

JOINT LEGISLATIVE FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Friday, August 5, 2016

MEMBERS PRESENT:

Rep. Neal Kurk, Chair

Rep. Ken Weyler

Rep. Lynne Ober

Rep. Mary Jane Wallner

Rep. Dan Eaton

Sen. Jeanie Forrester

Senate President Chuck Morse

Senator Gary Daniels (Alt.)

Sen. Andy Sanborn

Sen. Lou D'Allesandro

(The meeting convened at 10:15 a.m.)

(1) Acceptance of Minutes of the June 24, 2016 meeting.

CHAIRMAN KURK: Good morning, everyone. I'd like to welcome you all to the August 5th, 2016, Fiscal Committee meeting and open the meeting with item number one on the Agenda, the acceptance of the minutes of the June 24, 2016, meeting. Is there a motion?

****** SEN. D'ALLESANDRO: Move it.

REP. OBER: Second.

CHAIRMAN KURK: Moved by Senator D'Allesandro, seconded by Representative Ober that the item be approved. The minutes be approved. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

***** {MOTION ADOPTED}**

(2) Old Business:

CHAIRMAN KURK: Old Business. All of these items under Old Business have been tabled. Is there anyone who would like to move -- any item be removed from the table or shall we continue on to agenda item number three?

** SEN. D'ALLESANDRO: I'd like to remove item 16-099 from the table.

REP. WALLNER: I'll second.

CHAIRMAN KURK: Senator D'Allesandro, seconded by -- is moved, seconded by Representative Wallner that Fiscal 16-099 be removed from the table. This is --

SEN. PRESIDENT MORSE: Mr. Chairman.

CHAIRMAN KURK: Yes.

SEN. PRESIDENT MORSE: I think I know what he wants to take off. I don't think we have the right number.

CHAIRMAN KURK: Are you talking about Gateway to Work, Senator?

SEN. D'ALLESANDRO: Yes.

CHAIRMAN KURK: That's 087.

SEN. D'ALLESANDRO: Excuse me. I looked in the book. It was under 099. I want Gateway to Work Opportunity.

CHAIRMAN KURK: Senator D'Allesandro moves Fiscal 16-087, request from the Department of Health and Human Services for authorization to accept and expend \$8,298,168 in Federal funds effective July 1st, '16, through December 31st, '16, be removed from the table. This is the Gateway to Work proposal from the Department. Is there a second?

REP. WALLNER: I second.

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CHAIRMAN KURK: Representative Wallner seconds that. This is not debatable. The question before us is to remove from the table. You ready for the question? By show of hands, all those in favor of removing this from the table, please raise your hand?

CHAIRMAN KURK: All those opposed? The motion -- the vote being 5-5 the motion fails.

REP. EATON: Can I get a roll call, Mr. Chair?

CHAIRMAN KURK: We've already had the vote, Representative. We can't redo it with a roll call. If you want a roll call, you have to ask first. Is there any other item that anyone wishes to remove from the table?

**(3) RSA 14:30-a, III, Audit Topic Recommendation by
Legislative Performance Audit and Oversight Committee:**

CHAIRMAN KURK: There being none, then we'll proceed to item number three on the agenda. An audit topic -- this is under RSA 14:30-a, colon -- sorry -- Roman III, Audit Topic Recommendation By the Legislative Performance Audit and Oversight Committee.

** REP. OBER: Move to approve.

SEN. SANBORN: Second.

CHAIRMAN KURK: Representative Ober moves, seconded by Senator D'Allesandro that the item be approved. Discussion? There being none, all those in favor please indicate by saying aye? Opposed? The ayes have it and the item is approved. Senator Reagan, you're free to leave now.

SEN. REAGAN: Thank you.

*** {MOTION ADOPTED}

CONSENT CALENDAR

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**(4) RSA 14:30-a, VI Fiscal Committee Approval Required
For Acceptance and Expenditure of Funds Over \$100,000
From any Non-State Source:**

CHAIRMAN KURK: We turn now to item number four on the Consent Calendar. There are two items on this. There are questions on Fiscal 16-123 so that will be removed. We now will be voting strictly on the only other remaining item, Fiscal 16-115, a request from the Department of Resources and Economic Development for authorization retroactively to budget and expend \$150,000 in other funds for the period of July 1st through June -- July 1st, '16, through June 30th, '17.

****** REP. OBER: Move to approve.

SEN. D'ALLESANDRO: Second.

CHAIRMAN KURK: It's been moved by Representative Ober, seconded by Senator D'Allesandro that the item be approved. Is there any discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

***** {MOTION ADOPTED}**

CHAIRMAN KURK: We turn now to Fiscal 16-123, a request from the Department of Administrative Services for authorization to release \$379,000 in Active Health Benefit Reserve Funds, which is retroactive, and to reduce the Active Trooper Health Benefit Reserve from 100% to 90%, releasing another \$384,400. Is there a motion?

****** SEN. D'ALLESANDRO: I move the item.

CHAIRMAN KURK: Senator D'Allesandro moves the item.

REP. EATON: Second.

CHAIRMAN KURK: Seconded by Representative Eaton. Representative Ober is recognized for a question, and we thank

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the Commissioner and her staff for their presence. Good morning and welcome.

VICKI QUIRAM, Commissioner, Department of Administrative Services: Good morning.

REP. OBER: Thank you. Thank you, Mr. Chairman. I had e-mailed -- Mr. Kane spoke to the Commissioner yesterday. She called me. I wasn't home. It was in the evening. Cecile, don't put this in the minutes. We'd gone to the bar. But I did e-mail her later.

This item is married to another item and I asked her for additional monthly data which she said that they can provide but not today. And the monthly data is applicable here -- more applicable to her other item. However, I would also like to know, this happened in April of this year, how at risk are we for a similar kind of problem in Fiscal Year 17? Because, obviously, if you need money for '16, you can't be in that much better financial shape for '17 for this little group of people.

MS. QUIRAM: For the record, Vickie Quiram, Commissioner of Department of Administrative Services and Cassie Keane and Sarah Trask are with me today.

The situation that we're in we have been over with you many times. We are really when we wrote these reports we did it because we wanted to be completely transparent about what's going on in this account, and also you worked so closely with us and been real partners with us in solving some of these issues. So what has happened here as I've discussed many times, we have a -- our revenue comes in fairly stably in these accounts. And then we have our claims expenses that come in sometimes on a monthly basis higher and sometimes on a monthly basis lower. Our surpluses have been reduced to the point where we have now dipped into the sub accounts on the Actives. We are still okay. We still have surplus in our Active account and in our Retiree account. So we are, you know, we are not at a point where we're very, very critical right now. But being very transparent and with a decision that we received from the Attorney General's

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Office that says if we are going to temporarily dip into those reserve accounts, we do need to come to Fiscal Committee for approval for that. We felt like that it behooved us to let you know here's where we are.

So we are okay. We expect in the Active accounts that it will balance and that we will be fine at the end of the year. In the Retiree account we are fine for now, but there will be a point as we've discussed many times in Retiree Health where that -- that deficit will hit us. We think it will be late in the Fiscal Year, probably June. But we will have that for '17.

The recommendations that we have made here are to say if we are going to solve this problem for '17, and we are going to do it right now, we think that the recommendations that we've made here are responsible ways for us to make changes in order to manage the ups and downs of the health benefit plan for both the Actives and the Retirees.

We don't know when that -- exactly when that -- when we'll get enough claims that we will dip lower or higher on these accounts. In dental that's a great example. The dental account we have had more expenses this year than we have had in the past for these few months. Probably because the collective bargaining agreement raised that level that people can use dental, their deductible from 1500 to 2000. It didn't cost the State very much at all. But people are going in and they're getting that \$2,000 worth of work done early in the year. Very normal. It will be -- we really think that it will balance out.

REP. OBER: Follow-up, Mr. Chairman.

CHAIRMAN KURK: Follow-up.

REP. OBER: Commissioner, I'm on Page 3 of your memo under Item (a), the Trooper account.

MS. QUIRAM: Hm-hum.

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REP. OBER: And I'm in the second paragraph and I'm about a little more than 50% down. You say in May 2016 the prescription drug claims expense was 32,000 more than on average. And June 2016 the medical claims expense was approximately 45,000 more than on average. One of the pieces of data I asked her for because we made changes to the prescription plan effective February 1st, 2016, isn't that right, Commissioner?

MS. QUIRAM: Yes.

REP. OBER: Okay. I asked her and they'll be happy to provide that, they just couldn't get it together today, when we made that prescription plan change month by month, what was the expected expenditure, and then month by month what was the actual expenditure? 'Cause we've now -- we should have through July claims for that. So we have February through July, plus a look at what their expected monthly expenditure was and their projection prior to the plan change so that we can estimate if the plan changes are giving us what we want. Why is that important? Because we used what we thought would be the savings from the plan change to partly offset some of the underage in the overall Retiree Health problem.

So that is a critical piece of data for us to have. And it will, as I said, this applies more to the item that's coming up that we haven't looked at. But it's applicable here because you mentioned it here. And ditto, the same thing for the health claims.

Now we did make changes also in the health plan and that was effective January 1st because Fiscal took action. So we need to see what those projections were and where we were going because we are critically concerned about Retiree Health. And I must have spent, as you guys did, thousands of hours last year with you working on that. So we need that kind of data before we can act on the second piece. But it came up here so it was appropriate to ask the question here. And I understand that you wouldn't have it today. And I thank you for agreeing to get it for us.

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CHAIRMAN KURK: Question. These are sub accounts within the Active account.

MS. QUIRAM: Yes, they are.

CHAIRMAN KURK: Are they statutorily required to be separate? And I ask that because the follow-up question is let's assume this is not approved, you can still take -- could you take surplus from the Active account and use it for these particular accounts?

MS. QUIRAM: Yes, we can. We are required to keep Active accounting separate from Retiree accounting. So yes, we can do that. We want to keep the color of money very much the same. It is -- we account for it in sub accounts so that we can get very transparent with where we are going with these accounts. And we also would put it back from the same people it was taken from. We just want to be very, very careful that we keep, you know, we keep that color of money very carefully, and we would continue to do so. And yes, that is exactly what we would propose to do at this point.

CHAIRMAN KURK: If this is not approved?

MS. QUIRAM: Either way, yes.

CHAIRMAN KURK: Thank you. Further discussion or questions? Senator Daniels.

SEN. DANIELS: Thank you. Commissioner, just a clarification on Page 2. The second line it says in September 2016 the reserve amount will maintain five point -- 5% and then later after the budget passed in late September 2016. That supposed to be 2015?

CASSIE KEANE, Director, Division of Risk and Benefits, Department of Administrative Services: Yes. Sorry.

MS. QUIRAM: Yes, thank you.

SEN. DANIELS: Okay.

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MS. QUIRAM: Sorry for the error.

CHAIRMAN KURK: Further discussion? There being none, are you ready for the question? The motion before us is to approve the item. If you're in favor of that, please now indicate by saying aye? Opposed? The ayes have it and the item is approved. Thank you.

*** {MOTION ADOPTED}

MS. QUIRAM: Thank you.

(5) **RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from Any Non-State Source and RSA 124:15 Positions Authorized:**

CHAIRMAN KURK: We turn now to item number five on the agenda. There is one item here on this Consent Calendar, Fiscal 16-126, a request from the Department of Justice for authorization to accept and expend \$108,223 in Other funds through June 30th, 2017, and pending approval of that request establish one full-time salary Drug Prosecutor position through June 30th, 2017. Is there a motion?

** SEN. D'ALLESANDRO: I move the item.

CHAIRMAN KURK: Senator D'Allesandro moves the item.

REP. EATON: Second.

CHAIRMAN KURK: Seconded by Representative Eaton. Is there someone from the Department of Justice who can answer a question? Good morning, Mr. Foster.

JOSEPH FOSTER, Attorney General, Department of Justice: Good morning, Mr. Chairman, Members of the Committee. For the record, Joseph Foster, Attorney General.

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CHAIRMAN KURK: Thank you for being here. Representative Ober is recognized for a question.

REP. OBER: Thank you. Thank you for coming this morning. I think Mr. Kane probably let you know I was concerned about space in your organization, which has really nothing to do with this except you're adding one person. I don't want him sitting on the floor. Because I know that we added four new staff members in the budget spaced throughout the biennium, but still four new spaces that you need to sit. And then we had approved previously one other prosecutor under a Federal grant. So that was five. And I heard that you were very tight over there. And now this is number six. I don't want him sitting on the floor or her sitting on the floor or in the parking lot. So what's the space situation over there?

ATTORNEY GENERAL FOSTER: We are tight on space. We do have space for this individual. He'd be housed in an office. But I'll let Kathy give you a little bit more details on what we have been doing looking at space.

KATHLEEN CARR, Director of Administration, Department of Justice: Hi, Kathy Carr, Director of Administration. We have met with General Services through DAS, took a tour through the building. We wanted to wait for the Fire Marshal report to get back to see what we were allowed and not allowed to do. So we have some moveable walls. And I don't know when this will take place, but we are hoping to add a few offices up on the third floor. And then we are moving people around on the first floor to make everything much -- use the space a little better so we can add some additional office space. That's where we're at right now.

REP. OBER: Thank you. Years ago, the Star Trek TV series said, "Space, the final frontier," and it certainly is an ongoing problem. Thank you.

ATTORNEY GENERAL FOSTER: Thank you.

REP. OBER: Thank you, Mr. Chairman.

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CHAIRMAN KURK: So the bottom line of your answer is that there will be space for all six of the new hires.

ATTORNEY GENERAL FOSTER: There is space for all six of the new hires, yes.

CHAIRMAN KURK: Thank you.

REP. WEYLER: Further question.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Are you utilizing the space that used to be the bank?

ATTORNEY GENERAL FOSTER: That -- yes, our offices where the bank used to be.

REP. WEYLER: You're expanding into that space anyway in the last year or so. The bank closed out. Okay. I thought perhaps that was usable space for you being the only one in the building now. Thank you.

ATTORNEY GENERAL FOSTER: Sure.

CHAIRMAN KURK: There being no further questions, is there further discussion?

SENATOR FORRESTER: I have a question.

CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: Thank you. Do you know when you anticipate making this hire or have you already made it?

ATTORNEY GENERAL FOSTER: There is an individual in the office who has sought out this position and I'm looking at Kathy. We would have to perhaps put to G & C.

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MS. CARR: I'm just waiting for a position number. I have put in my request pending approval. And once we get a position number -- then if we get approved, once we get a position number we would be able to put that person in.

SEN. FORRESTER: So you don't anticipate any delays?

ATTORNEY GENERAL FOSTER: No.

SEN. FORRESTER: Thank you.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Representative Ober.

REP. OBER: So you have a person in the office. Do they have a current position and are they going to move to a one-year position?

ATTORNEY GENERAL FOSTER: Yes, and they understand that.

REP. OBER: Okay. And then you'll backfill the position they leave?

ATTORNEY GENERAL FOSTER: Correct. I mean, we -- the general approach I take in the office is that if an individual who we value wants to try another area of law, another area of practice, I tend to let that happen. I think it's for their growth and, frankly, we are able to retain people longer as a result of that.

REP. OBER: Oh, I agree with that. I just hate to see a person that you value and would like to retain longer go into a one-year position that might go away.

ATTORNEY GENERAL FOSTER: And they understand the risk of that. And, you know, if we -- if the Legislature in the next budget should not choose to continue this position, we'll try to make the best effort we can to move him into another position.

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REP. OBER: Okay. Thank you.

CHAIRMAN KURK: Any further questions? There being none, are you ready for the question? All those in favor of the motion to approve Fiscal 16-126, please now indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

CHAIRMAN KURK: Thank you.

ATTORNEY GENERAL FOSTER: Thank you, Mr. Chair.

(6) RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 from Any Non-State Source and RSA 21-I:30, II, Medical and Surgical Benefits:

CHAIRMAN KURK: We turn now to item six on the agenda. Fiscal 16-124, a request again from the Department of Administrative Services for authorization to reduce Retiree Health Benefit Reserve Funds from 5 to 4%, a reduction in the amount of \$800,000 of projected annual claims in administrative expenses; and, two, schedule and hold a public hearing before Fiscal to review the Retiree Health Benefit Plan design and premium contribution changes. Is there a motion?

** SEN. D'ALLESANDRO: Move the item.

REP. EATON: Second.

CHAIRMAN KURK: Moved and seconded. Moved by Senator D'Allesandro, seconded by Representative Eaton. Is there someone from the Department who would be available to answer questions?

MS. QUIRAM: Good morning, again.

REP. OBER: Do we have an update on this?

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CHAIRMAN KURK: We have just or I've just been handed a replacement page in which the Department has removed its request for a public hearing since they didn't want to usurp the Chair's authority, and I appreciate that very much. And just for everybody's information, I intend -- I am now announcing that we will have a public hearing on this issue on September 23rd, that's a Friday, at 1:00 p.m. And I believe the place will be in Representative's Hall. We are checking to make sure that's available. And that public hearing will deal with Retiree Health Benefit Plan design and premium contribution changes.

It's my intention that the Department will make a presentation, too, at the public hearing about options as opposed to proposals, and that the public then will comment on those options and at our -- at the Fiscal Committee meeting in October, the Fiscal Committee will approve plan changes presumably on the basis of some presentation by the Department. Questions about that announcement? Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you very much, Mr. Chairman. Mr. Chairman, question A. Is everyone going to sit in on the hearing? Originally, we thought it was going to be a portion of the Fiscal Committee. But based on your iteration, I'm assuming everybody will sit in on the public hearing.

CHAIRMAN KURK: I read the statute and the statute says the Fiscal Committee shall hold a public hearing, not a subcommittee. However, I point out that a public hearing can be held without the majority of the Committee so if this conflicts with Members' schedules, attendance will not prevent or lack of attendance will not prevent the hearing from going forward.

SEN. D'ALLESANDRO: Thank you for that clarification.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Further.

SEN. D'ALLESANDRO: No, fine. Thanks.

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CHAIRMAN KURK: Representative Ober.

REP. OBER: As to the good Senator's question, the House did not pass the bill with the portion the subcommittee in so the statute passed. I know that was your idea which I supported fully but that did not pass through the House.

SEN. D'ALLESANDRO: Thank you. Thank you for that comment. If I may, Mr. Chair? I think that's a good idea. If everybody can be there, that's terrific. But it seemed at the time, just point of order, that a subcommittee put less pressure on the entire group as a time constraint that are offered in place. But the public hearing is essential. It must go forward. And I think you've covered it so I take it it will happen.

CHAIRMAN KURK: I think perhaps one of the more important outcomes of the public hearing will be that the Department has an opportunity to hear what retirees and other people think about the various options that they propose.

SEN. D'ALLESANDRO: Right.

REP. OBER: Mr. Chairman, I have questions about this.

CHAIRMAN KURK: Representative Ober.

REP. OBER: Thank you. I spoke earlier about the projections, the budgeted amount, and the spend rate. And I believe, Commissioner, you've indicated that you can do this in perhaps in a month; is that correct?

MS. QUIRAM: I cannot guarantee that I can do it the same amount. We are right in the middle of budget season and we have a staff that I can't have Cassie stay here longer than six days a week.

REP. OBER: I understand that.

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MS. QUIRAM: We will have to take it back and look. I can bring my budget people in and see if they can help us come up with something but I don't know.

REP. OBER: If you can come up with something.

MS. QUIRAM: Eventually, yes.

REP. OBER: And we are talking about a surplus that is estimated, if I might, for June 2017. And you have a rather hefty budget line item for the intervening months. We are a month and a half into the Fiscal Year. So you had, I think, for the total biennium 43 million. So you've got something over \$20 million between now and June 2017; is that correct?

SARAH TRASK, Administrator, Division of Risk and Benefit Management, Department of Administrative Services: 143 million.

MS. KEANE: 143 million.

REP. OBER: 143 million. That's a pretty hefty budget. In six weeks you haven't spent all that; am I correct?

MS. KEANE: We're good so far.

REP. OBER: Because if you had, this 800,000 isn't going to get us through the Fiscal Year. I want to ask about looking at perhaps funding the budget out of your exist -- the study out of your existing budget. I know in the past we haven't asked you to look at that, because your staff is very busy, and we did in the House try to provide an additional 350,000 which, unfortunately, the House voted down that bill.

Would it be possible for you to look about funding that? My thought is perhaps tabling this because we've ascertained you've got money for right now so you don't need this for the surplus right now. Looking at options, because I know the two-year budget cycle goes along, other opportunities do show up that you may or may not be able to use, and putting this off and allowing you and your able staff time together.

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MS. QUIRAM: We hate to put the study off anymore at all. Can we go back and look? We can go back and look. Our budgets are very tight. I do not have any idea where we would come up with \$300,000 to continue the study right now. Hum -- that's --

CHAIRMAN KURK: If I may? The study was estimated to cost 300,000. You've spent 109, I believe.

MS. QUIRAM: Yes, we have.

CHAIRMAN KURK: So you need 180 -- 191,000.

MS. QUIRAM: Hm-hum.

CHAIRMAN KURK: Am I correct that you without our approval can spend that money from surplus?

MS. QUIRAM: We can. We can. But we would be knowing that we are projecting at the end of the Fiscal Year 17 that we will need to dip into reserves. So we have been questioned on our use of that money for a long-term study knowing that that is the case.

CHAIRMAN KURK: But the AG's letter I thought made it clear that this was a legitimate expenditure out of surplus.

MS. QUIRAM: Yes, it is.

CHAIRMAN KURK: Okay. So if we were to postpone this for a month that wouldn't upset any apple carts if you spent the money during this month to get the information from the study, hopefully concluded in time for the public hearing, but certainly in time for --

MS. KEANE: No.

CHAIRMAN KURK: It won't be available for the public hearing?

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MS. KEANE: No.

CHAIRMAN KURK: Will it be available to be used for the 2017 rate setting process so that you can propose -- you can make proposals to this Committee in October that we would approve on the basis of which you would go forward for 2017?

MS. KEANE: I don't think it will be done by then because we halted it when the legislation failed, and we haven't done any work since all the legislation failed and through today. So it won't be done by October.

MS. QUIRAM: That doesn't mean that we wouldn't be able to present some options --

MS. KEANE: Right.

MS. QUIRAM: -- in September and at least get people's opinions on how they feel about these options and what might work best for the retirees.

CHAIRMAN KURK: These options would be based on conversations with the consultants who are working on the study?

MS. KEANE: Yes.

MS. QUIRAM: Yes.

MS. KEANE: And they're in the nature of modeling. If we change the plan like this, how much savings could we achieve? If we changed it like that, what would the savings be?

CHAIRMAN KURK: So you can go ahead and spend money between now and our next meeting on this -- on this study.

MS. QUIRAM: We can do so as long as Fiscal Committee understands that when we get --

CHAIRMAN KURK: We are increasing the potential deficit --

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MS. QUIRAM: Potential deficit.

CHAIRMAN KURK: -- in June.

MS. QUIRAM: Yes.

CHAIRMAN KURK: Thank you.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Sorry, you have a question?

REP. OBER: No, because I was going to move to table that.

CHAIRMAN KURK: Senator Forrester.

REP. OBER: So I would like to yield to you, Senator.

SEN. FORRESTER: Thank you. Commissioner, did you just say that -- did I hear you say that you stopped -- everything stopped when the legislation failed. So you were in the process of with a consultant doing the work but you stopped it all?

MS. QUIRAM: We stopped the consultant from working on it because we were -- we were moving ahead, and I think we have talked to this Committee about it many times before that we move ahead with the long-term study understanding how important it was. And it was provided for in the legislation that \$300,000 was provided for in the legislation. So it was our hope that that would pass and that's the way we had discussed this and why we were moving forward. So when it didn't pass, we needed to back up a little bit and make sure that we had the authority to spend the money, which is why we asked the Attorney General's Office for their opinion.

CHAIRMAN KURK: Follow-up.

SEN. FORRESTER: So if we table this, you won't continue even though -- am I understanding right you won't continue this

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even if you can take it from the surplus. You're not going to continue to work on the study.

MS. QUIRAM: I think we would feel comfortable moving ahead with the study if Fiscal Committee discusses it with us and approves that they agree that it's an appropriate use for the money, and that we can move ahead knowing that we might come to the end of this -- end of Fiscal 17 and that may add to our deficit at the end of Fiscal Year 17, and we may have to dip into the reserves.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. But for clarification, what you're saying to the Fiscal Committee is there are two alternatives. The first is pass this.

MS. QUIRAM: Hm-hum.

SEN. D'ALLESANDRO: Be transparent letting us know exactly what's happened in terms of the money. The other, don't pass this but know clearly that you have notified the Fiscal Committee that you're going into the reserve to -- you're going to use those reserves, based on the definition by the Attorney General. But, indeed, there could be a problem going forward. Is that pretty much a synopsis of what you're saying?

MS. QUIRAM: We would not be using reserve funds right now. We have enough in the account. So we have budgeted funds --

SEN. D'ALLESANDRO: Right.

MS. QUIRAM: -- we can use for the study.

SEN. D'ALLESANDRO: Right.

MS. QUIRAM: It's just knowing that when we get to June we will be possibly needing to dip into the reserves. We don't know

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what's going to happen between now and then. We may have great experience or we may have horrible experience.

SEN. D'ALLESANDRO: Yes, understand. So there will be no surprise.

MS. QUIRAM: Right.

SEN. D'ALLESANDRO: We are aware of the fact that there may be a problem in the -- and have to dip into the reserves. It's a question of transparency. They're letting us know the alternatives and that's clear because we complained about that in the past that things haven't been transparent. But it's quite clear now. We have a decision to make. We go one way or the other way.

CHAIRMAN KURK: My understanding is that whether or not this item passes or is tabled, the study is going to go ahead; is that correct, using surplus funds, not reserves? And you have surplus funds at this time. You're telling us that when you do that you will, based on current projections, increase the problem for June of '17.

MS. QUIRAM: Yes.

CHAIRMAN KURK: Thank you.

REP. OBER: Mr. Chairman, there is a third option. I asked her if she would also look at her budget because HB2 gave the Commissioner the right to transfer money within her budget. She has an option above and beyond what other Commissioners have. Look at her budget and see, although her budgets are tight as she said, but look in that budget and see what else she has that could be transferred from other accounts, not the Retiree account, not the surplus account, to help offset the cost of this. And I believe when I spoke to her she agreed she would look at it but said, please know the budgets are tight. I'm aware of that. But there is that third option that we need her to look at, also.

CHAIRMAN KURK: Thank you. Senator Morse.

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SEN. PRESIDENT MORSE: Be really nice to know how tight the budgets are, but I don't think the Governor's Office is going to communicate that to us.

REP. OBER: Yeah.

SEN. PRESIDENT MORSE: Being totally open here, because I guess we want to make sure the public understands what's going on here. We know there's a deficit coming before the end of June. How much is it right now that we think we are going to be short that need some kind of appropriation?

MS. KEANE: It's --

MS. QUIRAM: It's about \$250,000, assuming that the hundred dollars -- yeah, \$100,000 transfers that we have already taken out of our '17 budget to put in here. It's about \$250,000 there, and then the additional \$300,000 for the study would make it \$550,000.

SEN. PRESIDENT MORSE: Okay. While we are being totally open and the public understands where we are going here, we still have another six months next year that's in a different budget that's going to be short for a year some number around \$15 million. So from the end of June to December, we have a \$7 million problem that we haven't adjusted anything for. We haven't told the retirees anything, how we are going to account for that.

MS. QUIRAM: Yes, that is true. We have, however, been given an indication from the Governor on our efficiency target. And in our efficiency target the funds for Retiree Health -- at least enough for the funds for Retiree Health have been put into the DAS budget for the 18-19 biennium.

SEN. PRESIDENT MORSE: That's very nice. She's not going to be here. The reality is it's a \$30 million problem in the next biennium.

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MS. QUIRAM: Yes.

SEN. PRESIDENT MORSE: And we are not facing reality. We didn't face it in the session. We decided to punt, which I said we wouldn't do. And now here we are as a Fiscal Committee, not the whole body, because the Governor decided not to follow your plan, and we are going to be short, because you're not coming with a plan in September to change the retiree's health because there is no plan.

CHAIRMAN KURK: Let me just, if I may, try to understand one other thing. You set rates for Fiscal -- for a calendar year and you do it basically from, I guess, it's sometime late October, early November.

MS. KEANE: Yes.

CHAIRMAN KURK: Will that plan -- will the proposal that you're going to bring before us to make those changes include the \$7 million that Senator Morse referred to for the second six months of Calendar '17?

MS. QUIRAM: Yes, it will be considered as an option. We will model it that way.

CHAIRMAN KURK: And if I may? Once that number is set, that is to say, once the contribution rates and all of the plan features are set for '17, can we, the Legislature or the Fiscal Committee through you, make changes to that? Because we will be acting before the new Legislature's elected and, obviously, before the new budget has been adopted.

MS. QUIRAM: Yes. We have a long way to go in the budget. Can we change the rates?

MS. KEANE: If you approve the plan design changes that we present to you in September in October, then we will be prepared to adjust Calendar Year working rates for Calendar Year 17 based on what is approved by the Committee.

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CHAIRMAN KURK: I understand that. But now it's March, and the House is doing the budget. And the House at that time has a different view of what ought to be done. So the question is what changes can be made to the Calendar Year 17 Plan that's been approved by Fiscal, notice has been given out, it's in effect, what changes can be made? My understanding is that we can change certain rates but not plan design features.

MS. KEANE: Correct. You can change premium contribution amounts which in law today only applies to people who are non-Medicare eligible. We call them under 65s, unless a law is passed that allows that to apply to over 65 Medicare eligible, in which case we could also implement a premium contribution for over 65 Medicare eligible retirees.

CHAIRMAN KURK: Thank you. Senator Morse and then Senator D'Allesandro. Sorry, Senator Sanborn.

SEN. SANBORN: Senator Morse, if you have another question.

SEN. PRESIDENT MORSE: I just want to follow-up on what you just said. I mean, my understanding, and this is based on what we did last year, and I remember having to table it a month, the employees have to -- the retirees have to be noticed --

MS. KEANE: Correct.

SEN. PRESIDENT MORSE: -- on these changes in a certain period of time. So we were fighting in October or October 15th deadline last time. So you're telling me you intend to come to us in Fiscal and put a program in place on January 1st that will solve the problem for the whole -- for that year, because that's essentially what this is going to do.

MS. KEANE: We're going to present options to you, Senator Morse, that are going -- that -- and that will include addressing the whole problem. We are going to give you a lot of different options so you can look and see what is it that you want to do. Some will be medical design options. Some will be pharmacy options. When you talk about October and how we had to

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have a decision by October, what is critical is that we have to work with our pharmacy vendor, Express Scripts, and get notice to them in October so that they can comply with all the Medicare regulations. And this year the date is October 14th. So we would need decisions by October 14th in order to implement plan design changes January 1.

MS. QUIRAM: For pharmacy.

MS. KEANE: For pharmacy. Okay. That's what I'm talking about. When I was talking earlier, I was talking about a mid-calendar year premium contribution change, which is different from a plan design change, such as pharmacy co-pays and out-of-pocket expenses.

SEN. PRESIDENT MORSE: And I just want to clarify what the Chair was saying.

MS. KEANE: Sure.

SEN. PRESIDENT MORSE: There's ten people here making a decision on part of the problem. More than likely, the Legislature is going to have to weigh in sometime next year, even if we fast-track the bill before we pass the budget. Is that going to be able to be implemented next year?

MS. KEANE: If we don't meet that October date, we will not be able to make pharmacy plan design changes in Calendar Year 17. What that would mean is that if we -- in order to achieve that savings, we would have to look to the medical components of the benefit, and we've lost the benefit of time. We talked about this a lot. And then we could also if we are looking at the biennium, and how do we manage this budget over the biennium, time is money. But we can, again, work on if we miss October 14th, 2016, for 1/1/17, we can look to 1/1/18 and implement changes then.

SEN. PRESIDENT MORSE: I want to assure you I heard it. I heard you last year.

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MS. KEANE: Yes, thank you.

CHAIRMAN KURK: But this also can be bifurcated then. As long as we give you the -- the decision with respect to plan design for Express Scripts on the 14th of October, we would be able to have a decision, let's say, on contribution rates or something like that at a later -- at another meeting and still meet the January 1st deadline; is that correct?

MS. KEANE: Yes. When you talk about increasing a premium contribution, however, even though there's not a regulatory deadline for Medicare, there's -- there's what is proper notice to retirees so they can make adjustments in their life so if they have increased costs they can have a plan for that.

CHAIRMAN KURK: Thank you. Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. Ladies, as always, thanks for coming up. And probably comes as no surprise that I join Senator Morse in my concern about the frustration some of us have in trying to solve this problem. But I want to assure you, and I think I speak for every single person sitting up at this table that you guys have been nothing but a shining example what communication and working with this Legislature is all about. You guys have really been awesome and transparent and continue to bring ideas to the table and we truly, every one of us, and we talk about you behind your back all the time, but we truly appreciate all the efforts you have guys have put in.

MS. KEANE: Thank you.

MS. QUIRAM: Thank you.

SEN. SANBORN: All that being said, and I'll keep it positive, I just want to share some of this, in addition to the concerns my colleague just had about holistically where we are on a policy basis and our frustration with the Governor, I do have -- and for the record, Mr. Chair, I support not tabling this because I just think it's a much cleaner accounting just to approve it and go forward. But I am concerned that so many times

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we have kind of come in, we're taking haircuts here and haircuts there to kind of band-aid our way down to the finish line. And although I know the reserve amounts because I've been fortunate and gotten copies of what we have in surplus and reserve, and I know there's some money in the accounts, it's just making me, as just a frugal guy, wiggly about how we continue just kind of like shave off the top of the bowl, and I hope we can find a way to stop doing that.

MS. QUIRAM: I think that's one of the reasons that we are saying that we want to move ahead with this long-term planning.

SEN. SANBORN: Thank you, ladies. Thank you, Mr. Chair.

CHAIRMAN KURK: Senator D'Allesandro.

SEN. D'ALLESANDRO: Thank you, Mr. Chair. I just wanted to make a point. You've already scheduled the hearing. So, indeed, if you don't pass this, you have to somehow cut this in half, divide the question and pass the public hearing process because you've already scheduled it on how to decide it.

CHAIRMAN KURK: Oh, no, no. The public hearing goes forward regardless of how Fiscal acts. Fiscal could act on an entire plan at one time or it could act on a plan in pieces. But in order to meet Express Scripts' deadline, certain components, if they're to be changed, have to be decided on by October 14th.

SEN. D'ALLESANDRO: Understand. But the public hearing is part of this.

REP. OBER: No, it's been removed. You have a replacement page.

CHAIRMAN KURK: The public hearing, regardless of what happens on this particular item, the public hearing is an independent statutory requirement which the Chairman has fulfilled by my prior announcement.

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SEN. D'ALLESANDRO: Okay. Great. Thank you. I have the replacement. I apologize.

CHAIRMAN KURK: Representative Ober.

** REP. OBER: Mr. Chairman, I do believe we need data in order to make a good decision, and so I move to table this item.

CHAIRMAN KURK: Is there a second?

REP. WEYLER: Second.

CHAIRMAN KURK: Representative Weyler seconds the motion made by Representative Ober. This is not debatable. If you're in favor -- are you ready for the question? If you're in favor of tabling item Fiscal 16-124, please now indicate by raising your hand? If you're opposed?

CHAIRMAN KURK: The motion fails.

** SEN. SANBORN: Mr. Chair, I move ought to pass.

SEN. FORRESTER: Second.

REP. WEYLER: We already have a motion.

CHAIRMAN KURK: Yes, the motion is made by Representative D'Allesandro and Representative Eaton. The motion before us now is to pass this item. Further discussion?

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: Representative Ober.

REP. OBER: Reluctantly, how hard I worked on this, I'm going to vote no on this for two reasons. Number one, the House to my horror voted down the money for the study. That was in a bill that went in front of the House and we voted no on that. And I spent months working on that with the ladies, but the House vote is no on this item. Number two, I do think we now

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start -- need to start looking at what their projections are per month, what their spending rate is per month, and get a real handle on where we are going because this isn't going away as the Commissioner started with then and Senator Morse agreed with that. It's going into the next biennium. We're not trying to plug one hole that never comes back to face us. The Commissioner has been open and honest meeting after meeting about how this is going to get worse, not better. So we absolutely have to look at the data that they have been doing to make their monthly projections and ask to look at the data against the monthly spend rate and see where we are. We need to know if the pharmacy plan changes we made in February have made any kind of a dent from the memo we got. It doesn't look like it. If so, what else do we need to look at; formulary changes, et cetera. That's part of the reason I was in support of that study, part of the reason I wanted that to go forth. I know in the House one of my Finance colleagues made a case on the floor not to pass that bill, and it did not pass. But I cannot because the House has voted no, vote to pass this, because I will be violating the House vote. Very unfortunately and, Commissioner, you don't know how I regret that situation.

CHAIRMAN KURK: Further discussion? There being none, are you ready for the question? The motion is to approve Fiscal 16-124. If you're in favor, please indicate by saying aye? Opposed? No.

REP. WEYLER: No.

CHAIRMAN KURK: The ayes have it and the item passes. Thank you.

*** {**MOTION ADOPTED**}

MS. QUIRAM: Thank you.

(7) **RSA 7:12, I, Assistants:**

CHAIRMAN KURK: We turn now to item number 7 on the agenda, Fiscal 16-117, a request by the Department of Justice for

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authorization to accept and expend a sum not to exceed \$1,352,300 from funds not otherwise appropriated for the purpose of covering projected shortfalls in general litigation expense incurred in the defense of the State and the prosecution of criminal law for June 30th, 2017.

Is there someone from the Department who would be prepared to answer questions? Mr. Attorney General, good morning again.

ATTORNEY GENERAL FOSTER: Good morning, and with me is Kathy Carr.

CHAIRMAN KURK: Could you help us out by explaining to us what the initial budget appropriation was, what subsequent approvals for additional funds Fiscal gave, how much of that has been spent; and, specifically, what's happened to the money that we appropriated for the *Kibby* case which as a result of a plea bargain might not have been spent.

ATTORNEY GENERAL FOSTER: For each of the Fiscal Years, and I'm going to have Kathy correct me if I'm wrong, the budget provides for \$350,000.

CHAIRMAN KURK: Attorney General, could you speak into the microphone? Bring it quite close so that people in the back can hear you.

ATTORNEY GENERAL FOSTER: For each of the Fiscal Years 16 and 17 the budget provides for \$350,000. The -- for Fiscal Year 16, looks like there were two additional requests totaling \$1.6 million, which were approved, and that was expended and slightly over expended. Most of that was related to work done in audits and investigations done in connection with the Fair Labor Standards Act issues. I believe I have briefed some of you about that in the past. Most of the audits have been completed, although there's four agencies where it's going on.

You know, as I indicated, the State was not in compliance in various ways on Fair Labor Standards Act issues for a variety of reasons and bringing it into compliance and that's taken some

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time, a lot of effort, and there were United States Department of Labor investigations that were also open and resolved, and there are no pending investigations now. Corrective action's been taken.

In connection with *Kibby*, it's true the case has pled. It pled about a month or so before it was going to go to trial. There was still expended \$135,000 roughly in preparation of that case. It's a complicated case and, obviously, as I'm sure you understand, a lot of expenses are incurred even before you start trial with various experts and other assistance at the office.

CHAIRMAN KURK: Remind us how much we appropriated for *Kibby* and how much is left over?

MS. CARR: I don't -- I'll have to get back to you on the exact amount.

CHAIRMAN KURK: Approximate.

MS. CARR: I think we gave a 250 -- Kathy Carr, Director of Administration. I believe we asked for like we thought it was going to be about \$250,000 in total. We spent about 135,000 of those dollars.

CHAIRMAN KURK: And that money is accounted for in this request?

MS. CARR: That money was spent on other issues. The DOL, the U.S. Department of Labor issues was almost -- if you want to tell them.

ATTORNEY GENERAL FOSTER: I mean, it was over -- approximately \$1.4 million totally incurred on the three agency investigations, as well as the audits that were done. And my guess is that is more than what was anticipated when the requests were made. That would be my guess as to where it was consumed.

CHAIRMAN KURK: Senator Sanborn.

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SEN. SANBORN: I guess I have two questions, if I may, Mr. Chair? So I guess I'm coming back to the Department of Labor audit you're talking about. We had a payroll issue with a number of agencies. That's the issue you're talking about. I see one shaking yes and one shaking no. I guess --

ATTORNEY GENERAL FOSTER: Well, it's the Fair Labor Standards Act in compliance with that which is overtime issues, recording -- reporting of time in an accurate way, that sort of thing.

SEN. SANBORN: Had some issues with Liquor even, I believe.

ATTORNEY GENERAL FOSTER: Correct. That's correct.

SEN. SANBORN: We spent \$1.4 million adjudicating or defending that and only \$100,000 on Kibby? Seems like --

ATTORNEY GENERAL FOSTER: Well, there were three separate agency investigations where the U.S. DOL came in and did -- and opened up an investigation, and they were resolved. Coming out of those investigations it became apparent to us that statewide many agencies were not in compliance and so a full audit was done to bring the State into compliance so we wouldn't have problems into the future. And, frankly, that is one of the many reasons the U.S. DOL shutdown their investigation and didn't open up a full-blown investigation of the State statewide because it was because of that.

CHAIRMAN KURK: Follow-up.

SEN. SANBORN: You want to stay on this one first before I go to the next one?

CHAIRMAN KURK: Yes. Why isn't the DOL charge one that is paid by the various departments that were under investigation? Why is this being picked up by DOJ?

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ATTORNEY GENERAL FOSTER: This was funds where we hired outside counsel. So it's not the fine or the penalty that I'm talking about which were actually relatively minimal. We were able to negotiate them. But it was time spent on legal counsel. We have not allocated legal counsel to those agencies. That's correct.

CHAIRMAN KURK: But why didn't you charge back against the various agencies a proportionate share of outside counsel that you had on this so that whoever was under investigation would be paying the bill out of their budget rather than taking money out of surplus? That's -- somebody made that decision, either to do it or not to do it.

MS. CARR: I -- I'll have to get back to you on that. I need to check with our Civil Bureau on -- but normally we -- we are responsible for representing all the states. And I will have to find out where the decision came that we would be paying for all of this.

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: There's more discussion.

REP. OBER: I have a question when it's my turn.

CHAIRMAN KURK: Senator Sanborn, please continue.

SEN. SANBORN: Thank you, Mr. Chair. Again, thank you so much. Although I do recognize it's your responsibility to represent our agencies when things go sideways, I would think that they should be responsible for paying for it if they find themselves in a sideways position.

With that being said, I guess I'm a little bit sideways on the other thing. I'm just looking for clarification, Mr. AG. I saw an article in the *Union Leader* last week about legal expenses that exceeded \$1 million on the Liquor Commission contract dispute which kind of caught me by surprise. And so is that part of this request or have you already funded that from

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other appropriations we have made to you or we expecting to see another million dollar request for legal fees?

ATTORNEY GENERAL FOSTER: That's been paid and I think that is charged back to Liquor, but I will confirm that for the question that the Chairman asked. Yes.

SEN. SANBORN: That million dollars was charged back?

ATTORNEY GENERAL FOSTER: Yes.

SEN. SANBORN: Thank you, sir. Thank you, Mr. Chair.

CHAIRMAN KURK: Representative Ober.

REP. OBER: Thank you. My first question was going to be to the LBA and that was I believe the law says that those liquor bills will be charged back to Liquor as an enterprise fund.

MS. CARR: Yes.

REP. OBER: Could you let us know on that at some point? I don't expect you to have it in your head. And my second question was to the AG. The outside counsel you're referring to, was that a New Hampshire company?

ATTORNEY GENERAL FOSTER: No. And, in fact, I will tell you that we started when this started up to work with a New Hampshire office of a national firm, weren't getting appropriate or quick answers. It is a very technical area of the law. There are very few people have expertise in it so it's not a state firm.

REP. OBER: My third question is also to the LBA and we might have to have a little break before we find this out. But, Mr. Kane, isn't there also a law that if they go outside of the state for legal counsel above a certain amount that that needs to come to Fiscal for approval?

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MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: Not anymore. That was effective a couple bienniums ago, but it was never reinstated.

REP. OBER: It was --

MR. KANE: A couple of bienniums ago.

REP. OBER: Did it have a sunset date?

MR. KANE: House Bill 2 it was for the biennium ending.

REP. OBER: Was that written in House Bill 2 for the biennium ending?

MR. KANE: It was, and I'll get a copy for you.

REP. OBER: Could you, please. Thank you.

ATTORNEY GENERAL FOSTER: I do believe that's accurate because it's come up in connection with the DOL investigation. So I have looked at that and that's my understanding as well.

CHAIRMAN KURK: So that was boiler plate for one budget and was not continued in the subsequent budget?

MR. KANE: It was in House Bill 2 in one budget, not continued in the next.

CHAIRMAN KURK: Senator -- excuse me -- Representative Weyler. Oh, I'm sorry, please answer.

MS. CARR: Representative Ober, we do bill the Liquor Commission every quarter for all of our litigation and those funds get paid directly into the General Fund.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: The AG came before us on this pharmaceutical thing and also before the Governor and Council, because I

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believe it is still in HB2 to say that if he's going to outside counsel of a certain amount, he has to come back to us. And you've lost the case in court because you did not do that. So you came back later because I believe it's still there. When you go to outside counsel you have to come to Fiscal for counsel outside the state, so we are involved and we are aware of where the money is going. And I think that the lawyers in this state should get a shot at it.

CHAIRMAN KURK: Mr. Attorney General, would you care to respond?

ATTORNEY GENERAL FOSTER: The case that I lost actually wasn't on an hourly-based matter. It was a contingency fee case. So it is somewhat different, and it's on appeal.

On the issue of hiring counsel, we try to hire in-state. There are excellent lawyers in this state and most often that's what we do do. And, as I said, that's what I tried to do even in this case. And we were not getting the answers promptly or accurately and, frankly, it was costing quite a bit without a result. And that's why I felt I had to go outside the state. So that is my predisposition. I'm -- obviously, I came from a private law firm and would like to keep business within the state. And when I can, I do that.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Follow-up. You still believe that you're under compunction to come to this Fiscal Committee to spend more than \$100,000 on outside counsel?

ATTORNEY GENERAL FOSTER: We come to you, ultimately, in matters of this sort. But to do it in advance is often difficult, if not impossible, because matters come up very quickly.

REP. WEYLER: If you know it's going to exceed because of the way it's progressing, do you come to us?

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ATTORNEY GENERAL FOSTER: I mean, here it is, you know, before you.

REP. OBER: That's after the fact.

ATTORNEY GENERAL FOSTER: Ultimately, you do see what it is that we are doing.

CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: Just curious. You said most of the attorneys are hired in the state are from in-state. What percentage? I'm just curious.

ATTORNEY GENERAL FOSTER: I mean, looking at this, I can think since I've been there we have hired trademark counsel. We have had assistants in connection with the MET litigation.

SEN. FORRESTER: I was just curious.

ATTORNEY GENERAL FOSTER: Percentage-wise this particular matter is very, very expensive. But the matter that Mr. Sanborn was referring to, that was New Hampshire counsel, the million dollars, for example. That was I think the litigation *Amanda D* that led to the mental health settlement. That was also New Hampshire counsel. I don't know a percentage basis and it's going to change Fiscal Year to Fiscal Year depending on the matter. I think if we go back some Fiscal Years it would be overwhelmingly 60, 70, 80, maybe even close to 100%, frankly, because we rarely hire outside counsel. It's the exception rather than the rule. Outside counsel outside of the state we rarely hire.

CHAIRMAN KURK: Excuse me. Further questions or discussion? We'll take a five-minute recess.

(Recess taken at 11:15 a.m.)

(Reconvened at the 11:24 a.m.)

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CHAIRMAN KURK: The Committee will come out of recess and resume its actions. Representative Ober is recognized.

REP. OBER: Could we have the AG at the table?

CHAIRMAN KURK: Mr. Attorney General, could you and Kathy return to the table? Thank you. Representative Ober.

REP. OBER: Thank you. You had the right to come to Fiscal to ask for additional funds and certainly your agency has no way of knowing what some human is going to do to another human when you're preparing your budget. And that's what you're always faced with is the aftermath of what one of us does to somebody else. But when we give you money, we expect it to be spent for the purpose that you get it or returned to the General Fund balance. So if you get 800,000 for the Ober case, for example, and you only spend 200,000, we would expect you to send the 600,000 back to the Ober case, not to spend it on other projects, even if those projects may be worthy. We expect you to have that open communication with us about what you need. A couple of reasons. Many of us come back and so we build a better understanding to work as a partner when you do your budgets, because you know that's always a stressful time.

Another reason is, it actually keeps it very open and honest about what's been going on. So we have a little concern about what happened with the money that was earmarked for one case and got spent on another case. And I guess we all would like to know whether if we approve this you will give us your word that it will be spent as you have asked or returned to the General Fund and not spent on other matters, but that you will come back and discuss those other matters with us.

ATTORNEY GENERAL FOSTER: We would certainly do a better job keeping you informed, even month to month if you would like, on matters that come up. The problem we've always -- we do have is I think what you articulated. We do our best guess at to what something is going to cost. But matters can -- in litigation can take very quick turns in another direction and we don't have the flexibility of always being able to come to you before we have

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to expend something for the interests of the State. And these are all matters that are defensive in nature. They're not offensive. It's not that I'm choosing to do.

REP. OBER: We understand that.

ATTORNEY GENERAL FOSTER: We certainly can keep you informed between meetings, if we see things that are going over what the estimated budget is so you know about it. I try to do that when they come in and I can do a better job of that. These are estimates at what we have had. We are looking forward. I assure you things will come up between now and the end of the Fiscal Year that are not on that sheet and there are cases that may well resolve themselves through plea bargaining and otherwise. And I -- whether I -- how I handle that, I guess, I would like to have a further discussion with you, but I can certainly inform the Committee. I think you're entitled to know what's going on in these cases.

REP. OBER: Certainly I appreciate you talking about the overspending. I'm specifically speaking about the under spending. Project X needs X number of dollars for -- it was expert witnesses in the case of this case and then the gentleman pled guilty. So we knew you hadn't spent all that money. I believe the Chair actually e-mailed you and asked you.

ATTORNEY GENERAL FOSTER: He did.

REP. OBER: But we didn't get any feedback about it. So it's been sitting out there. And then when this came up, the question still came up what happened to that money we gave for the trial that didn't happen because the man pled guilty? So it's the underages that we are actually more concerned about than the overage. You've been very good about coming with the overages if we need money. It's the other side of that aspect. Thank you, Mr. Chairman.

CHAIRMAN KURK: Question. Oh, Representative Weyler.

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REP. WEYLER: Thank you, Mr. Chairman. General Foster, you're not running a private law firm. You're using public money. The public is the client. We are accountable to that public through us. They want to know where all those monies are being spent and we get queried about it frequently. So when you're withholding information from us, you're withholding it from the public. So your agency does not have a good history of being forthcoming to questions we ask. I've experienced that in the past and not you specifically. That this is public money. I wish you would look at the public as the client and bring more disclosure. Thank you.

CHAIRMAN KURK: Question. What are the payments to The Disability Rights Center and why are those included under litigation expenses?

ATTORNEY GENERAL FOSTER: That's fees that are part of the mental health settlement where we are obligated to pay both the reviewer's fees, which I think is separately listed, as well as The Disabilities Rights Center fees that are incurred in monitoring the settlement agreement.

CHAIRMAN KURK: And that's considered a litigation expense as opposed to a budgeted expense in the Department?

ATTORNEY GENERAL FOSTER: It's certainly a litigation expense. We are paying somebody else's legal fees. It's not a budgeted expense.

CHAIRMAN KURK: Thank you. Further questions of the Attorney General? There being none, thank you. Is there a motion?

** SEN. D'ALLESANDRO: Move the item.

REP. EATON: You already have it.

REP. OBER: We have a motion, I believe, Mr. Chairman. Do we have a motion, Ken?

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REP. WEYLER: We do. No, we don't. We don't.

** SEN. D'ALLESANDRO: I move the item.

REP. EATON: I second.

CHAIRMAN KURK: Senator D'Allesandro moves, seconded by Representative Eaton that the item be approved. Discussion? Questions? There being none, are you ready for the question? All those in favor say aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

ATTORNEY GENERAL FOSTER: Thank you.

(8) RSA 167:4, I, (b), Eligibility for Assistance:

CHAIRMAN KURK: We now turn to Tab 8, Fiscal 16-122, a request from the Health And Human Services Oversight Committee for approval of the proposed administrative rules regarding asset transfers as reviewed and recommended by the Committee. Is there a motion?

** SEN. D'ALLESANDRO: Move the item.

REP. OBER: Second.

CHAIRMAN KURK: Moved by Senator D'Allesandro, seconded by Representative Ober that the item be approved. Discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(9) RSA 177:2, II, Closing of State Stores:

CHAIRMAN KURK: We turn now to Tab 9, Fiscal 16-120, a request from the Department -- New Hampshire Liquor Commission

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for approval of the indirect cost allocation plan for State Fiscal Year 2017. Is there a motion?

** SEN. D'ALLESANDRO: Move it.

CHAIRMAN KURK: Senator D'Allesandro is moving quite a bit.

SEN. FORRESTER: Second.

SEN. D'ALLESANDRO: I'm quick.

CHAIRMAN KURK: In this case seconded by Senator Forrester that the item be approved.

REP. OBER: I think his lunch is calling him.

CHAIRMAN KURK: Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(10) RSA 363:28, III, Office of the Consumer Advocate:

CHAIRMAN KURK: We turn now to Tab 10.

** REP. OBER: Move to approve.

CHAIRMAN KURK: Fiscal 16-121.

SEN. FORRESTER: Second.

CHAIRMAN KURK: A request from the Office of Consumer Advocate for authorization to enter into a contract to provide expert services to support participation in the Net Energy Metering proceeding before the Public Utilities Commission in an amount not to exceed \$75,000 for June 30th, 2017. Senator Forrester moves, seconded by Representative Ober that the item be approved. Discussion? Questions? Senator Sanborn.

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SEN. SANBORN: Thank you, Mr. Chair, I guess discussion on the question why the Consumer Advocate is weighing on the Net Metering case since it doesn't affect rates or benefits.

CHAIRMAN KURK: It certainly affects rates to the extent Net Metering allows a group of people solar energy users can --

SEN. SANBORN: All right. I'll concede your point.

SEN. D'ALLESANDRO: That was quick.

CHAIRMAN KURK: Further discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(11) Chapter 276:4, Laws of 2015, Department of Administrative Services, Transfer Among Accounts and Classes:

CHAIRMAN KURK: We turn now to Tab 11, Fiscal 16-119, a request from the Department of Administrative Services for authorization to transfer \$100,000 in General Funds in and among accounting units through June 30th, 2017.

** REP. OBER: Move to approve.

SEN. FORRESTER: Second.

CHAIRMAN KURK: Representative Ober moves, seconded by Senator Forrester that the item be approved. Discussion? Questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

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(12) Chapter 276:29, Laws of 2015, Department of Transportation; Transfer of Funds:

CHAIRMAN KURK: We turn now to Tab 12, Fiscal 16-118, a request from the Department of Transportation for authorization to transfer \$324,800 in Federal funds in and among accounting units through the end of the Fiscal Year.

** REP. EATON: Move approval.

CHAIRMAN KURK: Moved by -- approval is moved by Representative Eaton, seconded by Representative Weyler. Questions or discussion?

REP. WEYLER: Question.

CHAIRMAN KURK: Question. Is there somebody from the Department of Transportation? Good morning, folks. Thank you for coming. Representative Weyler is recognized for a question.

REP. WEYLER: Thank you, Mr. Chairman. Director, how many bus stations are we responsible for? I know there are some we sublet sort of to a bus company.

PATRICK HERLIHY, Director, Division of Aeronautics, Rail, and Transit, Department of Transportation: Thank you for the question, Representative Weyler. For the record, my name is Patrick Herlihy. I'm the Director of Aeronautics, Rail and Transit at the Department of Transportation. To answer to the question we are responsible for all seven of the bus terminals that we own that we have operators operate for us.

REP. WEYLER: Thank you. That was my only question. Thank you.

REP. OBER: I have a question, Mr. Chair.

CHAIRMAN KURK: Representative Ober.

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REP. OBER: Thank you. On Page 2 of your document that you submitted to us under the explanation. Was this a budgeted project that had a cost overrun?

MR. HERLIHY: No. It was a budgeted project. When we did the budget two years ago, we put it all into Class 72 'cause it was Federal funding. And then we were told after the budget was passed that they should be in different line items because we actually own the assets.

REP. OBER: Thank you.

MR. HERLIHY: So that's why we transferred them out.

REP. OBER: It would be helpful if that had just been written here.

MR. HERLIHY: Okay.

REP. OBER: That that wasn't clear. We look at the explanation. It says to transfer budgeted amounts, but it doesn't say for a project that was budgeted. It's just budgeted amounts. It's hard to tell if that was for a different project that you're not doing and this one instead or whatever.

MR. HERLIHY: Very good. We'll note that in the future.

CHAIRMAN KURK: On Page 2 in Class 37 you proposed to spend \$9,800 to, quote, update security camera systems.

MR. HERLIHY: Yes.

CHAIRMAN KURK: Could you explain what that means?

MR. HERLIHY: Yeah. With the passage of RSA 236:160 a couple years ago gave us the authority to upgrade our cameras to high-resolution cameras at State-owned bus terminals. So we are going through the process of doing that right now. Previously, when we came in the spring, we transferred funding again out of Class 72 to start that process with Portsmouth -- the Portsmouth

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Transportation Center and the terminal in Salem. We were in desperate need of camera replacements anyway. The cameras weren't functioning there to begin with. So this is the -- these are for the personal computers and the servers that need to run the software for those high-resolution cameras.

CHAIRMAN KURK: Thank you. Further questions? Thank you both.

MR. HERLIHY: Thank you.

CHAIRMAN KURK: Questions or discussion? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

***** {MOTION ADOPTED}**

CHAIRMAN KURK: We turn now to Fiscal 16-127, a request from the Department of Transportation for authorization to establish a non-budgeted class in an accounting unit to transfer \$22,000 between accounts and classes through June 30th, 2017.

****** REP. OBER: Move approval.

REP. EATON: Move approval.

CHAIRMAN KURK: Moved by Representative Ober, seconded by Representative Eaton. I have a question of the Department. Sorry.

MARIE MULLEN, Director of Finance, Department of Transportation: Good morning, again. Marie Mullen, Director of Finance.

CHAIRMAN KURK: Thank you. Is this simply an accounting change or are you paying people money that you didn't pay them before or more money than you paid them before?

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MS. MULLEN: No. This is simply an accounting change. We inadvertently didn't budget it in this budget. In previous budgets it was in Class 50 and that was incorrectly applied. They shouldn't come out of Class 50. They should be coming out of the Board Commission so we are trying to correct that and get those budgeted at this time.

CHAIRMAN KURK: You're not paying these folks more.

MS. MULLEN: No, their fees have not gone up. It's part of RSA. They get paid a certain per diem mileage and that type of thing.

CHAIRMAN KURK: Thank you very much. Further discussion or questions? There being none, are you ready for the question. All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(13) Chapter 276:143, Laws of 2015, Department of Health And Human Services; Transfer Among Accounts and RSA 14:30-a, VI Fiscal Committee Approval Required for Acceptance and Expenditure of Funds Over \$100,000 From any Non-State Source:

CHAIRMAN KURK: Turn now to Tab 13, Fiscal 16-116, a request from the Department of Health and Human Services for authorization to transfer \$2,815,934 in General Funds and increase related Federal revenues in the amount of 813,000 and increase related other revenues in the amount of \$160,965 through June 30th, 2017. Is there someone from the Department who can answer some questions? Good morning.

JEFFREY MEYERS, Commissioner, Department of Health and Human Services: Good morning, Mr. Chairman. For the record, Jeff Meyers, Commissioner of Department of Health and Human Services, and I'm joined this morning by Sheri Rockburn, our Chief Financial Officer.

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CHAIRMAN KURK: Thank you both for coming. How much of this is new money? Is it the total of 813 plus 160?

SHERI ROCKBURN, Chief Financial Officer, Department of Health and Human Services: That is correct. What I would emphasize though is it's money as part of a grant from State Fiscal 16 that was unspent. And so this is really allowing us to re-appropriate it for use in '17. So it's money that was budgeted and accepted in in '16 but was not spent. And so this is re-appropriating it for use in '17.

CHAIRMAN KURK: And is this going for new programs or expansion of existing programs or just to pay current bills?

MS. ROCKBURN: No, it's paying current. Of the 800,000 seven hundred is just in our Child Care Development Fund. So that is a grant that we get every year for Child Development Funds and so most of that 800 is in that area. In the other funds that is only a piece of that 99,000 is actually new money that's -- a little bit will be new money that's coming in next year. That was a change in the Joshua Law for Domestic Violence Funds. So there was a new fee that was put into that law along with a little increase in marriage license fees. 99,000, most of that is left over from fees from '16 for use in '17 and a little bit is a projection of some money that will come in '17. That would be the only one I would say is relatively a new area is the other funds.

CHAIRMAN KURK: And is there any connection between this and the money that's going in for child care here and the proposed rules change that you had before JLCAR which was about a \$4.8 million proposed expense?

MS. ROCKBURN: No, this is completely independent of that.

CHAIRMAN KURK: Thank you.

MR. MEYERS: This is separate.

CHAIRMAN KURK: Is there a motion?

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** SEN. D'ALLESANDRO: Move the item.

CHAIRMAN KURK: Senator D'Allesandro moves to approve the item, seconded by Representative Weyler. Discussion or questions? There being none, are you ready for the question? All those in favor, please indicate by saying aye? Opposed? The ayes have it and the item is approved.

*** {MOTION ADOPTED}

(14) Miscellaneous:

CHAIRMAN KURK: I understand we have a late item, Fiscal 16-130 and that's been distributed.

** REP. OBER: Move to approve.

CHAIRMAN KURK: My understanding that this is the Department's application for -- well --

MR. MEYERS: May I come up?

CHAIRMAN KURK: Thank you, Commissioner Meyers. I appreciate you explaining this.

MR. MEYERS: Of course. The Legislature re-authorized the New Hampshire Health Protection Program earlier this year. The vehicle to do so is House Bill 1696. House Bill 1696 required the Department to seek several changes to the existing program including, for example, the inclusion of a mandatory work requirement that was modeled generally after the TANF Program to require two additional forms of identification with respect to establishing the citizenship of the individuals who are receiving benefits. Thirdly, to seek a provision and approval by the Federal Government that would allow -- that would require, I should say, health care facilities in New Hampshire that accepted Health Protection Federal monies to treat all veterans who chose to seek treatment at a facility at the cost of the Federal Government. And, lastly, to implement a new co-pay

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structure for those individuals who utilized emergency departments in our hospitals for non-emergency care, \$8 for the initial use of that and for a second, a subsequent visit, a \$25 co-pay for the non-emergency use of our emergency rooms.

So this, what's before you, is the product of initial drafting of the Department of a public comment and hearing process. There was a required 30-day public comment process that ended on the 29th, and I believe actually it ended on August 1st and that's why it was a late item. And although we didn't have to hold a public hearing, we held a public hearing in order to provide that opportunity for the public as well. And so the statute contemplates that all of these items would be put into an application for the amended waiver that we have today authorizing the program that's issued by the Federal Government back in 2014 and this would be submitted, and then the Federal Government would act on the wait.

So were the Fiscal Committee to approve it today, which the Department hopes it does, then it would be submitted either later this afternoon or on Monday morning to the Federal Government. The statute requires that we obtain any necessary waiver or State Plan Amendment to implement the program on or before November 1st. And if it's not so obtained, approved by the Federal Government, then I would as Commissioner have to issue notice to terminate the program in conjunction with the terms of our approval, which is a six-month wind down.

CHAIRMAN KURK: Thank you, Commissioner. My understanding that these are not prerequisites to the continuation of the program as a result of the *Umberger Amendment*.

MR. MEYERS: Well, I want to clarify. The *Umberger Amendment*, you mean the severability language that's been developed?

CHAIRMAN KURK: Yes.

MR. MEYERS: All except for the \$25 co-pay. That is not subject to the severability language. So the State must obtain a

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waiver allowing -- the \$8 is already approvable under current Medicaid standards. So there's no waiver or State Plan -- the State Plan Amendment for that but not a waiver for that. But in order to implement any co-pay above the \$8 for non-emergency use of the E.R., we have to submit this waiver application.

CHAIRMAN KURK: So if the Feds don't approve that particular part, then the program does not go forward?

MR. MEYERS: That's correct. We would have until November 1st to obtain approval of that \$25 co-pay. And if we do not obtain it, my reading of the statute is we have to provide notice to terminate in accordance with the Federal waiver that's been issued.

CHAIRMAN KURK: So if you issue that on November 2nd, then it would be sometime in April for the program --

MR. MEYERS: Six months. Yeah. Yes.

CHAIRMAN KURK: Question on this. What happens to folks who don't pay the \$8 or don't pay the \$25? I know the Supreme Court is considering a rules change that would provide legal counsel to those people who don't pay their fines in other cases and are threatened with jail. But what is the practical matter happens if people to whom this bill is sent don't pay it?

MR. MEYERS: There's no consequence in terms of the program itself. I mean, if somebody goes to the emergency room and they're triaged, they're examined, evaluated, which they're required to be under Federal Law, and it's determined that they have a condition or issue that is not an emergency, and there's a reasonable man standard -- reasonable person standard, I should say, excuse me, that is employed in that event. So if somebody believes they have emergency, and that's why they went to the emergency room to seek treatment, that's taken into account in evaluating whether it's an emergency or not. If it's clear that they don't, but they still seek treatment at that facility, that hospital emergency department and they don't have the money, then it's up to the hospital to determine whether or

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not they're going to continue to treat that person or not for a non-emergency condition. That's my understanding.

CHAIRMAN KURK: Thank you. Questions? Representative Ober.

** REP. OBER: I move to approve.

CHAIRMAN KURK: Representative Ober moves to approve the item. Is there a second?

SEN. DANIELS: Second.

REP. WEYLER: Second.

CHAIRMAN KURK: Second by Senator Daniels.

REP. OBER: May I say something?

CHAIRMAN KURK: Representative Ober is recognized for a question.

REP. OBER: Not a question. Commissioner, I just want to thank you for providing the draft copy of this so we could review it while you were holding public hearing. Was very helpful. We knew it was going to be late. I just want you to know that was very helpful.

MR. MEYERS: Thank you. Thank you for mentioning that.

CHAIRMAN KURK: Further discussion or questions? There being none, are you ready for the question? All those in favor of approval of item 16-130, please now indicate by saying aye? Opposed?

SEN. D'ALLESANDRO: No.

CHAIRMAN KURK: The ayes have it and the item is approved.

REP. WEYLER: Is there opposition?

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CHAIRMAN KURK: There was.

REP. WEYLER: 9 to 1?

CHAIRMAN KURK: It was a voice vote. I declared it passed.

MR. MEYERS: Thank you.

(15) Informational Materials:

CHAIRMAN KURK: Thank you, Commissioner. At this time we have some informational items, and I think there are folks who have questions on some of them. We have the Department Dashboard, 15 -- sorry -- 16-110 as of May 30th which was updated --

REP. OBER: Mr. Chairman.

CHAIRMAN KURK: -- to include June.

REP. OBER: Can we have LBA additional revenues and positions just briefly tell us what we have here. That's before that in my book.

CHAIRMAN KURK: Yes. Mr. Kane. Thank you.

MR. KANE: Good morning. For the record, Michael Kane, Legislative Budget Assistant. So the first informational item that we include is in the Fiscal packet are the additional revenues and positions for the biennium ending June 30, 2017. So based on the Fiscal Committee actions, you can see what the Committee has approved.

If we turn to the end of the last page, you can see for Fiscal Year 16, last Fiscal Year, it was a total of \$515,797,559 approved in total funds of which 285.9 roughly were Federal, 229.9 were Other. Nineteen full-time positions were approved by Fiscal to be established and 12 part-time positions were approved by Fiscal to be established.

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So far in Fiscal Year 2017, we have 100 -- let's see -- 1.335555 total funds that were approved at the June meeting that impact Fiscal Year 17 of which about 1.2 million were Federal funds. There were some extensions of positions but no new positions were established by the Committee so far this Fiscal Year.

REP. OBER: Thank you.

CHAIRMAN KURK: Thank you, Mr. Kane. Are there any questions on Fiscal 16-110, the Dashboard? Senator Sanborn.

SEN. SANBORN: 110? Didn't we supplement with 129, Mr. Chair?

REP. WEYLER: 129 was more recent.

SEN. SANBORN: A handout today or handout this week.

CHAIRMAN KURK: Yes, both of them. If we could get the Commissioner and Sheri to come up, love to get the opportunity to ask some questions and get an update.

MR. MEYERS: Again, for the record, Jeff Meyers, Commissioner of Health and Human Services, and with me is Sheri Rockburn. And I would just say at the outset, if I may, Mr. Chairman, that it's my commitment to provide a Dashboard every single month, you know, regardless of the particular timing of Fiscal meetings or other meetings and so the May, I believe that the Dashboard that was submitted last month, was not taken up at that time. And, obviously, we now submitted a Dashboard to cover June. Given the timing of the August meeting, it was difficult to get all the information that we need for the books in order to provide the July Dashboard for this meeting. But we will be submitting to the Committee a July Dashboard a little bit later this month. Thank you.

CHAIRMAN KURK: We understand that. And the change of dates of this particular meeting complicated matters as well.

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MR. MEYERS: Understood. No problem.

CHAIRMAN KURK: Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. If you'll allow, I have got several. You guys, thank you for coming up. I appreciate it.

I guess I'm going to take this opportunity to kind of have a holistic discussion about some things that are causing me some concern. Part of it is going to circle back to some things we talked about, where we are and going forward, so if the Chair would be kind enough to allow me some discretion. First and foremost for me and many of us, where are we on the DD Wait List? Where's our number?

MR. MEYERS: Yeah. So if I can address that. We have been working, obviously, very closely with the Area Agencies to resolve issues regarding the DD Wait List. The DD Wait List is, obviously, and it may not be a perfect word, but it's almost like a pipeline. There are people who are there, people who go off and people who come on. So on any given day there's a number. That number changes obviously.

What I can tell you is that in Fiscal 16 we served 232 people off the Wait List. We are projected to serve -- one moment -- about another -- one moment. Excuse me. Another 174 for Fiscal 17 based on the funds that are available for a total of 406 which is what was targeted. We are in the process now of preparing a full report on the Wait List on who's on the Wait List, who's come on, who's come off, and that's going to be submitted to the Health and Human Services Oversight Committee and we'll make copies available, obviously, to Fiscal Committee as well.

So I don't know what the exact number is today. I know that recently it was about 150, 151, I believe was the number as of July 30th, if I'm correct. I believe it's July 30th. It was 151. But that's comprised of a number of different groups.

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SEN. SANBORN: So if I may?

MR. MEYERS: Yeah.

SEN. SANBORN: My concern, Commissioner, if you remember several months ago under a phenomenal decision by the Senate President to throw another 6 to \$8 million to make sure we eliminated the Wait List. We were at 100. I think was as high as 160 and three or four months ago I think it was still around 150. I think the number, and Sheri correct me if I'm wrong, about \$38 million in the general ledger account in order to make sure we satisfied and eliminated the DD Wait List. But if you're here telling me today after three or four months we are still at the same 150-ish number that we were three or four months ago, and I recognize it's a pipeline.

MR. MEYERS: Right. There are more people coming on than were projected and I think that's one of the dynamics that we are looking at very carefully.

SEN. SANBORN: I look forward to your report to help us understand when, you know, this is a very important thing for us here at this table.

MR. MEYERS: We understand that and I understand that. And I can tell you that we meet either every week or every other week with a group from the Area Agencies to go through these reports and these numbers and to understand and make sure that money is continuing to go out. And I'm going to provide a very full report very shortly.

SEN. SANBORN: You say money continues to go out. Sheri, how much is still left in that account? Was like 38 million a couple months ago.

MS. ROCKBURN: Yeah. So, for the record, Sheri Rockburn, CFO for the Department. The budget for State Fiscal 16 was about a little -- eight and a half, \$8.7 million for just the Wait List for DD only. At the end of June 30th, we had spent 5 million of that eight leaving a balance of 3.7. That has been allocated to

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clients that we are working on that balance plus the '17 appropriation to make sure all of that gets allocated to individual clients and that's what the Commissioner was referring to. We have been working with the Area Agencies with a subgroup every two weeks to make sure that continues. So that's just for the DD population in terms of the Wait List.

In addition to that, there's a little over 200 million in the -- I'll call it the maintenance DD budget. It's about 213 million and that is for clients that have been served not new to the system this year but in previous years.

SEN. SANBORN: That 213 is for the year, correct, not the biennium?

MS. ROCKBURN: Correct, that's just per year.

SEN. SANBORN: Per year.

MS. ROCKBURN: Correct.

SEN. SANBORN: If I can change gears a little bit. I saw an interesting conversation, I guess, op-ed that kind of surprised me about our mental health system today in the *Union Leader*. I am hoping that you saw it. Again, there's some concern within the Legislature about, you know, the beds that we finally got up and running at New Hampshire Hospital but this article today seemed to imply the fact that with the challenges you're having with staffing over there they have had to pull a bunch of staff from other facilities that we now lost nine beds up in Lebanon or Hanover while we are trying to gain ten beds down here in Concord. So tell the Committee a little bit about where we are in making sure that we're doing what we are all trying to do.

MR. MEYERS: Yeah, we are doing what we are trying to do. So the piece that you're referring to in today's *Union Leader* the only piece that I saw was an op-ed piece, not actually a news article.

SEN. SANBORN: Correct.

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MR. MEYERS: That's correct. We are talking about the same piece. So there's been a procurement process under way for some time now for -- to provide services not only at New Hampshire Hospital but at the Glencliff Home, at the Sununu Center, to the Department itself in DCYF. So the contract that was in place for Dartmouth College for the last number of years provided services well beyond New Hampshire Hospital, but obviously includes New Hampshire Hospital.

This article that the nine beds in Lebanon which you referred to, Senator, just a moment ago, those were beds, I am told by Dartmouth, that were not in use. So those beds were not being used anyway. So there's been no -- my understanding is that there's been no closure of resources at Mary Hitchcock Hospital in Lebanon in order to provide the services at New Hampshire Hospital or elsewhere under the contract extension that was approved by the Governor and Council.

The procurement process is ending. I anticipate bringing a contract forward to the Governor and Council on August 24th that will meet every aspect of the RFP that was issued. The ten ISU beds are up and running as you know. We have staff in order to staff that. Services are being provided at New Hampshire Hospital in normal course. There are more than adequate resources there under the extension today.

We are tracking every open bed, not only at New Hampshire Hospital and at DRF, the Designated Receiving Facilities around the state twice a day. I get a report twice a day telling me what beds are open where in the system. And I can tell you that we are -- the ten beds in the new Inpatient Stabilization Unit at New Hampshire Hospital in Concord are being used for short stays. So the average length of stay is three days.

That is -- it's only been up and running since July 5th. We are, obviously, watching it very carefully. It appears to be making some difference in the wait, those who are waiting for inpatient admissions in hospital ER Departments. That number, as

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you know, fluctuates -- can fluctuate by ten or more folks a day.

So we are doing everything we can to monitor it. There's -- I brought contracts to the Council about two meetings ago now that are going to put new resources in some high-need hospitals around the state to be able to connect people who are showing up in these departments with mental health issues to local resources to the greatest extent possible. That was a \$1.8 million contract. And I want to commend New Hampshire -- that was with the Foundation for Healthy Communities which is a foundation associated with New Hampshire Hospital Association, and I want to thank them again publicly for working with us in order to do that contract. Because that's going to put important new resources in hospital ER Departments in several cities of the state, initially about six hospitals initially that are high need and then, ultimately, other hospitals that will help connect people who are there to local mental health resources. Some of those folks may or may not need admission to New Hampshire Hospital.

I can tell you as well, and I submitted this information to LBA yesterday, including a copy of our report and project plan to the expert reviewer that's looking at the implementation of the Community Mental Health Agreement that we are -- we've got a complete project plan to continue to comply with the Mental Health Agreement. And we think we're, you know, starting -- the point I was going to make, excuse me, for the first time we have been able to extract information from our system showing who is showing up in the hospital ER Departments, whether they had received or not received a service from a community team, an ACT Team, Assertive Community Treatment team within 90 days. And there was some interesting information that showed up in that initial cohort that we looked at.

What we found is that individuals that were receiving ACT services within 90 days of an ER visit were not showing up regularly in the ER Department, where some folks who had not received an ACT service were showing up. And so, you know, we have taken that information. We provided it to the Community

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Mental Health Centers. We provided individual, you know, under appropriate agreements obviously for their patients. Many of these people are connected to a Community Mental Health Center. We are now for the first time are giving the Community Mental Health Centers real-time information about which of their clients are showing up in ER Departments who may or may not have ACT services so that they can look and determine how to connect those individuals to the right services, including ACT services.

So we are doing quite a lot to make progress, I think, on the implementation of the Community Mental Health agreement and to ensure that we have a stronger mental health system.

As you know, we are also going forward and releasing funding soon for the first year of our behavioral health waiver, our 1115 Transformation Waiver. So that's going to be about 19 and a half million dollars going out, we hope, by early September, assuming the Council approves the IDM contracts at the next meeting on August 24th that will help build staff retention and infrastructure to our behavioral health system in New Hampshire. There will be \$10 million going out later in the year for actual start of services. And then in January there will be additional funds that will be available. So we are making that investment that was contemplated under the Transformation Waiver. So there's quite a lot being brought to the table for mental health services in the state.

Also add that in the last round of MCO rate increases or rate agreement I should say, rate amendment for Fiscal 17, there's \$82 million of funding that's going through our MCOs for mental health services in the State of New Hampshire. So there's a considerable amount of money that is being put toward mental health and behavioral health in the state right now.

SEN. SANBORN: Is that new funding? Have you increased it or reallocated it?

MR. MEYERS: The rates went up slightly and I can report today that there's been considerable progress in finalizing capitated rate agreements between the Community Mental Health

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Centers and the Managed Care Organizations so that mental health services are fully now within and -- or will be shortly fully within Managed Care.

CHAIRMAN KURK: Could you help us by telling us what that small percentage is and what that translates into General Fund dollars?

MR. MEYERS: General Fund dollars is about two and a half million dollars.

CHAIRMAN KURK: That's not for mental health. That's the entire increase in the MCO rates.

MR. MEYERS: No, no, no, no. That was additional funds for mental health services, two and a half General Funds match so 5 million overall.

CHAIRMAN KURK: What's the total General Fund impact of the overall rate increase including the 2.5 million?

MR. MEYERS: Yeah, I don't have that number. I have that number obviously, and I just don't have it right in front of me; but I'm happy to provide it.

SEN. SANBORN: Be half of the 82?

MR. MEYERS: No, no, no, not at all. No. I just don't -- there was a slight increase overall. No, I don't think that's it. We'll provide it right away.

CHAIRMAN KURK: Thank you.

MR. MEYERS: But we have it. I just don't have it right at the top of my head.

CHAIRMAN KURK: Further questions, Senator?

SEN. SANBORN: Please, if you don't mind. I appreciate it. Mr. Commissioner, could you include on the Dashboard or give

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consideration to include kind of some sort of a synopsis where we are on the implementation of the DD Wait List and getting them off and are we getting – and maybe the Chair or the Chair of Finance and the Senate President are getting – are we getting some report that kind of shows either on a weekly or monthly basis under the mental health challenge how many people are showing up in emergency rooms and see if that number has been dropping or not? So are we actually making progress in reducing E.R. visits to mental health with all of the work and investments we've made so far? Is there some baseline we can be looking at?

MR. MEYERS: There are daily reports that are generated in terms of the number of folks who are waiting for potential inpatient admission and the number of beds that are available. You could be put on that. I wouldn't think there'd be an issue of putting you on that mailing list, on that e-mail list, but I'll look into that.

SEN. SANBORN: Two more things, if I may, Mr. Chair.

CHAIRMAN KURK: Commissioner, on Page 9 of the Dashboard -- let's see or is that one 10? Yes, Page 9 of the Dashboard, Developmental Services Long-Term Care.

MR. MEYERS: Yes.

CHAIRMAN KURK: The last column is ABD Waitlist and the next to last column is DD Wait List. Is that what the Senator wanted?

SEN. SANBORN: It is. My apologies on that.

MR. MEYERS: Okay.

MS. ROCKBURN: One of the things, if I can just add, the Commissioner was referencing is that what we are working on as a supplemental to this is actually looking at the numbers that have come off and have been new Wait List clients that are added, because what we realized also is that you can't assume that May there was 148 and the Wait List grew to 151. You know,

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we actually had, and I'm going to make this number up just as example, 50 might have come off and 53 went on. But I think the Dashboard loses that perspective exactly how many are coming off. And that's where Commissioner Meyers said we had close to 200 that came off this year; but we have, you know, more additional ones that come on in any given month. So we are going to look to modify this to have that actual ins and outs. Does that make sense?

SEN. SANBORN: Yes, sure would. If I could?

CHAIRMAN KURK: I have some others who have some questions.

SEN. SANBORN: Please.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: Thank you, Mr. Chairman. Commissioner, my impression on the DD Wait List was that most of the people that go onto it are aging out of Special-Ed at age 21 in education which the education dollars were paying for them before they go on the DD Wait List. So it is a known quantity in the Department of Education. So I'm surprised that we don't know who's coming out and they could probably provide by birth month who's going to be added because they age out at 21.

MR. MEYERS: Well, we do. We have information. We have a list that's the projected service needs list of those who will be aging out. But one of the things that I've been learning over the last number of weeks is that there's a greater number of young people, if you will, with autism. And that is growing at a rate that we have not seen here before in New Hampshire. And so there are more and more individuals with autism that are coming out of the schools and requiring services and that's one of the factors, not the only factor, but that's one of the factors that is driving the increase in the Wait List.

REP. WEYLER: Follow-up.

CHAIRMAN KURK: Follow-up.

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REP. WEYLER: Aren't they already identified by the DOE so that you would know they were coming?

MR. MEYERS: Yes. What I'm saying is that number is growing.

REP. WEYLER: But what I think the Senator and I, if we know a year or two in advance --

MR. MEYERS: Well, we know there are people there. What we don't know is exactly what services they may or may not need when they come off the Wait List. So that's something that is -- there are projections made for services, but then there's the reality. And so somebody can be projected to require certain services; but when they come off the list and they start, they may have other needs that we are not foreseeing. So it's not just a question of the number of people, it's what services are going to be required.

REP. WEYLER: Last question.

CHAIRMAN KURK: Representative Weyler.

REP. WEYLER: What is the -- what is the average amount we are spending on people on the DD Wait List?

MR. MEYERS: Well, that's -- this is one of the things that -- I'm glad you asked that question. So in the budget my recollection, and I can be corrected if I'm wrong, is that we budgeted an average of 44,000. But when you look at the number of people on the Wait List, there are -- there's a percentage and I think it's close to 20%, I'll stand corrected if I'm wrong on that, that were just receiving respite services. Respite services might be a thousand dollars a year. It might be \$2,000 a year. So when you take the people out who are receiving just the respite services, the average, in fact, is much higher. It's more like 54, 55,000. And that I think is the truer cost of the -- the average cost of services for the Wait List. And I think as we develop the budget this coming time, I think we need to take a more critical look at what that population is. I think

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we need to make some assumptions. We need to recognize those that really obtain a very low level of service and consider them potentially separately so that we forecast the true average cost, I think, in a maybe more complete way.

REP. WEYLER: Thank you. Thank you, Mr. Chairman.

CHAIRMAN KURK: Senator Forrester.

SEN. FORRESTER: Thank you. Thank you, Commissioner. This question that I have for you goes back to the June 20th Dashboard.

MR. MEYERS: Yes.

SEN. FORRESTER: And specifically it has to do with Glencliff.

MR. MEYERS: Yes.

SEN. FORRESTER: And it identifies a revenue shortfall because the census is down, and I'm wondering what is the connection with when you look at the -- I don't know what you call it -- selective initiatives under the item with the Community Mental Health Agreement, you talk about milestones that are not yet met, and it talks about transitions of individuals from Glencliff Home.

MR. MEYERS: Correct.

SEN. FORRESTER: I've heard concerns about moving people out of Glencliff Home just to hit numbers.

MR. MEYERS: No, we are not doing that at all. I can assure you.

SEN. FORRESTER: Then what's the connection between this or is there a connection between the census being down and moving people out of Glencliff and the revenue shortfall?

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MR. MEYERS: I was at -- well, I was at Glencliff on Monday. The census as of Monday was, I believe, 117 individuals. It's a 120-bed facility. By June of this year, we were to have transitioned ten -- appropriately, you know, assuming that they met the criteria, ten individuals out of Glencliff. That's a requirement of the settlement as you know.

They -- I talked to the Director up there, met with the Director and his staff on Monday and there are -- there are certainly more than ten individuals who are on a list that could be appropriately transitioned. We now have been able to make substantial progress on how to really access the Federal funding that's going to be necessary to help pay the cost of this through the CFI Waiver, and that was actually quite a challenge working that out. So we are working with two providers in particular right now, with Harbor Homes in Nashua, and with Northern Human Services up north. And we believe that we'll begin -- there have been a few people transitioned thus far but we -- but when it says that we haven't met our milestones, we haven't achieved the ten that we were required to achieve under the settlement agreement. And the settlement agreement requirement is that we were to transition out, if we could meet that for a cost of no more than \$100,000 a year. So we believe we can do that now. That the cost is under \$100,000 a year. As I said, we are working with two providers in particular to kind of increase the number of transitions. And I believe that we will catchup now we have the funding kind of resolved and be able to make substantial progress in the next, you know, number of months.

SEN. FORRESTER: So do you know why the census is down?

MS. ROCKBURN: I think I can better explain. The reference in the May Dashboard was that the budget assumed 100% capacity. So the budgeted revenues at the time were assuming that the full capacity of the facility would be achieved, when in reality there's always a bed or two that may be vacant. And so the census being down is really compared to budget. And I think we really need to think about that as we budget going forward into the 18-19 is to really think about how we are budgeting our

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revenues and our census assuming that there's always probably a piece of client counts or the census that may not be 100% at any given time. So I really think that the below -- the census being down is related to compared to the budget as opposed to how it normally trends.

CHAIRMAN KURK: So you're telling us that if you take ten people and transition them elsewhere that there will be ten other people to fill those beds so the net cost to the State is a million dollars.

MR. MEYERS: Well, I think if the Director were here right now he would say that there are people who are out there who are waiting to come into Glencliff. Whether it would be all ten beds and when that would be is a matter of discussion. But I don't think we are going to see -- I'm not aware of information that would -- I can represent that would be a significant decrease of folks going into Glencliff at this point in time.

CHAIRMAN KURK: So under the settlement, Glencliff as a practical matter will remain fully utilized by patients, and in addition we will have ten or more former Glencliff folks out in the community the cost not to exceed \$100,000 per person.

MR. MEYERS: Right. And I think that what the settlement is trying to achieve is that folks not stay at Glencliff longer than needed, recognizing the multiple challenges that many of the patients there face. But --

CHAIRMAN KURK: Thank you. Senator Morse.

SEN. PRESIDENT MORSE: I'd just like to follow-up on a couple of things I heard. On the 1115 Waiver, I thought that money had to be out by June or allocated by June as part of a presentation we saw?

MR. MEYERS: It was dependent upon CMS approval of all the funding protocols and our ability to get approval also of the protocol that allows us to draw down the funds and that took additional time. So the contracts and the money, Senator, money that's being drawn down is going initially to the lead members

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of the integrated -- of the seven integrated delivery networks. The seven lead IDNs. Those contracts are going before the Governor and Council on August 24th.

Assuming that the Governor and Council approves those contracts, we will be utilizing our normal and customary CMS 64 claiming process to start drawing down those funds. But we -- this was a little bit later than anticipated, one, because we had to complete the selection process for the IDN; and, secondly, CMS took additional time to approve the protocols that needed to be approved so we could draw down the funds.

SEN. PRESIDENT MORSE: But my understanding is there's seven IDNs in the State of New Hampshire.

MR. MEYERS: Yes, sir.

SEN. PRESIDENT MORSE: So seven IDNs are going to get the money in September. By the time it gets to our communities and has an effect it's not June.

I still have a serious concern about the DD answers because reality of the whole thing is if we are saying some people are only a thousand dollars and we have some at 54,000, that means that there's \$43,000 for -- left over for those patients. And my understanding of the problem after meeting with those groups was something was changed in your Department and, basically, we used to go back and look in December and then we'd look in the spring --

MR. MEYERS: Yes.

SEN. PRESIDENT MORSE: -- to see those people that weren't using their dollars, and we'd move it to people that needed more help.

MR. MEYERS: Yes, yes.

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SEN. PRESIDENT MORSE: It doesn't sound to me like we are getting there and we just came off a year with a massive, massive lapse.

MR. MEYERS: Yes.

SEN. PRESIDENT MORSE: Massive. I don't know what you're going to show now because we are moving the money forward. But reality is, we are not getting communication on dollars from anywhere in this Government right now. And it's frustrating because I think we have allocated plenty of money to the DD list. If we just stay on that.

MR. MEYERS: You mean on the Wait List.

SEN. PRESIDENT MORSE: On the Wait List. I think there's plenty of money out there, but I'm certainly hearing from people and you know because I call you.

MR. MEYERS: I do. I do.

SEN. PRESIDENT MORSE: That we know that this child is going to be become an adult and they can't plan as a family to handle it. And I don't think we have solved it. I really think there's a huge problem out there, and I certainly believe that we allocated money to help these people.

MR. MEYERS: We allocated a lot of money and I agree with you there. But I will tell you and I'm going to be making a full report, because this is important that everybody understand the data and the numbers. That for Fiscal 16 the average annualized cost for a student transitioning into the adult system was \$62,841. It was far above the \$44,000. And then there's instances out there where even though the money's on the Wait List it's sometimes used for people who are already clients who experience some sort of very significant life change. For example, there's an adult, let's say they're 25 or 30 years old and they have been taken care of by their parents and their parents are deceased or their parents are unable to care for them for some reason, and so there's emergency money that has to

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be allocated to that person so they won't be homeless or that they'll -- they get a particular service that they need.

I think there's a lot of reasons that go into how this money works and what some of the delays have been and so forth. And I can tell you that we are working very, very hard, as you know, meeting with them every two weeks, or every other week in some cases, to ensure that the P.A.'s are done properly, the Prior Authorizations are done and cleaned up, that there's reallocation of money that's being done appropriately. I brought back to the Department Matthew Ertas on a temporary part-time basis who had been in charge of the Bureau a few years ago. He's working with us now to help be able to make progress as well. I'm going to make a full report to the Legislature through the Oversight Committee, and I'll certainly copy all the Fiscal Members as well, in terms of what the numbers and dollars are and what we are projecting for '17 as well. That's going to come within the next week or two, a couple weeks probably, but that's going to be done.

SEN. PRESIDENT MORSE: One other thing I heard was rate increases to the MCOs. Does that come to Fiscal for approval besides Governor and Council?

MR. MEYERS: No, Senator, it does not. The rates are set. The rates aren't chosen arbitrarily. The Department doesn't pick the rates. The actuary looks at information in New England and the state and across the country and the actuary sets the rates.

SEN. PRESIDENT MORSE: I think there's been a ton of pressure since you became Commissioner on increasing those rates. You heard the same stories I've heard.

MR. MEYERS: Right.

SEN. PRESIDENT MORSE: The same people flying into New Hampshire saying that they need \$14 million in rate increases just to make up for what they lost. I'm not buying it. And who's making the approvals? If it's Governor and Council, I would

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hope they hire their own counsel to look at it because I'm concerned.

MR. MEYERS: I'm happy to discuss this further at any time with the Committee or any members of the Committee. I will tell you that the rates were developed in accordance with actuarial principles, and what the service utilization trends were, and what the cost of service trends were and, you know, there was a desire by the Council and by others to ensure that there were -- that there were capitated rate agreements between the Community Mental Health Centers and the Managed Care Organizations. So we worked very hard to be able to set the rates in a way that it would facilitate that outcome. But, ultimately, the rates were set by the actuary based on real data.

SEN. PRESIDENT MORSE: You yourself expressed concerns to me that the administrative fees by one of the MCOs far exceeded the average nationally, and we don't get to see this?

MR. MEYERS: The information is there and I can certainly submit it to you. Absolutely. We are not hiding any information.

SEN. PRESIDENT MORSE: And further question, 'cause you just brought it up. You basically just said that they're looking, and I'm assuming you're saying the Council, is looking to make sure that the capitated rates for mental health. Is that who you're talking about are in there at a rate that the MCOs can work with the mental health agencies?

MR. MEYERS: Both could work with each other, yes. The rate agreements, the capitated rate agreements could be reached.

SEN. PRESIDENT MORSE: Are there any fee-for-service bills pending right now from 2016 that we should know about? I mean, have we ended the year in fee-for-service with mental health and they're all done?

MR. MEYERS: No, it's not all done yet. So the money that was put into the rate agreement approved by the Council

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contained money for mental health services. That money is now being paid to Community Mental Health Centers on a fee-for-service basis under letters of agreement. My understanding earlier this week is that the Behavioral Health Association has pretty much concluded an agreement with one MCO for capitated rate agreements. It would put the services into a managed -- to a cap rate for mental -- Community Mental Health Centers and that the other MCO would be following suit very soon. So I don't -- so there are services being paid today under those letters of agreement that are not on a capitated rate basis, to be clear.

SEN. PRESIDENT MORSE: I'm going to ask it a little different. You're showing a \$13 million lapse right now --

MR. MEYERS: Correct.

SEN. PRESIDENT MORSE: -- in your Department which is the only lapse we have seen, by the way.

MR. MEYERS: Yeah.

SEN. PRESIDENT MORSE: Is there anything that will drive down that 13 million between now and September?

MR. MEYERS: Oh, oh, I'm sorry.

MS. ROCKBURN: So, Senator, I think what you were referring to fee-for-service meaning is the State continuing to pay fee-for-service claims. Is that what you were referring?

SEN. PRESIDENT MORSE: Are there any pending claims?

MS. ROCKBURN: No. That 13 million should not go down. Our books have been, you know, closed as of -- geez, I forget when the end of the period ended. The end of July was the official close of '16. So on a cash basis we don't expect that number to change at all, that 13 million.

SEN. PRESIDENT MORSE: Thank you.

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CHAIRMAN KURK: Question, Commissioner. \$13 million is how much you lapsed. In fact, how much were you expected under the budget to lapse?

MR. MEYERS: I don't have the exact number; but roughly \$21 million, I believe.

CHAIRMAN KURK: So you're roughly seven and a half million dollars short.

MR. MEYERS: That is correct.

CHAIRMAN KURK: Thank you. Another question. On Page 1 of the Dashboard there's a chart at the bottom which calculates how the \$46 million shortfall --

MR. MEYERS: Yes.

CHAIRMAN KURK: -- was determined. And the first item says Medicaid services of 25.5 million.

MR. MEYERS: Right.

CHAIRMAN KURK: Was any of that \$25.5 million, and I assume this is General Funds only, incurred for people who are on TANF and, if so, can any of the TANF reserve funds be used to reduce that?

MR. MEYERS: So the answer to your second question is no. There's a specific Federal statute that prohibits the use of TANF funds to pay for any medical services whatsoever.

CHAIRMAN KURK: What else can TANF funds be used for?

MR. MEYERS: They can be used for a variety of services that promote family. For example, I brought to Council earlier this week roughly \$500,000 contract for SUD treatment and recovery services at a new organization that's starting up in Rochester,

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Hope on Haven Hill. There's TANF funds that obviously would be used for the Gateway to Work.

CHAIRMAN KURK: That's not medical. SUD is not medical.

MR. MEYERS: There -- there -- but it's for -- no, it's not classified in the same way as statutory prohibition. So that funding is allowable to use for that purpose.

CHAIRMAN KURK: Let me put the question differently.

MR. MEYERS: Yes.

CHAIRMAN KURK: Is there any monies that are currently being spent out of the General Fund for services for these folks that could be paid for with TANF reserve money?

MR. MEYERS: No, no, no.

CHAIRMAN KURK: That's an absolute?

MR. MEYERS: Yes, sir.

CHAIRMAN KURK: Thank you. Further comment. My understanding, in response to the Senator's question before, was that the actuaries don't set the rates. They set a range, number one. And, number two, even though we are under Managed Care, that if the State by statute should declare a rate for a particular provider, as we have done in the past to balance the budget --

MR. MEYERS: Yes.

CHAIRMAN KURK: -- that that would be a legitimate factor that the actuaries would consider in setting future rates. So having gone to Managed Care does not mean that the State is out of the rate setting business if it should choose to do so.

MR. MEYERS: I think it's -- it's a little bit more complex than that. I will tell you that to the extent that when our

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actuary estimates rates and provides a range, we have always chosen the lowest part of that range to go forward with. I can assure you that.

CHAIRMAN KURK: But that's a decision that you make.

MR. MEYERS: And my predecessor as well, not just mine. With respect to your point about the Legislature, there -- there are -- CMS has to approve these rates. So to the extent that the Legislature provides any guardrails around the rates, they ultimately have to be -- they have to be actuarially determined, and they have to be able to satisfy the access requirement under Federal Law.

CHAIRMAN KURK: That's always been the case.

MR. MEYERS: Yes, that's my point, is that the Legislature can't legislatively prevent the establishment of a rate that's not actuarially sound or that's not within -- does not promote the access that's required under Federal Law. That's all I'm saying.

CHAIRMAN KURK: I understand that. I just wanted to make it clear to folks that because we have shifted to Managed Care does not mean the Legislature is out of the business of regulating the cost of Medicaid services should it choose to do so. And we have chosen to do so in the past when we were under a fee-for-service --

MR. MEYERS: Yes, yes.

CHAIRMAN KURK: -- regiment. Senator Morse.

SEN. PRESIDENT MORSE: You know, that budget is coming -- is shrinking because that's one month that's affected by usage, and it's affected by the rate applied. If we can't touch the rate applied, then when the Department comes back to the Legislature and says you made an adjustment at a 2%, you know, rate, slow down, you know, we weren't getting usage. And actually I saw a mental health thing looked like it was greater than 2% reduction

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in the documents that were given to us. I -- I certainly believe the Legislature can control this number. It's one line now. If it's growing by more than 3 or 4% a year, it's going -- it's going to be a problem for solving budgets.

MR. MEYERS: I've got information I can provide the Legislature. I'll provide it more fully in writing. But our actuary has gone back and looked at the trend of the rates, all of the actual rates since the beginning of the program starting on December 1st of 2013. I don't have the numbers right in front of me now, but it has approximately grown, rates have increased on an annual basis of about, I think, it's 3.4% or so per year.

Now, you've got -- if it's program changes along the way, like the addition of the Health Protection Program, establishment of a separate rate for the medically frail which is higher, the inclusion of SUD benefits for the standard population and so forth that wasn't there before July 1st of this year. But when you take out those program changes, I think the difference, the increase from the rate established on, say, December 1st of '13 when the program started to the rates that were just approved by the Council, I think it's about a 10 -- between 10 and 11% increase overall. I am told by the actuary that that is completely in line with what has been seen nationally over the same time period. So that the rate increases experienced year to year and over that three-year period, the program will be up and running three years as of this December 1st of '16, is completely in line with what the national costs have been with respect to Managed Care program. So that New Hampshire is not any lower, but it's not any higher either than essentially the national average increase.

CHAIRMAN KURK: And how would that compare with the average increase over the same period for fee-for-service programs, lower or higher?

MR. MEYERS: The amount of money the State is paying is lower than it would -- the analysis I have from the actuary, let me just caveat this a little bit, is that projecting into the future that the cost, the payments of Managed Care are lower

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than they would have been for fee-for-service in the same time period.

CHAIRMAN KURK: Thank you. Further questions? Senator Sanborn.

SEN. SANBORN: Thank you, Mr. Chair. I know it's on the table so we are going to talk about Gateway Program at that point. I think we need to talk a little bit about it, the Supreme Court ruling that came out this week relative to the SSI payment.

MR. MEYERS: Yes.

SEN. SANBORN: I did see a memo from you – thank you very much – about it's your belief that the State's not going to be obligated on historical look back.

MR. MEYERS: Decision's not retroactive. It's only prospective.

SEN. SANBORN: But the legislation that President Morse put in in 2011 around this issue showed a fiscal impact of about \$9 million.

MR. MEYERS: Right.

SEN. SANBORN: That was 2011. We can take basic math and, you know, look at the Rule 72s however we want, but now we are at 2016. So one of my concerns I have in the Gateway to Work Program is now we are about to have to go back and reallocate somewhere between nine and I'm guessing 14 and \$15 million.

MR. MEYERS: I'm not sure that's correct, Senator. Go ahead, please.

SEN. SANBORN: I can only look towards the people that did the Fiscal Note at that time but like to think they were honest and accurate at that time so I'm not judging them.

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MR. MEYERS: Yes.

SEN. SANBORN: The economy grows as the economy grows. So irrespective of what the number specifically is today, as you say, we are going to have to be taking money out of that TANF bucket in order to fund this ruling from the Supreme Court.

MR. MEYERS: So the ruling is prospective. It will impact the amount of funds that are spent with respect to kids. We, at least, preliminarily identified about 222 families that this would apply to, which is significantly less than the 1500 number that's been floating out there. What I can tell you is that ruling just came down. I've asked the staff to really look at this and to come up with an analysis of what the fiscal impact may be. I hope to have that available very shortly. And when it's available it will be made public, obviously. So I can't -- I can't address -- I don't know today what that number is yet, but we are working on it, and I can assure you that we'll be making it available to the Legislature.

CHAIRMAN KURK: So if this were to come to pass, 222 families would presumably be now eligible who are not eligible. They get six, \$700 a month in cash times 12 months, times 222. Is that the way it's figured?

MR. MEYERS: Very generally. But there's a lot of facets to this and I -- that's why I'm having the analysis done so that we can really provide all the information. I don't want to provide information that's not accurate.

CHAIRMAN KURK: Thank you.

SEN. SANBORN: Last question. Thank you, Mr. Chair. Thank you very much. Commissioner, you mention you have your staff looking into it.

MR. MEYERS: Yes.

SEN. SANBORN: I'm a little concerned as you heard me voice several times as to whether or not the Department has bitten off

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too much of the apple that they can realistically digest at this point. And I second that up with the concerns you continue to hear about the DD Wait Lists, mental health, MCO, I mean, all the issues we talked about. I'm concerned I'm hearing that there's been some staff turnover at the high level of the Department. Can you talk about what's going on and whether or not we can have the confidence that you're going to have maintained, however you want to say it, the staff at the executive level and HHS to get this stuff taken care of?

MR. MEYERS: Yeah, I have a very strong staff now and I'm going to continue to have a very strong staff. There has been some turnover in the high level, two people who had been there, each over 20 years, one 23 years, the other 22 years, decided they wanted to do something else and had gotten and were recruited specifically. So there are really just a change of four positions at the top on the executive team level of the Department and they were each for different reasons. There's a new Medicaid Director that I'll be -- there's an interim Medicaid Director today. I'll be making a decision on a permanent Medicaid Director, you know, probably, you know, soon after Labor Day. And I've already replaced Mary Ann Cooney, who's the Director of Human Services, with Maureen Ryan, who's now the Director of Human Services and doing an outstanding job.

There was a position called Senior Division Director. It's a G & C confirmed position. It's -- there are only three Governor and Council confirmed positions in the Department, the Commissioner, Deputy Commissioner and the so-called Senior Division Director and that person left, and I am actually kind of thinking about how that position should be positioned in the Department. And I intend to, you know, bring forward a proposal with the Legislature in the next budget as to repurposing that position a little bit differently than what it was functioning as previously. And there's an opening in the Deputy Commissioner position and that's under recruitment now as well, and I think that will be filled in the very -- hopefully will be filled in the short-term.

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So I think, you know, I've got a management team around ten people or so. They're very strong individuals. They're doing a great job. I think we are making a lot of progress on a lot of fronts and I think -- sure, the Department does have challenges. I mean, you know, we have got to look at staffing issues in the next budget. DCYF is an area -- one area, obviously, that I'm concerned about. There's an independent review going on now at DCYF and the resources that it needs and the function it's been playing. So that's a conversation that I look forward to having with the Legislature in the next Legislature and the next Governor.

SEN. SANBORN: Thank you.

CHAIRMAN KURK: Thank you. Thank you, Commissioner.

MR. MEYERS: Thank you.

CHAIRMAN KURK: Are there any other questions on any other information items? Senator Morse.

SEN. PRESIDENT MORSE: No, I just -- because we didn't speak because of the tabling, I would like to make a statement on that because I'm concerned of the -- of what's going on, and I certainly didn't not vote to take something off the table because of the issue. I did it because I'm having an extreme difficulty getting anything out of the Governor's Office financially. I certainly had Senator Bradley send several letters on Senate Bill 32 and saw nothing. I certainly have asked LBA multiple times to work with the Comptroller to figure out where we stand in this state on lapses and at least get some kind of position of where we stand. We certainly knew it was about \$80 million when we talked about the closing of the books last time, and we are getting no information.

So now we're asked to move forward and support a program that's a new program and Senator Sanborn brought up a good point of where there isn't this level of communication. I don't care what the Governor puts in a press release that we are working together and we should continue to work together. That issue

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came down on Wednesday. I have not heard a damn thing from the Governor about how much that's going to cost. I can read what Governor Lynch proposed to me to put into legislation and we did and it was \$9 million. And here we sit today with, you know, not even talking about escalating fees or anything, and we have the Commissioner say you can't address it right now because he doesn't know what it's going to cost. And, yet, we're still being asked to take it off the table. That's not good government.

I strongly believe in what's going on right now should -- everything should go through a finance committee. I mean, I'm hearing from House Members that want to change the way security works. I'm hearing about things that, you know, are going to cost money and we're asking a Committee like ours to take on the ability to approve all these numbers without the luxury of having a 20 or 30 member Finance Committee that you have in the House and my five or six member committee in the Senate go through what they normally would go through and get the tough answers. I'm concerned and that's why today I didn't vote to take this off the table because, you know, quite honestly, I don't believe we know where we are. And if somebody does in the Governor's Office, I wish they'd explain it to me.

CHAIRMAN KURK: Thank you, Senator. I would only add that any time we're asked to implement a major, new program, new and major, it's inappropriate for the Fiscal Committee to do that. It's appropriate for the Legislature to do that. And my concern about Gateway to Work is that it is not going through the Legislature and getting the vetting process on all of the numbers that it would have gotten had it gone to, for example, House Finance.

Okay. I have a question on 16-111, which is the Governor's certification that there is sufficient lapse money to cover certain expenditures. Is Ms. Telus here by any chance?

MEREDITH TELUS, Budget Director, Office of the Governor: I am. Good afternoon.

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CHAIRMAN KURK: Good afternoon. Thank you for coming.

MS. TELUS: Mr. Chair and Members of the Committee, Great to be here. Meredith Telus, Director -- Governor's Budget Director.

CHAIRMAN KURK: The statute that requires the Governor to make the certification reads as follows: The Governor shall certify to the Fiscal Committee of the General Court that any excess appropriations identified pursuant to this section are in addition to the projected lapses assumed during the adoption of the State Operating Budget for the biennium. The State Operating Budget, as you know, does not make assumptions with respect to a particular department. It assumes a certain percentage across the Board. The Governor found certain money that's going to lapse in the Treasurer's Office and made her certification. But at the same time she did that, and it's roughly 7 million, we have a \$7.6 million deficit for '16 in Health and Human Services. So I would ask that the Governor reconsider her certification so that she not do it based on how much money happens to be available in one particular line, but does it based on the entire budget lapse issue.

MS. TELUS: Would you like me to respond -- explain?

CHAIRMAN KURK: I'd love it. Thank you.

MS. TELUS: So, yes, as you are well aware, we had a couple of major hits in HHS. One was related to due to a preliminary injunction. It allowed hospitals to discount certain revenues and that increased our DSH payment, and a lot of that was covered with drug rebate revenue. There were also Medicaid shortfalls as we are all well aware from the Dashboard. Those were a couple of large impacts to Fiscal 16.

It is early and we have not yet gone through the audit, and we have yet to do all of our accrual adjustments; but at this point the cash lapses do look strong. And, Senator Morse, I'm going to work with Mr. Murphy to make sure that you get something showing what we have for cash lapses. Of course, with

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all the caveats that that is not the -- that is not the final and we have to go through the audit. And on that are you looking for a single number or agency by agency?

SEN. PRESIDENT MORSE: We don't need it at this point agency by agency. The concern of the Legislature is did we meet the \$46 million.

MS. TELUS: Yes. And in HHS, as you know, we did not. But I found that other agencies are coming in strong. I think that one thing that happens is that they reserve a certain amount of money for transfers to other agencies, like DAS and DoIT. And then at the end of the year they realized DoIT comes along and says you can liquidate that encumbrance. You can lapse that amount. But I will work on getting that. Next year I anticipate that the --

CHAIRMAN KURK: Next year being?

MS. TELUS: Excuse me. This year, Fiscal 17, I anticipate that the DSH need will go down because we'll have seen whether or not the preliminary injunction is stayed because we'll have had a full year of New Hampshire Health Protection Program. We'll have to see what happens with drug rebate revenue. We'll see what happens with caseloads. They were down slightly in the last three months of last Fiscal Year. We also knew when we discussed this legislation, I think it was during 533, we talked about Charter Schools and didn't end up using that. But there's an additional 8 million there.

So, you know, the letter was written. I thought it would be helpful and prudent to identify a single line that showed the lapse for that single line; but I fully anticipate that we will meet the lapse estimated of 3.3% for Fiscal 17 even after this transfer is made.

CHAIRMAN KURK: And what I hope is that in future letters that's what you refer to. It's not so much, oh, we found a pot from which we are going to take it. The question is will the entire lapse of 46 million or whatever it is be met and,

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therefore, we expect 3 million above that and from that excess I certify that there's enough money to make the transfers.

MS. TELUS: Yes.

CHAIRMAN KURK: You're telling us that despite the language of this letter, what I just stated is correct?

MS. TELUS: Yes.

CHAIRMAN KURK: There is enough money. We will meet our lapses for '16. We will meet our lapses for '17. And, in addition, there will be sufficient extra unspent money to cover these additional appropriations.

MS. TELUS: There will always be, you know, unanticipated and unbudgeted events; but yes, at this point I fully anticipate that in '17 we will meet the 3.3% lapse after this transfer is made.

CHAIRMAN KURK: Thank you very much.

MS. TELUS: Thank you.

Audits:

CHAIRMAN KURK: Any other items that people have questions on? There being none, then we'll turn now to the audit. This is an audit of the Department of Safety, Division of Homeland Security and Emergency Management. A performance audit for -- dated August 2016. And my understanding is we have some new faces at the table.

MR. KANE: We do. Well.

CHAIRMAN KURK: Old faces, new positions.

MR. KANE: I don't want to say old face. But we have Jay Henry has been with our office over 20 years. Steve Fox retired last week. I had the pleasure working with Jay for the last

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16 years. He moved from Senior Audit Manager to Performance Audit Supervisor, and I think you'll enjoy working with him as well.

CHAIRMAN KURK: Welcome and congratulations.

JAY HENRY, Performance Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Thank you. Steve Smith would be here today. He apologizes; but his son is getting married in Colorado so he decided to go there instead of being here with you.

Good morning. Gosh, good afternoon. My name is Jay Henry, and I'm the Performance Audit Supervisor at the LBA Audit Division and was in charge of this Audit.

With me is the Director of Homeland Security and Emergency Management, Perry Plummer. I'm presenting our Performance Audit of the Division of Homeland Security and Emergency Management for State Fiscal Years 14 through 16. Please note throughout the report and this presentation we'll refer to the Division as HSEM.

The purpose of our audit was to determine if HSEM was effectively coordinated and supported the State's and local governments' Emergency Management efforts.

Page 1 contains our Executive Summary in which we say HSEM was effective in coordinating and supporting Emergency Management efforts as demonstrated by the strong level of satisfaction with its services based on survey results from other state officials and municipal emergency management directors as found in the Appendices C and D of this report. We also found HSEM needed to improve its planning and operations to fully meet accreditation standards and comply with some State requirements, which we'll explain in our observations.

During the audit period, HSEM Management sought to make the State's Emergency Management Program compliant with accreditation standards while also adhering to Federal

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requirements in order to maintain Federal funding for the State's emergency program.

Page 3 contains our Recommendation Summary which shows HSEM fully concurs with all eight Observations, none of which require legislative action.

Starting on Page 5, we present background information on the development of emergency management planning in New Hampshire, and describe the complexity of the State's program.

There are five phases of emergency management; prevention, protection, mitigation, response, and recovery. And there are 46 support organizations which HSEM organizes into 15 support functions which we list on Pages 5 and 6.

Figure 1 on Page 7 shows how HSEM is organized and Table 1 on Page 9 shows the number of activations of the State's Emergency Operation Center over three years.

Table 2 on Page 11 presents the revenues and expenditures and shows that a majority of the Division's funds represent Federal grants to local communities.

Starting on Page 13, we present four Observations related to Emergency Management Standards. Throughout the report we used the Emergency Management Accreditation Program Standards or EMAP'S standards to measure the maturity of HSEM's program. While compliance with EMAP standards is not mandatory, the standards represent the best practices in the field.

In Observation No. 1, we recommend HSEM continue to work on developing a continuity of government plan with the cooperation of State leaders. This is the one key plan the State is lacking and is important to address to the continued operations of central government functions, records, systems, facilities, and authority.

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In Observation No. 2, on Page 15, we recommend HSEM develop a policy on when After-Action Reports will be produced and track the corrective actions identified from those reports.

On Page 17 in Observation No. 3, we recommend the Department of Safety continue its development of a training program that meets with -- fully meets accreditation standards.

In Observation No. 4 on Page 19, we recommend HSEM fully test its primary alternate facility in the event the Incident Planning and Operations Center on Smokey Bear Drive in Concord is unusable.

Starting on Page 21, we present four Observations based on the compliance with statutory requirements. In Observation No. 5, we recommend the Department adopt into administrative rule its statewide command system as required by State Law.

In Observation No. 6 on Page 22, we recommend the Department follow State Law to ensure that a random sample of access data is reviewed and that procedures for personnel actions are written for the Information and Analysis Center.

In Observation No. 7 on Page 24, we recommend the Department adopt rules for the Nuclear Plan Assessment Fee which is charged to nuclear power plants and used to help neighboring communities and the State pay for the cost associated for preparing, maintaining, and operating emergency response plans.

In our last Observation on Page 25, we recommend the Department complete all required reports related to the Nuclear Planning and Response Fund and ensure all dedicated funds are included.

Starting on Page 29, in our other issues and concerns section we discuss a number of improvements to HSEM's documentations and operations which, if implemented, could improve the conformity to accreditation standards. In many cases, HSEM is close to meeting a standard but is lacking one aspect, such as tracking the strategic plan, quantifying its gap

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analysis, considering the risks to its own operations, and assigning additional responsibilities in the State Emergency Operation Plan. We also suggest HSEM continue to work with the Department of Information Technology in determining which agency should have direct authority over the Security Operations Center.

Appendix A contains our Objectives, Scope and Methodology and Appendix B is the letter to the Fiscal Committee from the Division.

Lastly, I'd like to thank the Director and his staff for their cooperation throughout this audit and be happy to answer any questions the Committee has.

CHAIRMAN KURK: Thank you, sir. May we hear from the auditee?

PERRY PLUMMER, Director, Homeland Security Emergency Management, Department of Safety: Good morning. Thank you very much, Chairman Kurk, and Members of the Committee.

First and foremost, I want to thank the LBA management and audit staff for their hard work pursuant to the audit. Especially want to thank both Jay and Mark for the dedication, flexibility, and professionalism. They were both accommodating and sensitive to our current workload as they performed their duties and made great efforts to learn about our agency and critically analyze our operation.

The entrance time they spent in attending exercises, meeting with staff, researching emergency management accreditation standards is a testament to their commitment to their job and the citizens of New Hampshire.

Please note, the audit was based on Emergency Management Accreditation Standards which we consider the gold standard. Three years ago we began to go down an informal process of accreditation preparation with the goal of becoming one of 30 states that are accredited in Fiscal Year 18-19, and we feel

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we'll meet this. We look forward to achieving this accreditation. However, it will be a long, arduous process to complete.

As we review this report, please note the rating -- the approval rating for local and municipal partners is extremely high. The results of the audit impartial survey of 234 towns and municipalities show 92% of the respondents were satisfied or very satisfied with no respondents indicating they were dissatisfied. So of all the towns that were surveyed, not one person indicated they were dissatisfied with our service.

In addition, 87% of our State and Federal partners indicated that the services we provide are good or very good which are the top two responding choices; again, with no respondent saying they were dissatisfied.

During the audit period, we conducted two federally graded nuclear power plant off-site response exercises that were federally evaluated. We completed both of these without any action -- Areas Requiring Corrective Action as graded by FEMA and NRC. This is an accomplishment that's never happened before.

We also developed and implemented a nationally recognized school security program and have 65% of our public schools have had a security assessment.

We increased the local preparedness training by 72% and the amount of exercise by 83% for locals.

We implemented a LEAN process that improved -- that improved or decreased our grant processing time for local emergency management grants by 73% for locals.

We provided an in-person training for 10,000 State Employees on active shooter response in three months. And we just became the second state in the nation to receive Federal approval to certify local hazard mitigation plans. That's something that will be of great benefit to local communities.

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In addition to the statistical data that you've seen and you see in the survey, the survey received many comments about our staff which include but not limited to, the people are excellent. HSEM staff are a pleasure to work with. They generally do a great job. They handle events and planned events very well. Excellent State asset. Strong partnership which helps both agencies accomplish missions. I have been impressed with the depth of the organization work and feel more confident about New Hampshire's ability to respond to many types of crises. And when interacting with other states I feel HSEM is a leader in supporting State -- supporting the State and other agencies. Finally, excellent organization with timely and proactive and professional staff.

These accomplishments and survey results are a testament to the hard work and dedication of the entire HSEM staff, who I can't thank enough for their hard work and dedication to our local communities and our citizens.

Once again, I want to thank Jay and Mark for assisting HSEM to be the best it can be in protecting our citizens. And I just want to make two real quick comments.

On Observation No. 4, fully testing our primary alternative facility, that's happening as we speak with public health drill that's going on in a multi-day drill. We are actually over there testing that facility as we speak, and we are working on the Continuity of Government Plan. In here you'll see we talked about hiring a contractor. We have a plan to do that within your own agency saving those dollars and expediting that process. So, with that, I'll be willing to answer any questions.

CHAIRMAN KURK: Thank you, Mr. Plummer. Questions from Committee Members? Apparently none. Thank you, Mr. Henry, for an exceptionally brief report. Much appreciated. Representative Weyler is recognized for a motion.

****** REP. WEYLER: Mr. Chairman, I move we accept the report, place it on file, and release in the usual manner.

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REP. EATON: Second.

CHAIRMAN KURK: Seconded by Representative Eaton.
Discussion? There being none, are you ready for the question?
All those in favor, please indicate by saying aye? Opposed?
The ayes have it and the report is approved. Thank you,
gentlemen.

REP. WEYLER: Congratulations to both of you.

CHAIRMAN KURK: Anything else to come before us? Our next meeting will be on Friday, September 16th -- let me just make sure I got it right -- Friday, September 16th, at 10 o'clock in this room. And the public hearing on proposed changes to the Retiree Health Plan will be the following Friday, September 23rd at 1 o'clock. And as I said before, I believe that will be in Representative's Hall. With that --

** REP. WEYLER: Move to adjourn.

CHAIRMAN KURK: -- we stand adjourned.

SEN. SANBORN: Second. Thank you.

(The meeting adjourned at 12:58 p.m.)

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CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

Cecelia A. Trask
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State of New Hampshire
License No. 47

