



State of New Hampshire

FIS 16 109

DEPARTMENT OF HEALTH AND HUMAN SERVICES
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Late Item

JEFFREY A. MEYERS
COMMISSIONER

June 16, 2016

The Honorable Neal M. Kurk, Chairman
Fiscal Committee of the General Court

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Action 1: Pursuant to RSA 14:30-a, VI, Additional Revenues authorize the Department of Health and Human Services to accept and expend additional Drug Rebate revenue in the amount of \$15,899,592 effective upon approval by the Fiscal Committee and Governor and Council through June 30, 2016, and authorize the allocation of these funds in the accounts below.

Action 2: Pursuant to the provisions of Chapter 276:143, Laws of 2015, authorize the Department of Health and Human Services to transfer the Medicaid Enhancement – Private Local Funds in the amount of \$7,904,402 and pursuant to RSA 14:30-a, VI, Additional Revenues, authorize the Department of Health and Human Services to accept and expend the additional matching federal funds from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, in the amount of \$7,912,306 effective upon approval by the Fiscal Committee and Governor and Council through June 30, 2016, and authorize the allocation of these funds in the accounts below.

05-95-47-470010-7948 HHS: Office of Medicaid and Policy, Medicaid Care Management

CLASS OBJ	CLASS TITLE	Current Authorized Budget	Increase / (Decrease) Transfer to UCC Fund	Increase / (Decrease) Adjust for MET shortfall	Increase / (Decrease) Excess Drug Rebate to Cover MET	Revised Modified Budget
010-79480000-403978-000	Federal Funds	\$344,389,010				\$344,389,010
010-79480000-402201-005	Agency Income: Medicaid Enhancement - Local	\$124,656,230	(\$7,904,402)	(\$7,995,190)		\$108,756,638
010-79480000-407145-007	Agency Income Drug Rebates	\$13,570,935			\$15,899,592	\$29,470,527
010-79480000-406848-009	Agency Income MEAD	\$128,399				\$128,399
010-79480000	General Fund	\$184,684,658				\$184,684,658
	Total Revenue	\$667,429,233	(\$7,904,402)	(\$7,995,190)	\$15,899,592	\$667,429,233
041-500801	Audit Set Aside	\$410,409				\$410,409
101-500729	Medical Payments to Providers	\$666,721,652				\$666,721,652
102-500731	Contracts for Program Services	\$297,172				\$297,172
	Total Expense	\$667,429,233				\$667,429,233

05-95-47-470010-7943 HHS: Office of Medicaid and Policy, Uncompensated Care Fund

CLASS OBJ	CLASS TITLE	Current Authorized Budget	Increase / (Decrease)	Revised Modified Budget
010-79430000-403978-000	Federal Funds: Medical Grants	\$95,950,758	\$7,912,306	\$103,863,064
010-79430000-402201-005	Medicaid Enhancement-Local	\$95,850,408	\$7,904,402	\$103,754,810
	Total Revenue	\$191,801,166	\$15,816,708	\$207,617,874
041-500801	Audit Set Aside	\$100,350	\$7,904	\$108,254
102-500731	Contracts for Program Services	\$324,704	\$0	\$324,704
515-500357	Hospital Uncomp Care Pool	\$191,376,112	\$15,808,804	\$207,184,916
	Total Expense	\$191,801,166	\$15,816,708	\$207,617,874

EXPLANATION

As a result of a shortfall in Medicaid Enhancement Tax (MET) Revenue received in SFY 2016 and changes to the calculation of uncompensated care costs by the federal government, the Department's liability to the State's hospitals under the Disproportionate Share Program (DSH) for their uncompensated care has exceeded the amount budgeted for SFY 2016 for the DSH payment.

The shortfall in MET revenue of \$7,995,190 and the increase expense for DSH in the amount of \$7,904,402 (excluding the federal match) has resulted in an overall shortfall of \$15.9 million that this proposed transfer seeks to cover in order (i) to pay the DSH payment in full and (ii) to cover the shortfall of MET revenue. This item transfers money from the provider payment account to the uncompensated care fund to cover the increase in the DSH liability and accepts and expends additional drug rebate monies to reimburse the provider payment account in order that the Department meets all of its provider payment obligations.

DSH Shortfall

New Hampshire's Critical and Non Critical Access Hospitals annually file their Medicaid Enhancement Tax (MET) and self-report Uncompensated Care Costs, in April and May respectively. DSH payments are required to be paid to New Hampshire hospitals to reimburse for care for which they have not been paid, known as "Uncompensated Care."

DSH payments are distributed and paid annually by May 31st and are processed in the following priority order (subject to certain caps at both the ceiling and floor level):

- 1) Critical Access Hospital will be reimbursed at an amount equal to 75% of UCC
- 2) Non-Critical Access Hospital will be reimbursed at an amount equal to 50% of UCC
- 3) Remaining funds shall support Medicaid Provider payments

The State's fiscal year 2016 DSH obligation was higher than could have been anticipated at the time the current biennial budget was enacted because of a subsequent change in the definition of uncompensated care by the federal government that resulted in the issuance of a preliminary injunction by the Federal District Court of the District of New Hampshire in *New Hampshire Hospital Association v. Sylvia Matthews Burwell*. The effect of the preliminary injunction prevents the inclusion of any third party payments against hospital costs to arrive at a net Uncompensated Care Cost. As an example, previous charges reimbursed by Medicare, which would have lowered uncompensated care, are now excluded allowing those charges to be considered unreimbursed and subject to a DSH payment.

An additional significant factor influencing the State's DSH liability for fiscal year 2016 is the fact that the hospitals' uncompensated care costs were required to be calculated for the purposes of the 2016 DSH payment using fiscal year 2014 uncompensated care data. Because of the varying fiscal years for New Hampshire's hospitals and the fact that the New Hampshire Health Protection program did not commence until September 2014, the reduction in hospitals' uncompensated care that has and will continue to be realized is not reflected in the fiscal year 2014 UCC data. The Department and the hospitals anticipate that fiscal year 2015 uncompensated care costs will be significantly lower as that year will reflect more completely the impact of the NHHP program.

MET Revenue Shortfall

The Medicaid Enhancement Tax is assessed at 5.45% of net patient service revenue, collected by the Department of Revenue Administration, and subsequently transferred to DHHS. MET revenue is first distributed to fund DSH payments followed by Medicaid provider payments (in prior budget years the provider payments were funded first and once the budget was satisfied, the remainder was available for DSH). MET revenue in total was projected at \$220.5 million. MET is currently projected to come in at \$212.5 million, less than planned by \$7.9 million.

Because MET funds both DSH and provider payments, and since the law requires DSH to be satisfied first, the Department is requesting to transfer \$7.9 million of MET originally budgeted in provider payment to the DSH account, which can then be matched with federal funds to satisfy the full DSH obligation of \$15.9 million. However, after the transfer, it will create a revenue shortfall in the provider payment account. In order to cover the shortfall, DHHS is also requesting to accept and expend additional drug rebate revenue to continue to fund provider payments.

Due to delays in the SFY16 MCO contract negotiations, which when executed would allow the MCOs to negotiate and receive rebates directly from manufactures, DHHS was able to continue invoicing and receiving manufacturer drug rebates directly. As a result, rebate collection are expected to exceed the amount budgeted. This additional revenue is expected to be a one-time gain for SFY16 and is not expected to repeat itself in SFY17.

DSH payments totaling the budgeted \$191.4 million were processed on May 31st. The remaining DSH owed of \$15.9 million is contingent upon the Fiscal Committee and Governor and Council approval of the transfer and accept and expend of drug rebate revenue at their respective June meetings.

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Source of Funds

Account 7943: 50% Federal Medicaid Funds and 50% Medicaid Enhancement – Private Local Funds
Account 7948: 52% Federal Medicaid Funds, 16% Medicaid Enhancement – Private Local Funds,
4% Drug Rebates, 28% General Funds

Respectfully submitted,



Sheri L. Rockburn
Chief Financial Officer

Approved by:



Jeffrey A. Meyers
Commissioner