



Lori A. Weaver
Interim Commissioner

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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE COMMISSIONER

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February 3, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Office of the Commissioner, to enter into a memorandum of understanding with the New Hampshire Judicial Branch, Administrative Office of the Courts, Concord, NH, in the amount of \$149,854 to pay for individuals' legal representation at involuntary emergency admission probable cause hearings, effective upon Governor and Council approval through June 30, 2023. 100% General Funds.

Funds are available in the following account for State Fiscal Year 2023, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

05-95-92-922010-41150000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT, HHS: BEHAVIORAL HEALTH DIV, BUREAU OF MENTAL HEALTH SERVICES, COMMITMENT COSTS

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2023	049-584910	Transfer to Other State Agencies	92204115	\$149,854
			Total	\$149,854

EXPLANATION

The purpose of this request is for the Department of Health and Human Services (DHHS) to reimburse the New Hampshire Judicial Branch (NHJB) for legal representation for individuals subject to judicial hearings for involuntary emergency admission (IEA), which is an individual's unconditional right. Approval of this memorandum of understanding will allow the Department to make three (3) quarterly cost reimbursement payments to the NHJB for the legal representation.

DHHS has historically entered into contracts with private law firms and attorneys to provide legal representation at probable cause hearings for individuals subject to IEA to any program or designated receiving facility for mental health treatment.

Following recent court rulings, DHHS and the NHJB reviewed RSA 135-C:27-33 and determined the responsibility to provide legal representation at IEA hearings aligns more within the authority of the Judicial Branch. To effectuate this end, DHHS terminated the four (4) contracts with private law firms and attorneys providing this service effective September 30, 2022. Concurrently, the NHJB entered into contracts with the same four (4) private law firms and attorneys effective October 1, 2022.

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DHHS continues to contract with private law firms and attorneys to advise individuals, whose conditional discharge has been revoked, of their right to appeal.

Should the Governor and Council not authorize this request, individuals subject to judicial hearings for involuntary emergency admittance to any program or designated receiving facility for mental health treatment will not have legal representation, which is their unconditional right.

Area served: Statewide

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lori Weaver", written in a cursive style.

Lori A. Weaver
Interim Commissioner

State of New Hampshire Interagency Memorandum of Understanding

Whereas, the New Hampshire Department of Health and Human Services [“DHHS”] is a duly constituted agency or branch of government of the State of New Hampshire;

Whereas, the New Hampshire Judicial Branch, by and through the Administrative Office of the Courts [“NHJB”] is a duly constituted branch of government of the State of New Hampshire;

Whereas, pursuant to RSA 135-C:22 and RSA 135-C:52, **DHHS**:
Has historically received funding from the Legislature to ensure individuals subject to an involuntary emergency admission (“IEA”) petition are appointed legal counsel.

Whereas, the **NHJB** is:
Engaged in the process of centralizing all IEA petitions filed in the Circuit Court. Part of the centralization plan includes the transfer of the appointment and payment of IEA Counsel from DHHS to NHJB.

Whereas, **DHHS** desires to:
Transfer funding provided to DHHS for this purpose to the NHJB.

Whereas, pursuant to RSA 135-C:23, **NHJB** is responsible for:
The appointment and payments of IEA counsel for petitionees. _____

Whereas, **NHJB** desires to:
Receive funding from DHHS to fund contracts with attorneys to ensure legal representation of individuals subject to an involuntary emergency admission petition.

NOW, THEREFORE, the parties enter into this Memorandum of Understanding (MOU) to their mutual benefit, the benefit of the State and in furtherance of constitutional or statutory authority and objectives.

1. The *DHHS* agrees to:



Transfer to **NHJB** the amount of **\$149,854** for the services described in the attached MOU, Exhibit A – Parties Responsibilities, which is hereby incorporated by reference.

Payment shall be provided from: 05-95-92-922010-4115

2. The *NHJB* agrees to:



Receive the funding from **DHHS** to pay for the services described in the attached MOU, Exhibit A – Parties Responsibilities, which is hereby incorporated by reference.

DS
DM

3/1/2023

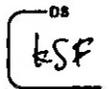
DS
KSF

3/1/2023

3. The method of payment for the above-referenced services is described in MOU, Exhibit B – Payment Terms, which is hereby incorporated by reference.
4. All obligations hereunder are contingent upon the availability and continued appropriation of funds. The Agencies shall not be required to transfer funds from any other account in the event that funds are reduced or unavailable.
5. The MOU is effective upon Governor and Executive Council approval through June 30, 2023.
6. This MOU may be amended by an instrument in writing signed by both parties. Either party may terminate this agreement by providing written notice to the other party at least thirty (30) days prior to termination.
7. The Parties agree that the obligations, agreements, and promises made under this MOU are not intended to be legally binding on the Parties and are not legally enforceable.
8. Disputes arising under this MOU, which cannot be resolved between the Parties, shall be referred to the New Hampshire Department of Justice for review and resolution.
9. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
10. The Parties hereto do not intend to benefit any third parties and this Memorandum of Understanding shall not be construed to confer any such benefit.
11. In the event any of the provisions of this Memorandum of Understanding are held to be contrary to any state or federal law, the remaining provisions of this MOU will remain in full force and effect.
12. This MOU, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire MOU and understandings between the parties, and supersedes all prior Memoranda of Understandings, and understandings, relating hereto.
13. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.

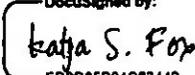
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3/1/2023

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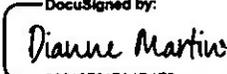
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New Hampshire Department of Health and Human Services

DocuSigned by:

 Signature
 Director
 Title
 Katja S. Fox
 Print Name

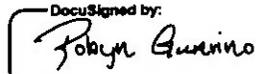
3/1/2023
 Date

New Hampshire Judicial Branch, Administrative Office of the Courts

DocuSigned by:

 Signature
 Director
 Title
 Dianne Martin
 Print Name

3/1/2023
 Date

Approved by the New Hampshire Department of Justice for form, substance, and execution:

By: 
 Name of Assistant Attorney General

On: 3/6/2023
 Date

Approved by the Governor and Executive Council

By: _____

On: _____
 Date

State of New Hampshire
Interagency Memorandum of Understanding
Exhibit A – Parties Responsibilities

1. RESPONSIBILITIES OF DHHS

1.1. DHHS agrees to:

- 1.1.1. Transfer the State Fiscal Year 2023 balance of funds allocated to the terminated DHHS Involuntary Emergency Admission Legal Representation (RFA-2022-OCOM-01-INVOL-03) contract, to the NHJB, to appoint legal counsel to petitionees that are the subject of an IEA petition filed in Circuit Court.

2. RESPONSIBILITIES OF NHJB

2.1. NHJB agrees to:

- 2.1.1. Appoint legal representation to petitionees who are a party to Involuntary Emergency Admission (IEA) petitions filed in the New Hampshire Circuit Court.

State of New Hampshire
Interagency Memorandum of Understanding
Exhibit B – Payment Terms

1. This MOU is funded by 100% General Funds.
2. The Department of Health and Human Services (DHHS) shall make payment to the New Hampshire Judicial Branch (NHJB) on a quarterly basis for the fulfillment of this Agreement in accordance with the MOU, Items #1 and #2.
3. NHJB shall submit two (2) quarterly invoices with supporting documentation to DHHS no later than April 15, 2023 for the period of October 1, 2022 through December 31, 2022, and for the period of January 1, 2023 through March 31, 2023. NHJB shall submit a third (3rd) and final invoice to DHHS no later than July 15, 2023 for the quarter ending June 30, 2023, in accordance with Section 3 of the MOU. NHJB shall ensure each invoice:
 - 3.1. Is submitted in a form that is provided by or otherwise acceptable to the Department.
 - 3.2. Identifies and requests payment for the previous quarter.
 - 3.3. Includes supporting documentation with each invoice.
 - 3.4. Is completed, dated and returned to the Department with the supporting documentation to initiate payment.
 - 3.5. Is assigned an electronic signature, includes supporting documentation, and is emailed to DHHS.DBHInvoicesMHS@dhhs.nh.gov or mailed to:

Financial Manager
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301
4. DHHS shall make payments to the NHJB within thirty (30) days of receipt of each invoice and supporting documentation for authorized payments, subsequent to approval of each submitted invoice.