



Joint Budget Committee

Interim Supplemental Budget Requests FY 2026-27

Health Care Policy and Financing Medical Services Premiums

Prepared by:

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September 18, 2026

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Interim Supplemental Requests

→ Qualified Noncitizens

Item	Total Funds	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Request	\$15,804,656	\$15,804,656	0	0	0	0.0
Recommendation	4,717,601	4,717,601	0	0	0	0.0
Staff Recommendation Higher/-Lower than Request	-\$11,087,055	-\$11,087,055	\$0	\$0	\$0	0.0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.?

NO

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.

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria?

NO

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.

Explanation: JBC staff and the Department agree that the first part of the request dealing with unknown eligibility is the result of unforeseen circumstances related to late federal guidance that did not provide adequate time for the Department to make eligibility system and process changes.

However, JBC staff believes that the second part of the request dealing with grandfathering benefits for noncitizens using long-term services supports addresses a foreseen issue and does not meet the statutory criteria for an interim supplemental.

The Department requests \$15.8 million General Fund for two distinct initiatives related to federal H.R. 1 changes in noncitizens who qualify for Medicaid. The initiatives are severable, so the request and recommendation for each is described separately below.

Funding to account for unknown eligibility

Request

The Department requests funding for temporary health benefits to noncitizens with unknown Medicaid eligibility while the Department figures out whether they still qualify for Medicaid.

The Department projects the policy will increase expenditures by:

- FY 2026-27: \$4.7 million General Fund

How we got here: Automatic enrollment and eligibility changes

The Department automatically enrolls people eligible for federal Supplemental Security Income (SSI) into Medicaid. SSI is a federal cash assistance program for people with low income and either a disability or an age of 65 or over, including noncitizens. Eligibility for SSI and Colorado Medicaid used to align for noncitizens. However, changes in federal law will cause some noncitizens to lose Medicaid eligibility (see the section below titled "Federal changes to noncitizens who qualify for Medicaid" for more information). The SSI and Medicaid eligibility criteria no longer match for noncitizens. It is hard for the Department to identify *which* noncitizens with SSI no longer qualify for Medicaid because its system is set up to automatically enroll anyone with SSI and SSI data given to the Department does not sufficiently distinguish specific noncitizens categories.

Failing to cover someone eligible for Medicaid would violate federal law, while claiming a federal match for someone ineligible for Medicaid would also violate federal law. In either scenario, the federal government could stop Medicaid payments to Colorado.

Why an interim supplemental request?

The Department argues it needs an interim supplemental because federal guidance on implementing this change came late and did not fit what the Department reasonably expected based on prior practice and norms. The Centers for Medicare and Medicaid Services released guidance on the relevant portions of H.R. 1 on April 8, 2026. Colorado and other states that auto enroll from SSI raised concerns that the guidance did not address a discrepancy between the SSI data and the new rules for H.R. 1. CMS did not release technical guidance addressing that discrepancy until August 17, 2026. However, that technical guidance did not include any of the possible work arounds that the Department anticipated. For example, there were no changes to the federal SSI data to include more information to determine noncitizen eligibility. There was no leniency to allow time for states to make necessary system changes. There were no ongoing federal funds during the period of unknown eligibility or during the notification period before the end of coverage. The Department argues it could not have started system changes before the August 17 technical guidance. The Department's formal request to CMS for more time was denied on August 24.

Who is impacted and how were the costs calculated?

The Department estimates there are 4,885 noncitizens automatically enrolled in Medicaid using the SSI data whose Medicaid eligibility is unknown. Not all of the 4,885 noncitizens with unknown eligibility will be ineligible. The request assumes 25 percent will remain eligible, which is factored into the estimated General Fund cost. The Department estimates that \$4.7 million will shift from a federal fund cost to a General Fund cost. This is an

interim supplemental for overexpenditure authority, so it only addresses the General Fund increase, but the supplemental change when the legislature is in session will include the federal funds decrease.

Funding to account for unknown eligibility

Item	Total	General Fund	Federal Funds
Noncitizens in SSI data	4,885		
FY 2025-26 expenditure	\$29,380,814	\$14,284,491	\$15,096,323
% of year Oct through Feb	41.67%		
Projected expenditure – Oct through Feb	\$12,242,006	\$5,951,871	\$6,290,135
Percent eligible for federal match	25.0%		
Eligible for federal match	3,060,502	1,487,968	1,572,534
Ineligible for federal match	9,181,504	9,181,504	0
Subtotal	\$12,242,006	\$10,669,472	\$1,572,534
Difference from projected expenditure	\$0	\$4,717,601	-\$4,717,601

The costs could differ from the estimate if the actual number remaining eligible differs, the average cost per client differs, or the time before the Department manually determines eligibility differs.

The Department's short-term plan

In the short term, the Department proposes using state funds to provide services while it manually verifies the eligibility of each noncitizen in the SSI data. This is complicated, because the eligibility system currently overwrites any manual eligibility changes daily when it receives new SSI data. For some noncitizens, the Department will be able to cross reference other federal data sources to get the necessary information. For other noncitizens, the Department will need additional information from the members directly.

If a member is determined eligible, the Department will retroactively submit a claim for matching federal funds. This is allowed under federal timely filing procedures. The Department will use the matching federal funds to offset General Fund, just like it does for any other recovery.

If a member is ineligible, any General Fund spent before their coverage ends will not be clawed back. Any expenditures for services between October and the end of coverage are not be eligible for federal matching funds.

The Department cannot end coverage without advance notice. Federal rules require advance notice of an adverse action at least 10 days before the last day of the month when coverage ends. An eligibility determination in the last 10 days of the month means that eligibility will not stop until the end of the next month. Once the notification period is over, the Department will stop paying for new services.

The Department's long-term plan

The Department is also working on system and procedure changes to identify and not automatically enroll relevant noncitizens sent in SSI data moving forward. The request assumes the Department will complete the eligibility system and procedure changes by the end of February 2027. However, the request hedges and says, "If additional funding is needed, a supplemental request will be submitted."

The Department plans to complete the manual eligibility verifications and the system and process changes within existing resources. The requested funding is for only the estimated service costs.

Recommendation

Staff recommends the requested \$4,717,601 for this component of the request. The Department is in a difficult position, because the information currently available is insufficient to verify all the noncitizens in the SSI data who still qualify for Medicaid. The primary alternative would be for the Department to continue claiming federal matching funds and then repay the federal government for any expenditures for people subsequently deemed ineligible. However, that option carries significant risk of federal penalties and disallowances.

HCPF's statutory authority

Legislative Legal Services (LLS) agrees that the Department has existing statutory authority for the proposed payments. The Department is required by state law¹ to provide services to people eligible for Medicaid under federal law. A portion of the 4,885 people will remain eligible for Medicaid under federal law. To comply with state and federal law, the Department would need to continue services while it determines who is eligible.

JBC's statutory authority

The Department argues that the guidance on April 8 was not sufficiently detailed for the Department to start system and process changes, or to justify a supplemental request. The Department made an assumption that the final technical guidance would either include federal changes to the SSI data to facilitate state compliance or provisions allowing time for states to make system and process changes. HCPF's assumption aligned with prior CMS practice, feasibility considerations, and how governments, including Colorado, typically treat political subdivisions.

The argument appears strong enough to the JBC staff to justify an interim supplemental, but also weak enough that the JBC could deny the request. Maybe the Department should have prioritized work on the system and process changes after the guidance on April 8. Maybe the Department should have submitted a supplemental request at that time. Those things didn't happen and the Department can't turn back the clock. As a practical matter, the JBC staff cannot identify a good alternative to the proposed funding that would allow the Department to comply with state and federal law.

Grandfather benefits for noncitizens using long-term services and supports

Request

The Department requests General Fund to continue health benefits for 275 noncitizens who are using long-term services and supports and who would otherwise lose coverage in October. The requested funding would cover estimated costs from October 2026 through February 2027. At that point, the General Assembly would need to make a decision about whether to continue benefits for longer. There are no matching federal funds.

The Department projects the policy will increase expenditures by:

- FY 2026-27: \$11.1 million General Fund

The Department argues that removing care for this population would cause significant harm. They need and use extensive services due to disabilities. Some possible outcomes from removing care include greater reliance on

¹ Section 25.5-5-101 (1), C.R.S.

family, friends, and charity for services, going without needed care, increased use of emergency care, shorter lifespans, or relocating to a place they can get care.

Recommendation

Staff recommends denying this portion of the request. The Department lacks statutory authority for the proposed payments. Furthermore, the JBC lacks statutory authority to approve the overexpenditure.

These legal considerations are significant and should not be dismissed. If the JBC staff is forced to set the legal arguments aside temporarily, the Department's argument that removing coverage will cause significant harm is legitimate. The impacted population fits the traditional priorities of the Medicaid program because they are people with disabilities. While the people are noncitizens, they are legally residing in the U.S. There are several good policy reasons to support the request. On the other hand, there are other ways to spend \$11.1 million General Fund that might be higher priorities because they would leverage federal funds and impact more people. This is a small and expensive population. The Department's solution is short-term with no long-term proposal. Also, this is the exact intended outcome of the federal law and perhaps the appropriate remedy is a change in the federal law. The JBC staff did not try to balance these competing arguments to reach a conclusion because the legal concerns are compelling by themselves. Also, these are not data-driven arguments that would benefit from the analysis expertise of the JBC staff.

HCPF's statutory authority

The Department has broad authority to do things necessary to comply with federal Medicaid provisions, but narrow and specific authority when there are no matching federal funds. If there are no matching federal funds, the General Assembly expects an affirmative state statute authorizing the services.

An affirmative state statute is a particularly important standard for the Department of Health Care Policy and Financing. The General Assembly allows unlimited overexpenditure authority for Medicaid services. If the Department can take General Fund and create new programs, then it can overexpend the remaining appropriation "for Medicaid". That would circumvent the General Assembly's control over the Department's budget.

LLS was not able to identify any state statute that makes the 275 noncitizens eligible for services. The Department provided several cites, but none of the cites apply.

- 25.5-5-101 – This section describes mandatory eligible populations for Medicaid under federal law. There is no question that these 275 people are no longer eligible for Medicaid under federal law as of October 2026.
- 25.5-5-201 (3) - This section requires that benefits continue for lawfully residing individuals receiving nursing facility care or home- and community-based services and allows General Fund for that purpose. However, it applies only to people receiving services **on July 1, 1997**. It was passed in response to a change in federal law that required certain noncitizens to wait five years before becoming eligible for Medicaid. It is a great example of the General Assembly grandfathering benefits for noncitizens using long-term services and supports and authorizing General Fund for that purpose, similar to the requested policy in this supplemental. However, it is an even better example of the General Assembly authorizing such a policy through an affirmative statute, rather than through the budget process. The Department was not able to identify if any of the 275 people referenced in the request were receiving home- and community-based

services on July 1, 1997. If the people did not receive services on July 1, 1997, then the section does not apply.

- 25.5-5-201 (4) – This section says that a lawfully residing pregnant noncitizen who otherwise meets Medicaid criteria is eligible for benefits and it allows General Fund for that purpose. The provision applies only to pregnant people. The Department is currently getting a federal match for services to lawfully residing pregnant noncitizens and that is not changing under H.R. 1. None of the 275 noncitizens are pregnant. This section is irrelevant to the request.
- H.B. 26-1235 amendment to 25.5-5-101 (1)(o) – This was a technical clean up to conform with federal law. It clarified that a qualified noncitizen is eligible for Medicaid services only after they have resided in the United States for five years, unless the qualified noncitizen is a pregnant person or child under nineteen years old. That does not authorize a General Fund program for the 275 noncitizens using long-term services and supports.

JBC's statutory authority

Statute² allows the JBC to approve, in whole or in part, an overexpenditure requested by the Office of State Planning and Budgeting, if the overexpenditure, "is necessary due to unforeseen circumstances arising while the general assembly is not meeting in regular or special session". The limited authority delegated to the JBC by the General Assembly does not allow approval of overexpenditures for things that were foreseen.

The ineligibility of this population of 275 individuals is a result of H.R. 1, which was enacted in July 2025. The ineligibility of this population is the unambiguous intended outcome of that portion of H.R. 1. The Department's February 2026 forecast accounted for the 275 people losing coverage. The budget assumes no expenditures for the 275 people. The Department is sending notices and case management agencies are reaching out individually. This was a known issue and the Department admits there is no new information. The Department explains:

No new information became available. However, it became clear during discussions at the Medicaid Commission that members of our Joint Budget Committee were concerned that we have available options for this population. The only option for not losing coverage is to backfill with General Fund. Therefore, we are presenting this supplemental to provide the JBC an opportunity to act to continue coverage for a discrete, highly vulnerable population at their discretion. This is a last ditch effort to help these individuals.

The statute allows overexpenditures for unforeseen events, rather than last ditch efforts on behalf of vulnerable people. The request amounts to a second bite at the apple, rather a response to unforeseen circumstances.

Furthermore, the statute only allows for overexpenditures of existing appropriations, rather than new appropriations for new programs. The Long Bill includes an appropriation in the Medical Services Premiums division for "Medical and Long-term Care Services for Medicaid Eligible Individuals". There is no appropriation for Medicaid ineligible noncitizens using long-term services and supports. The next closest thing is an appropriation in the Other Medical Services division for "Health Benefits for Children Lacking Access Due to Immigration Status". None of the 275 people targeted by the request are children. The JBC cannot authorize an overexpenditure because there is no existing appropriation for the purpose the Department proposes.

² Section 24-75-111, C.R.S.

Federal changes to noncitizens who qualify for Medicaid

Federal H.R. 1 changes the noncitizens who qualify for Medicaid. Effective October 1, 2026, H.R. 1 limits health coverage for noncitizens to:

- **Lawful permanent residents** (green card holders)
- **Cuban/Haitian entrants**
- **Compact of Free Association** migrants from certain Pacific Island nations³
- **Children and pregnant women lawfully residing** in the U.S., if a state elects the coverage option like Colorado. Lawfully residing is a broader term than lawful permanent resident. A lawfully residing noncitizen has permission to live in the U.S. but that status might have limits on time, work, and paths to citizenship. A lawful permanent resident can live in the U.S. indefinitely with no work restrictions and a path to citizenship.
- **Emergency services** regardless of immigration status

Legal statuses of noncitizens that will lose health coverage if they do not meet the criteria described above include:

- **Refugees and asylees** – People fleeing persecution based on race, religion, nationality, political opinion, or membership in a particular social group. Can lead to a green card.
- **Temporary Protected Status** – People from countries experiencing conflict, disaster, or extraordinary conditions. No direct path to a green card.
- **Humanitarian parole** – People from a region or individuals granted temporary status for urgent humanitarian reasons or because their presence provides a significant public benefit. This includes some Afghans who aided the U.S. military and Ukrainians who fled violence. No direct path to a green card.
- **Survivors of human trafficking or domestic violence** – Can lead to a green card.
- **Withholding of removal** – People protected from deportation to a specific country (but not other countries) because they could face a threat to their life or freedom. No direct path to a green card.

³ Applies to people from the Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau.