



Lori A. Weaver  
Interim Commissioner

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

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April 25, 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 Liquor Commission (NHLC), 5 Storrs Street, Concord, NH 03301 (Vendor #177913 B001), in the amount of \$410,658 for the purpose of returning unsold COVID-19 antigen at-home rapid test kits from NHLC to the Department, effective upon Governor and Council approval through June 30, 2023, or upon full payment by the Department to NHLC, whichever is later. 100% Other Funds (ARPA).

Funds are available in the following account for State Fiscal Year 2023.

**05-095-094-940010-26180000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SERVICES, HHS: NEW HAMPSHIRE HOSPITAL, NEW HAMPSHIRE HOSPITAL, DHHS/LIQUOR COVID TEST KITS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2023	001-484977-69	Transfers from Other Agcy	N/A	\$410,658
			<b>Total</b>	<b>\$410,658</b>

**EXPLANATION**

The purpose of this request is remit payment to NHLC for unsold COVID-19 Test Kits provided to NHLC under a previous MOU with the Department and facilitate the return of the unsold test kits from NHLC to the Department.

The Department received approval from the Fiscal Committee (January 21, 2022, FIS 22-043) and Governor and Executive Council (January 26, 2022, item #13A) to accept and expend American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLFRF) for the purchase of COVID-19 antigen at-home rapid test kits. The Department also entered into an MOU, approved by the Governor and Executive Council on January 26, 2022 (Late Item #A), with NHLC for the sale and distribution of the test kits at New Hampshire Liquor & Wine Outlet stores, and NHLC subsequently paid \$833,000 for test kits purchased by the Department through the Department of Administrative Services (DAS).

Demand for the test kits at New Hampshire Liquor & Wine Outlet stores was, however, limited as the availability of test kits increased statewide, and NHLC ultimately sold only a portion of the purchased test kits, with 36,523 test kits valued at \$410,658 remaining. The previous MOU between the Department and NHLC expired on December 31, 2022; the Department is therefore requesting to enter into this MOU with NHLC to enable to DHHS to pay NHLC for and retrieve the unsold test kits.

Should the Governor and Council not authorize this request, the Department will be unable to remit payment to NHLC for the unsold test kits, which will have a negative fiscal impact on NHLC.

In the event that the Other Funds become no longer available, additional General Funds will not be requested to support this program.

Respectfully submitted,



Lori A. Weaver  
Interim Commissioner

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**



**AND**

**THE NEW HAMPSHIRE LIQUOR COMMISSION**

**MOU-2023-OCOM-03-TESTS-01**

**1. GENERAL PROVISIONS**

- 1.1. This Memorandum of Understanding (MOU) is between the New Hampshire Department of Health and Human Services (DHHS), 129 Pleasant Street, Concord, NH 03301 and the New Hampshire Liquor Commission (NHLC), 50 Storrs Street, Concord, New Hampshire 03301 (referred to as the "Parties").
- 1.2. DHHS and NHLC previously entered into an MOU, approved by the Governor and Executive Council on January 26, 2022 (Late Item #A), to transfer COVID-19 rapid test kits from DHHS to NHLC for sale and distribution to the public and businesses in New Hampshire.
- 1.3. The purpose of this MOU is to set forth the roles and responsibilities of the DHHS and the NHLC regarding the return of unsold COVID-19 Test Kits from NHLC to DHHS. DHHS will subsequently remit payment to NHLC for the unsold COVID-19 Test Kits through the invoicing process described below.
- 1.4. In connection with the performance of this MOU, DHHS and NHLC shall comply with all applicable laws and regulations.

**2. TERM**

- 2.1. Effective date: This MOU is effective upon approval by the Governor and Executive Council.
- 2.2. Duration: The duration of this MOU is from the Effective Date through June 30, 2023, or upon full payment to NHLC, whichever is later.
- 2.3. Modification: The parties may modify this MOU by mutual written agreement at any time, subject to the approval of the parties, review by the Office of the Attorney General, and approval of the Governor and Executive Council.
- 2.4. Termination: Either party may unilaterally terminate this MOU upon written notice to the other party, in which case the termination shall be effective thirty (30) days after the date of that notice or at a later date specified in the notice.

**3. RESPONSIBILITIES OF THE NEW HAMPSHIRE LIQUOR COMMISSION**

- 3.1. NHLC agrees to:
  - 3.1.1. Facilitate retrieval by DHHS of 36,523 unsold COVID-19 Test Kits.
  - 3.1.2. Submit an invoice to DHHS for payment in accordance with Section 5, Payment Terms below.

**4. RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- 4.1. DHHS agrees to:
  - 4.1.1. Coordinate with NHLC to retrieve the unsold COVID-19 Test Kits from NHLC.
  - 4.1.2. Remit payment for the unsold COVID-19 Test Kits to NHLC in accordance with Section 5, Payment Terms below.



## Memorandum of Understanding Between DHHS and NHLC

### 5. PAYMENT TERMS

- 5.1. The maximum amount of funds available under this Agreement from DHHS to NHLC shall not exceed \$410,658 in State Fiscal Year 2023.
- 5.2. NHLC shall submit an invoice to DHHS within thirty (30) days of approval by the Governor and Executive Council of this MOU. NHLC shall:
  - 5.2.1. Ensure the invoice is presented in a form that is provided by or otherwise acceptable to DHHS.
  - 5.2.2. Provide supporting documentation, as requested by DHHS, that may include inventory documentation and proof of expenditures.
  - 5.2.3. Ensure the invoice is completed, dated and returned to DHHS with any requested supporting documentation for authorized expenses in order to initiate payment.
- 5.3. In lieu of hard copies, all invoices with supporting documentation may be assigned an electronic signature and emailed to [beth.kelly@dhhs.nh.gov](mailto:beth.kelly@dhhs.nh.gov), or invoices may be mailed to:

Financial Manager  
Department of Health and Human Services  
129 Pleasant Street  
Concord, NH 03301
- 5.4. DHHS shall make payment to NHLC within thirty (30) days of receipt of each invoice and supporting documentation for authorized expenses, subsequent to approval of the submitted invoice.
- 5.5. Notwithstanding any provision of this MOU to the contrary, all obligations of DHHS hereunder, including without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds. DHHS shall not be required to transfer funds from any other source in the event that federal funds are reduced or become unavailable.
- 5.6. The Parties may agree to changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years and budget class lines through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.

### 6. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES:

- 6.1. Disputes arising under this Memorandum of Understanding which cannot be resolved between the agencies shall be referred to the New Hampshire Department of Justice for review and resolution.
- 6.2. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.
- 6.3. 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.
- 6.4. 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 Memorandum of Understanding will remain in full force and effect.



## Memorandum of Understanding Between DHHS and NHLC

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- 6.5. This Memorandum of Understanding, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Memorandum of Understanding and understandings between the parties, and supersedes all prior Memoranda of Understanding and understandings relating hereto.
- 6.6. Nothing herein shall be construed as a waiver of sovereign immunity, such immunity being hereby specifically preserved.



Memorandum of Understanding Between DHHS and NHLC

APPROVALS:

DocuSigned by:  
*Nathan White*  
Nathan D. White  
Chief Financial Officer  
NH Department of Health and Human Services

4/19/2023

Date

*JMM*

Joseph W. Mollica  
Chairman  
NH Liquor Commission

Date

4/18/2023

The preceding Memorandum of Understanding, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

4/21/2023

Date:

DocuSigned by:  
*Robyn Guarino*  
Name: Robyn Guarino  
Title: Attorney

The foregoing Memorandum of Understanding was approved by the following authority of the State of New Hampshire:

Date:

Name:  
Title: