

Primer

House Appropriations Committee (D)



JOE MARKOSEK, DEMOCRATIC CHAIRMAN

October 6, 2017

Tobacco Settlement Fund *Allocations & Programs*

The tobacco Master Settlement Agreement (MSA) has been providing revenue to Pennsylvania since 1999. Pursuant to the MSA, tobacco companies have paid a cumulative \$6.5 billion through April 2017. Although a major purpose of the agreement is to reduce smoking, especially among youth, the MSA places no requirements or restrictions on how states spend their tobacco payments.

In 2001, Pennsylvania enacted legislation directing the deposit, investment and spending of MSA payments. The Tobacco Settlement Act created the Tobacco Settlement Fund for the deposit of all MSA revenue and established various health-related programs to be supported by the fund.

This primer examines how Pennsylvania uses the MSA payments, describes the health-related programs created in the Tobacco Settlement Act, and reviews the statutory formulas directing the appropriation of annual revenue. A separate primer, explains the Master Settlement Agreement and details the tobacco payments to Pennsylvania.

The Tobacco Settlement Act (Act 77 of 2001) established the Tobacco Settlement Fund for the deposit of payments received by the commonwealth. It also established specific health-related programs to be financed with fund revenue. Some programs were designated to receive ongoing appropriations, in accordance with the statutory formula set in Section 306 of the act. Other programs received one-time appropriations in 2001/02 as stipulated in Section 1501, funded with the MSA payments Pennsylvania received prior to June 2000.

- Programs designated for ongoing appropriations included: basic health insurance coverage for low-income adults; Medical Assistance for workers with disabilities; tobacco use prevention and cessation programs; uncompensated care payments for hospitals; home and community-based care services for seniors; health research grants for Pennsylvania institutions; and the PACENET prescription drug program for seniors.
- Regional biotechnology research centers (also known as life sciences greenhouses), health-related venture capital investments, a grant program for community-based health care providers, a medical education loan assistance program, and a grant program to purchase medical and surgical equipment received one-time funding for fiscal year 2001/02.

Allocation Formulas

The funding formula in the Tobacco Settlement Act allocated 92 percent of yearly MSA payments to designated programs and the balance to the measure's endowment account supporting the commonwealth's future health care needs. However, in nine of the budgets since 2001/02, the General Assembly modified the act's funding provisions so tobacco funds could be redirected to other health-related programs. These modifications were accomplished via amendments to the Fiscal Code as part of the annual budget process. (*See Appendix A for a list of the modifications made to the Act 77 funding formula.*)

House Appropriations Committee (D)

Miriam A. Fox, Executive Director

Beth Balaban, Assistant Executive Director

Mark Shade, Communications Director

In 2013, the General Assembly enacted legislation (Act 71 of 2013) to repeal the funding provisions in the Tobacco Settlement Act and established new allocation percentages, beginning in 2013/14, with Section 1713-A.1 of the Fiscal Code. The table below compares allocation percentages initially established in Act 77 for tobacco-funded programs with the replacement percentages established by Act 71.

Statutory Percentages for Appropriating Tobacco Payments		
Program/Purpose	Act 77-2001	Act 71-2013
Home and community-based services	13%	13%
Tobacco use prevention and cessation programs	12%	4.50%
CURE - Broad-based health research	18%	12.6%
CURE - Cancer research	1%	1%
Hospital uncompensated care payments	10%	8.18%
Health insurance for adults * Medical Assistance for Workers with Disabilities	30%	30%
PACENET expansion	8%	8%
Health Endowment Account	8%	-
Other health-related purposes	-	22.72%
<p><i>* Language in Act 77 stipulated that this allocation be used for two programs: Medical Assistance for Workers with Disabilities (established in Chapter 15 of Act 77) and adultBasic (established in Chapter 13 of Act 77)</i></p>		

Act 71 of 2013 made several significant changes to the original funding formula in Act 77:

- It eliminated the annual allocation to the Health Endowment Account (which was depleted in 2011 as part of the Fiscal Code changes in Act 46 of 2010) and the adultBasic program (terminated by Corbett in 2011).
- It also added a new allocation to be separately appropriated for health-related purposes. The funding redirects from previous budgets to primarily offset General Fund costs for Medical Assistance long-term care and, to a much lesser extent, for continued funding that supports the life sciences greenhouses established in Act 77.

Act 71 of 2013 also required all other payments and revenues received by the commonwealth (other than the annual MSA payment) to remain in the Tobacco Settlement Fund so they can be appropriated for health-related purposes. Examples of “other payments” include strategic contribution payments and any tobacco payments released from the disputed payments account. Act 77 had previously required the strategic contribution payments be deposited into the endowment account, but the General Assembly had been redirecting these payments to other health-related purposes as part of the annual budget process, so this new provision simply continued previous budgeting actions.

Within one year of enacting the new Act 71 funding provisions, the General Assembly started modifying it. In fact, the Act 71 formula never had time to work as the first modification was made retroactive to 2013/14 in response to the 2003 NPM litigation ruling that reduced the April 2014 payments received by Pennsylvania. The General Assembly has changed the Act 71 formula each fiscal year subsequent to 2013/14. *(See Appendix A for a list of changes made to the Act 71 funding formula.)*

Tobacco Funded Programs

The following Act 77 programs currently receive annual appropriations from the Tobacco Settlement Fund formula:

- **Home and Community-Based Services.** The Department of Human Services uses the allocated tobacco funds to help pay for services provided through the aging waiver program for seniors, age 60 or older, who are eligible for Medical Assistance. The waiver program provides personal care, attendant care, home health care, home-delivered meals, transportation, specialized medical equipment, and other services to older Pennsylvanians who would otherwise require nursing facility care. Tobacco funds allocated for home and community-based services qualify for federal Medicaid matching funds.
- **CURE Health Research.** The Department of Health administers the Commonwealth Universal Research Enhancement (CURE) program, which awards grants to Pennsylvania-based researchers, universities, medical schools and other institutions. The current statutory funding formula requires 12.6 percent of annual tobacco payments to be allocated for broad-based health research; 1 percent for cancer research.
- **Tobacco Use Prevention and Cessation Programs.** The Department of Health uses this allocation for community-based prevention and cessation programs based on best practices for effective intervention from the national Centers for Disease Control. At least 70 percent of the funding must be used for grants to primary contractors to develop local programs in service areas; the remaining funds are used for statewide programs.
- **Hospital Uncompensated Care.** The Department of Human Services uses these funds to provide partial reimbursement to hospitals for costs incurred in treating patients with inadequate or no insurance. Act 77 stipulates that 85 percent of the funding is designated is for uncompensated care payments to hospitals for the cost of care provided to individuals who are uninsured or unable to pay for services and 15 percent is designated for “extraordinary expense” payments to hospitals for treating uninsured patients whose cost of care exceeds twice the hospital’s average cost per stay. Eligible hospitals may choose to receive either the uncompensated care or the extraordinary expense payment, but cannot receive both. Federal matching funds are available for both payments.
- **Medical Assistance for Workers with Disabilities, or MAWD.** MAWD is a Medical Assistance purchase program for working Pennsylvanians, age 16 to 64, who have a disability and whose income is less than 250 percent of the federal poverty level. The program is administered by the Department of Human Services. Act 77 stipulates that MAWD enrollees pay the department a monthly premium, equal to five percent of their monthly premium, to purchase their Medical Assistance coverage. However, language in the Fiscal Code permits DPW to adjust this percentage, subject to federal approval. Tobacco funds allocated for MAWD qualify for federal Medicaid matching funds.
- **PACENET Transfer.** These funds are transferred to the PACE Fund to support provisions in Act 77 which expanded PACENET, a pharmaceutical assistance program for seniors administered by the Department of Aging. Act 77 increased income eligibility for PACENET by \$1,000 in 2001, raising the annual income limit to \$17,000 for single individuals and \$20,200 for married couples. (Due to subsequent legislation amending the State Lottery Law, the current PACENET income limit is \$23,500 for single individuals and \$31,500 for married couples.)

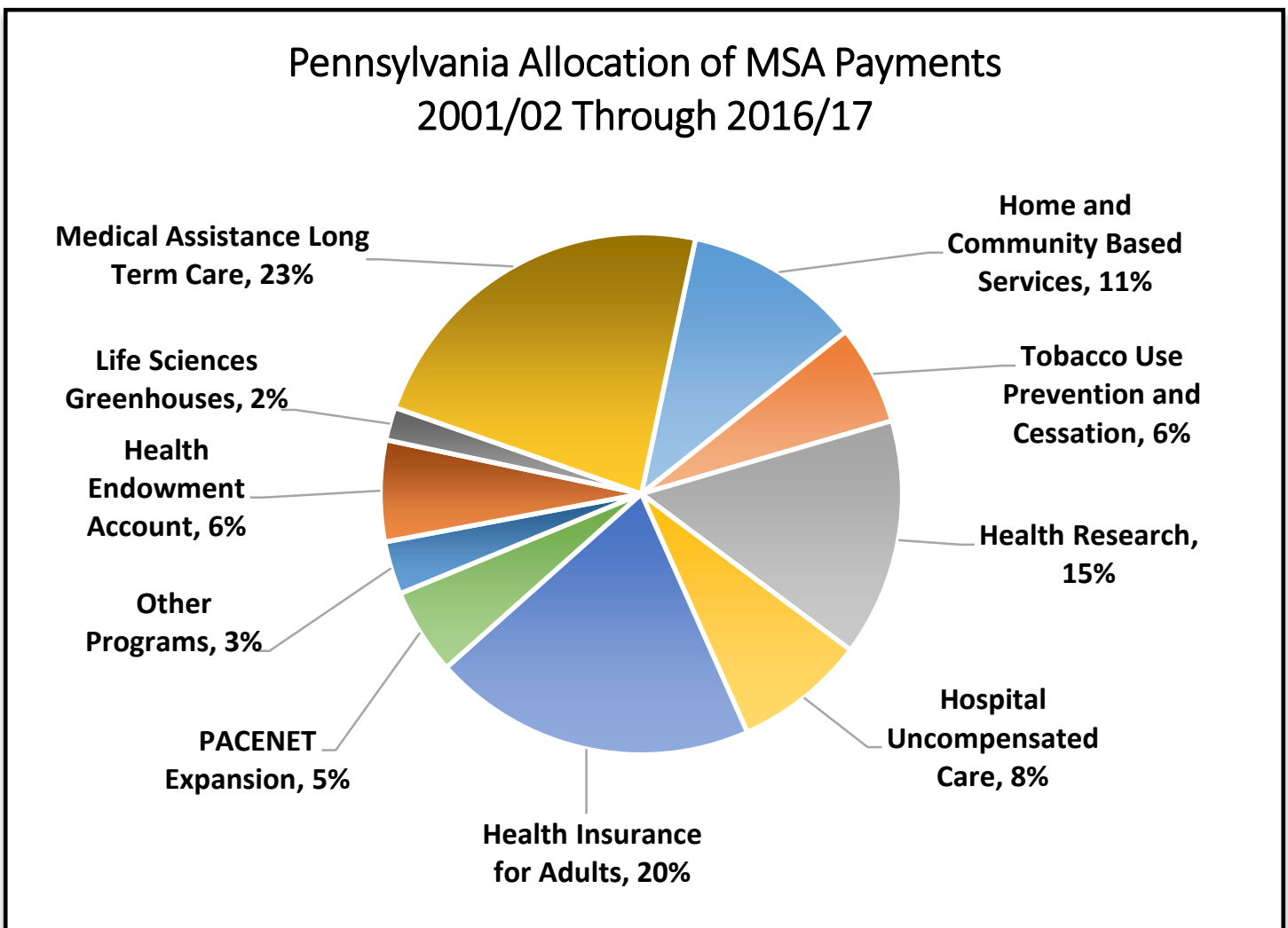
The funding allocation for health-related purposes currently supports two programs: Medical Assistance long-term care and life sciences greenhouses. The General Assembly has appropriated the lion’s share of this allocation to Medical Assistance long-term care in the Department of Human Services.

- **Medical Assistance Long-Term Care.** In all but two budgets since 2002/03, the Department of Human Services has used tobacco funds to help pay for nursing facility care provided to Pennsylvanians who are eligible for Medicaid. These funds reduce the need to spend General Fund revenue on nursing home expenditures in Pennsylvania’s Medical Assistance program. Tobacco funds appropriated for Medical Assistance long term care qualify for federal Medicaid matching funds.
- **Life Sciences Greenhouses.** The appropriated tobacco funds support the regional biotechnology research centers established in Act 77. The Department of Community and Economic Development received \$100 million in 2001/02 as start-up funding for three centers –this money was part of the one-time appropriations in Act 77. Since 2006/07, the General Assembly has annually appropriated \$3 million from the Tobacco Settlement Fund to provide continued support to the centers.

How MSA Payments Were Spent

The pie chart below shows how Pennsylvania used its MSA payments from 2001/02 through 2016/17. Pennsylvania allocated most of its tobacco payments for Medical Assistance long-term care (\$1.5 billion) and health insurance for low-income adults (\$1.3 billion), followed by CURE health research (\$958 million) and home and community-based services for seniors (\$714 million). During this period, \$401 million was allocated for tobacco use prevention and cessation programs.

Pennsylvania has used tobacco revenue to support essential health care services and related programs in the General Fund budget, most often for the purpose of helping to close General Fund budget deficits. The “other programs” category on the pie chart includes \$101 million that was transferred to the General Fund: \$68.5 was part of the one-time 2001/02 appropriations in Act 77 and \$34 million was part of the funding modifications made in Act 50 of 2009. Additionally, MSA payments deposited in the endowment account (as well as earnings and other revenues in the account) were transferred to the General Fund over the course of two budgets. \$150 million in 2009/10 and another \$371 million in 2010/11 (including \$121 million to a restricted receipt account earmarked for public school retirees) when the endowment account was depleted by Act 46 of 2010.



Appendix A. Legislation Impacting Program Allocations

The following table shows the allocation percentages in Section 306 of the Tobacco Settlement Act (Act 77 of 2001) used to distribute annual MSA payments among programs, beginning in 2001/02, and the subsequent legislative changes to the allocation percentages for 2005/06 through 2012/13. The funding provisions in Act 77 were repealed July 1, 2013.

	Act 77 (2001) Program Allocations	Fiscal Code Modifications to Act 77 Allocations							
		Act 41 (2005) FY 2005/06	Act 66 (2006) FY 2006/07	Act 42 (2007) FY 2007/08	Act 53 (2008) FY 2008/09	Act 50 (2009) FY 2009/10	Act 46 (2010) FY 2010/11	Act 26 (2011) FY 2011/12	Act 87 (2012) FY 2012/13
Health Insurance for Adults	30%	26.25%	26.25%	20%	20%	20%	20%	20%	20%
Home and Community-Based Services	13%	13%	13%	13%	13%	13%	13%	13%	13%
Tobacco Use Prevention and Cessation	12%	9%	9%	9%	9%	4.5%	4.5%	4.5%	4.5%
CURE Health Research:									
Broad-Based Research	18%	18%	18%	18%	18%	18%	18%	18%	13%
Cancer Research	1%	1%	1%	1%	1%	1%	1%	1%	1%
Hospital Uncompensated Care Payments	10%	10%	10%	10%	10%	10%	10%	8.18%	8.18%
PACENET Expansion	8%	8%	8%	8%	8%	8%	8%	8%	8%
Health Endowment Account	8%	8%	8%	8%	8%	0%	0%	0%	0%
<i>Balance of Allocation (per Fiscal Code): Redirect for Health-Related Purposes Transfer to General Fund *</i>		6.75%	6.75%	13%	13%	21% 4.5%	21% 4.5%	27.32%	32.72%

* Act 50 of 2009 transferred 37.5% of the annual allocation for prevention and cessation programs to the General Fund in fiscal years 2009/10 and 2010/11.

The following table shows the funding formula added to 1713-A.1 of the Fiscal Code, under Act 71 of 2013, and the subsequent legislative changes. The percentages in Act 71 largely reflect the reductions enacted in Act 87 of 2012 to the allocation percentages for the tobacco use prevention and cessation, CURE health research, and hospital uncompensated care payments programs.

	Act 71 (2013) Program Allocations Effective FY 2013/14	Fiscal Code Modifications to Act 71 Allocations			
		Act 126 (2014) FY 2013/14	Act 126 (2014) FY 2014/15	Act 25 (2016) FY 2015/16	Act 85 (2016) FY 2016/17
Medical Care for Workers with Disabilities	30%	30%	15.12%	30%	30%
Home and Community-Based Services	13%	13%	13%	13%	13%
Tobacco Use Prevention and Cessation	4.5%	2.93%	4.5%	4.5%	4.5%
CURE Health Research:					
Broad-Based Research	12.6%	6.3%	12.60%	12.60%	12.60%
Cancer Research	1%	0.5%	1%	1%	1%
Hospital Uncompensated Care Payments	8.18%	4.09%	8.18%	8.18%	8.18%
PACENET Expansion	8%	0%	0%	0%	0%
Health-Related Purposes	22.72%	43.18%	45.6%	30.72%	30.72%