriately using MSA funds.

3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

Funds allocated to the department to compile the report have been eliminated. The savings to the reporting agencies are minimal.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Inaction is not an option as the Board of Health now lacks the statutory authority to promulgate rules for Tobacco Master Settlement Agreement monitoring and reporting.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There is no other less costly or less intrusive method to repeal the Tobacco Settlement Monitoring and Reporting rules. The rules are no longer authorized by statute.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

There are no other alternative methods for achieving the purpose of this rulemaking.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

Senate Bill 15-189, signed into law on April 16, 2015, serves as the basis for the request to repeal these rules.

STAKEHOLDER COMMENT
For Proposed Repeal of
6 CCR 1014-2, Tobacco Settlement Monitoring and Reporting Rules
June 17, 2015

The following individuals and/or entities were included in the development of these proposed rules:

The Department has developed the proposed repeal.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

- HCPF- Children's Health Plan Plus (CHP+) (Including the Supplemental Account)
- HCPF- Children's Autism Program
- CDHS- Colorado Nurse Home Visitor Program
- CDHS- Tony Grampas Youth Services Program
- CDHS- Offender Mental Health Services
- CDHS- Substance Abuse Primary Prevention and Treatment
- CDHS- Child Mental Health Treatment Program
- CU Health Sciences Center- University of Colorado- Anschutz Medical Campus
- CDPHE- ADAP- Ryan White AIDS Prevention Drug Assistance
- CDPHE-Local Public Health Planning and Support
- CDPHE- Colorado HIV & AIDS Prevention Grants Program (CHAPP)
- CDPHE- Colorado Immunization Fund
- CDPHE- Colorado Health Services Corps, Primary Care Office Loan Repayment
- CDPHE- State Dental Loan Repayment
- CDE- Early Literacy Grant
- DPA- Supplemental State Health and Dental Contribution
- DMVA- Colorado State Veteran's Trust Fund

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

No major factual and policy issues were encountered.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

This is a request to repeal the Tobacco Settlement Monitoring and Reporting rules pursuant to SB15-189. There are no HE/EJ impacts.

~~DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT~~

~~State Board of Health~~

~~TOBACCO SETTLEMENT MONITORING AND REPORTING RULES~~

~~6 CCR 1014-2~~

~~[Editor's Notes follow the text of the rules at the end of this CCR Document.]~~

~~1.1 Definitions.~~

~~(1) "Board" means the State Board of Health.~~

~~(2) "Conflict of interest" means a personal or financial interest that could reasonably be perceived as an interest that may influence an individual in his or her official duties.~~

~~(3) "Department" means the Department of Public Health and Environment.~~

~~(4) "Financial Interest" means a substantial interest held by an individual which is an ownership or vested interest, or employment or prospective employment for which negotiations have begun, or a directorship or officership in a tobacco settlement program.~~

~~(5) "Master settlement agreement" means the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett Group Inc.; Lorillard Tobacco Company; Phillip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research—U.S.A., Inc.; and Tobacco Institute, Inc., Case No. 97 CV 3432, in the District Court for the City and County of Denver.~~

~~(6) "Settlement moneys" means the moneys received pursuant to the master settlement agreement, other than attorney fees and costs.~~

~~(7) "Tobacco settlement program" means any program that receives appropriations from moneys received by the state pursuant to the master settlement agreement.~~

~~1.2 Conflicts of Interest.~~

~~(1) Applicability. This section applies to:~~

~~(a) Any person involved in making recommendations to the board regarding the continued funding of a tobacco settlement program; or~~

~~(b) Members of the board.~~

~~(2) Prohibited Behavior. Except as provided in §25-31-105, C.R.S., no person who is involved in evaluating tobacco settlement programs shall have a conflict of interest. Such conflict of interest includes, but is not limited to, any conflict of interest involving the person and the recipient of any tobacco settlement program moneys or the person and the tobacco industry.~~

~~(3) Responsibilities of Persons with a Potential Conflict of Interest. A person who believes that he or she may have a conflict of interest shall disclose such conflict of interest as soon as he or she becomes aware of the conflict of interest. If the person is a member of the board and acting in the capacity of a board member, the person shall publicly disclose the conflict of interest to the board; other persons shall disclose the conflict of interest in writing to the board. If the board determines~~

41 ~~the existence of a conflict of interest, the person shall not participate in any reviews or evaluations~~
42 ~~that may be affected by the conflict.~~

43 ~~1.3 Reporting Requirements for Tobacco Settlement Programs.~~

44 ~~(1) Each tobacco settlement program shall annually submit to the department a report, which at a~~
45 ~~minimum, includes the following information:~~

46 ~~(a) The amount of tobacco settlement moneys received by the program for the preceding fiscal~~
47 ~~year;~~

48 ~~(b) A description of the program, including the program goals, population served by the program,~~
49 ~~the actual number of people served, and the services provided;~~

50 ~~(c) An evaluation of the operation of the program, which includes the effectiveness of the~~
51 ~~program in achieving its stated goals; and~~

52 ~~(d) The costs incurred by each program that receives settlement moneys including, but not~~
53 ~~limited to, the amount and justification of administrative costs incurred by the agencies~~
54 ~~that implement the program.~~

55 ~~(2) In addition to the requirements in §1.3(1), the annual report submitted by the Department of Human~~
56 ~~Services, Division of Veterans Affairs, shall be submitted to the department no later than~~
57 ~~November 1, 2001 and November 1 for each year thereafter and shall include the following~~
58 ~~information:~~

59 ~~(a) The number and type of improvements or additions to nursing homes that have been made;~~

60 ~~(b) The number and type of improvements to veterans' cemeteries;~~

61 ~~(c) The number of veterans served through the veterans outreach program; and~~

62 ~~(d) The results achieved as a result of allocations made out of the trust fund.~~

63 ~~(3) In addition to the requirements in §1.3(1), the annual report submitted by Comprehensive Primary~~
64 ~~and Preventive Care Grant Program, Department of Health Care Policy and Financing, shall be~~
65 ~~submitted to the department no later than November 1, 2001 and November 1 for each year~~
66 ~~thereafter and shall include the following information:~~

67 ~~(a) The number of additional uninsured and medically indigent patients that are cared for; and~~

68 ~~(b) The types of services that are provided.~~

69 ~~(4) In addition to the requirements in §1.3(1), the annual report submitted by the health sciences facility~~
70 ~~pursuant to §25-31-108, C.R.S. shall be submitted to the department no later than October 1,~~
71 ~~2001 and October 1 for each year thereafter and shall include the following information:~~

72 ~~(a) An evaluation of the implementation of the nurse home visitor program and the results~~
73 ~~achieved;~~

74 ~~(b) Any changes in:~~

75 ~~(i) training requirements;~~

76 ~~(ii) protocols;~~

77 ~~(iii) management information systems; or~~

78 ~~(iv) evaluation criteria.~~

79 ~~(5) The Read-to-Achieve Grant Program created pursuant to §22-7-506, C.R.S. shall submit an annual~~
80 ~~report that meets the requirements of §1.3(1) and the report shall be submitted to the department~~
81 ~~no later than November 1, 2001 and November 1 for each year thereafter.~~

82 ~~(6) The Department of Health Care Policy and Financing shall submit an annual report that meets the~~
83 ~~requirements of §1.3(1) concerning tobacco settlement moneys received by the Child Basic~~
84 ~~Health Plan and the report shall be submitted to the department no later than November 1, 2001~~
85 ~~and November 1 for each year thereafter.~~

86 ~~(7) The Department Of Health Care Policy And Financing shall submit an annual report that meets the~~
87 ~~requirements of §1.3(1) concerning tobacco settlement moneys received by the children's autism~~
88 ~~program and the report shall be submitted to the department no later than November 1, 2005 And~~
89 ~~November 1 for each year thereafter.~~

90 ~~(8) The State Dental Loan Repayment program at the Department of Public Health and Environment~~
91 ~~shall submit an annual report that meets the requirements of §1.3(1) concerning tobacco~~
92 ~~settlement moneys received by the program and the report shall be submitted to the department~~
93 ~~no later than November 1, 2005 and November 1 for each year thereafter.~~

94 ~~(9) The Ryan White program at the Department of Public Health and Environment shall submit an annual~~
95 ~~report that meets the requirements of §1.3(1) concerning tobacco settlement moneys received by~~
96 ~~the program and the report shall be submitted to the department no later than November 1, 2005~~
97 ~~and November 1 for each year thereafter.~~

98 ~~(10) The Tony Gramscas Youth Services program at the Department of Public Health And Environment~~
99 ~~shall submit an annual report that meets the requirements of §1.3(1) concerning tobacco~~
100 ~~settlement moneys received by the program and the report shall be submitted to the department~~
101 ~~no later than November 1, 2005 and November 1 for each year thereafter.~~

102 ~~(11) The Department of Human Services shall submit an annual report that meets the requirements of~~
103 ~~§1.3(1) concerning tobacco settlement moneys received by the children's mental health treatment~~
104 ~~program and the report shall be submitted to the department no later than November 1, 2005 and~~
105 ~~November 1 for each year thereafter.~~

106 ~~(12) Each report submitted shall be accompanied by an executive summary not to exceed 2 pages. In~~
107 ~~addition, each report shall be submitted electronically for placement on department's Internet web~~
108 ~~site.~~