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Lori A. Weaver  
Commissioner

Karen E. Hebert  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
*DIVISION OF ECONOMIC STABILITY*

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September 20, 2023

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

**REQUESTED ACTION**

1) Authorize the Department of Health and Human Services, Division of Economic Stability, to enter into provider agreements with eligible Child Care Providers, for the purpose of providing one-time assistance to Child Care Providers statewide, specifically to reduce operating costs that will enable them to advance efforts for workforce recruitment and retention, and increase child capacity; and

2) Contingent on approval of Request #1, authorize the Department of Health and Human Services, Division of Economic Stability, to make unencumbered payments to Child Care Providers, in an amount not to exceed \$3,596,400 for all participating Child Care Providers.

Both requests shall be effective upon Governor and Council approval, through September 30, 2024. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2024, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

**05-095-094-9400010-24650000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: NEW HAMPSHIRE HOSPITAL, ARPA DHHS FISCAL RECOVERY FUNDS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount of Available Funding
2024	102-500731	Contracts for Prog Svc	00FRF602PH 9542A	\$3,596,400
			<b>Total</b>	<b>\$3,596,400</b>

**EXPLANATION**

The purpose of this request is to allow the Department to provide one-time assistance to eligible Child Care Providers statewide to reduce operating costs, and thereby enabling Providers to further invest in professional child care workforce retention and recruitment efforts. Eligible Providers include New Hampshire licensed-exempt facilities, licensed full day/full week early

childhood and/or out-of-school time child care centers, and family child care centers. All licensed and licensed-exempt facilities are defined under NH RSA 170-E. Providers must submit applications, which will be available on the Department's "NH Connections" website, to request reimbursement for operating expenses incurred between **March 3, 2021 and September 30, 2023**. Providers will be informed of the opportunity via several communication channels.

Examples of operating expenses eligible for reimbursement in the program can include: long-term mortgage or lease payments; maintenance, repairs or renovations; building or expansion of outdoor space; programs or services necessary for business operations, such as software or training; or other facility enhancements.

The use of the attached Provider Agreement template will allow the Department to efficiently enter into agreements with eligible Child Care Providers, reimbursing for allowed expenses, in an effort to swiftly enable Providers to reduce operating costs and to further invest in professional child care workforce retention and recruitment.

The Department is also requesting authority to make unencumbered payments to participating Child Care Providers. The Department is making this request because the participating Child Care Providers and funding associated with each Child Care Provider cannot be determined in advance. The amount of funding that each Child Care Provider is eligible to receive will be determined upon receipt of all applications by dividing the total funding available by the combined child capacity of all applicants, then multiplied by each applicant's capacity.

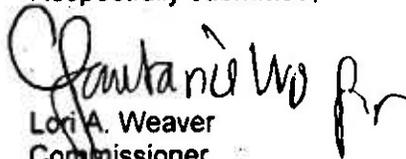
Should the Governor and Council not authorize this request, Child Care Providers statewide will not have this unique opportunity to further strengthen recruitment and retention efforts that will increase their capacity to provide child care.

Area served: Statewide.

Source of Federal Funds: Assistance Listing Number #21.027, FAIN SLFRP0145.

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

Respectfully submitted,

  
Lori A. Weaver  
Commissioner

# Child Care Operating Expense Reduction (CCOER) Grant Program Application

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## **ELIGIBILITY INFORMATION**

This Application is for the Child Care Operating Expense Reduction Grant (CCOER) program, which will provide direct beneficiary awards to eligible Child Care Providers with the purpose of enabling those providers to strengthen their workforce by reducing operating costs and investing in workforce retention and recruitment.

CCOER funds were awarded under the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") established by the American Rescue Plan Act of 2021 ("ARPA"), H.R. 1319, Section 9901 on March 11, 2021, provided by the United States Department of Treasury ("Treasury"), Assistance Listing Number (ALN) 21.027, Federal Award Identification Number (FAIN) SLFRP0145.

### **Eligible Child Care Providers include:**

- New Hampshire licensed-exempt facilities;
- Licensed full day/full week early childhood and/or out-of-school time child care centers; and
- Family child care centers.

All licensed and licensed-exempt facilities are defined under NH RSA 170-E. Interested Child Care Providers must submit completed Applications that are signed and include proof of operating expenses incurred between **March 3, 2021 and September 30, 2023**, in support of their request for reimbursement.

**\*Child Care Providers with multiple sites, are required to complete separate Applications for each location funds are being applied for.\***

### **Who is not eligible to apply?**

- Programs that are not currently open;
- Head Start or Early Start programs;
- Public school operated programs;
- Part day or part week early childhood or enrichment programs that are not considered Child Care Providers; and
- Summer camps (full or part day) unless it is an expansion of a regular child care program.

### **Examples of reimbursable operating expenses include:**

- Rent, mortgage or lease payments;
- Maintenance/repairs or minor improvements, that include but is not limited to:
  - Renovating bathrooms.
  - Installing ramps, railings, and other accessibility features.
  - Removing non-loadbearing walls to create more space.
  - Replacing carpet with linoleum or another cleanable surface.
  - Installing touch-free faucets or light switches.
- Building of or expansion of outdoor playground space;
- Programs or services needed to operate the child care business, that include but is not limited to:

- Payroll/Bookkeeping Software.
- Business automation training and support services.
- Materials for play & learning/safe sleeping/diapering or toileting.
- Facility enhancements or programming that would improve the staff experience.

Child Care Providers will be eligible to receive the Grant Award Amount as a reimbursement of expenses that will be determined upon receipt of all applications. The following formula will be used to determine the 'maximum' Grant Award Amount:

- \$3,596,400 (available program funding), divided by combined child capacity of all applicants, multiplied by each individual Child Care Provider's capacity.
- For example:
  - *If the combined total child capacity of all applicants is 20,000 children, the formula to determine funding allocation per child capacity would be:  $\$3,596,400 / 20,000 = \$179$  per child capacity for each applicant.*
  - *If Provider A has child capacity for 50 children, the formula to determine their funding cap would be:  $50 \times \$179 = \$8,950$  (maximum amount that Provider A is eligible to be reimbursed).*

**Note:** The above scenario is an example for reference. The determined 'maximum' amount is dependent upon the described formula. Expenses incurred that are submitted above 'maximum' cannot and will not be authorized as part of the reimbursement agreement. Supplying proof of the reimbursed expense(s) is required. All Applications are subject to the Grant Award Amount formula.

**Applications must be submitted no later than December 1, 2023 @ 4:30 PM, EST.**

### **ACKNOWLEDGMENT**

I, the Applicant, hereby certify that all information provided in this Application is complete, accurate, and up-to-date, as of the date specified below. If I receive a CCOER Grant Award, the funds shall only be used for eligible expenses and not for other COVID-19 related, or other, expenses for which I received previous funding/reimbursement from other state or federal sources.

I, the Applicant understand, agree and accept use of its electronic signature by email as binding and final in accordance with all terms of RSA 294-E, the Uniform Electronic Transactions Act.

I, the Applicant understand, agree and accept that by submitting this Application, it is certifying that the person named in the signature block has authority to bind the business entity and that the State is entitled to rely on this certification as actual and apparent evidence of authority to bind the business entity.

By checking the following boxes, I am confirming:

- The Child Care Provider applying for the CCOER Grant Award is in full operation as of the date this form was completed.
- The Child Care Provider applying for the CCOER Grant Award is in Good Standing with the State of New Hampshire and any required licensing to operate.

- The Child Care Provider owner intends to maintain ownership and remain open and active through September 30, 2024.
- The documentation provided with this Grant Application is an accurate representation of the Child Care Provider's current eligible expenses and staff wages.

<b>Name of Child Care Provider:</b>	
<b>Designated Signature for Child Care Provider:</b>	<b>Date Signed:</b>
<b>Printed Name:</b>	<b>Title:</b>

\*Digital signatures are accepted\*

## **APPLICATION FORM**

### **Child Care Provider Contact Details:**

1. Name of Child Care Provider:
2. County Served:
3. Address (Street, City/Town, Zip Code):
4. Phone Number:
5. Email Address:
6. New Hampshire Child Care License Number:
7. New Hampshire Vendor Number:
8. Business Type:
9. New Hampshire Scholarship Resource Number(s):

### **Grant Request:**

10. Amount of eligible operating expense(s) requested:
11. Briefly describe what the operational expenses(s) were for and why you incurred this expense(s) ("for" or "in" the space where your program is located):
12. Date the expense(s) was incurred:
13. Provide documentation included with this Application submittal, to verify incurred expense(s) (Example: receipts, statements and invoices, etc.):
14. Briefly describe how you will re-invest the monies reimbursed to you toward retention or recruitment of your child care workforce. Include a timeline and (if any) potential impact on your staff.
15. Briefly describe your sustainability plan for maintaining increased staff wages and/or enhanced benefits over the next two (2) to four (4) years.

### **If applying for Rent, mortgage or lease payments:** (Please complete this section)

16. Does the Child Care Provider own or rent its location?
17. If the location is owned by the Child Care Provider, are there other businesses in the building?
18. How long has the business owned or rented this location?

19. Describe the type of building and location where the child care program operates (stand-alone building on private lot, stand-alone building in business/industrial park, converted private home, church, etc.)
20. Monthly Rent or Mortgage Payment:
21. Indicate if utilities are included in the monthly payment:
22. Next Payment is Due on:

**Child Care Provider Capacity (at time of Application):**

23. Total Capacity (as determined by Child Care Licensing or Local Regulations for License-Exempt Programs):
24. Percentage of currently enrolled children (full and part-time) residing in New Hampshire:
25. Do you maintain a wait list?
26. How often do you update your wait list?
27. Number of children in your program currently receiving New Hampshire Child Care Scholarship:
28. How many classrooms are currently closed due to staffing issues?
29. Child Capacity By Age Group Table: (please complete)

Child Capacity By Age Group	Currently Enrolled Full Time	Currently Enrolled Part Time	Open Slots Full Time	Open Slots Part Time	Wait List Full Time	Wait List Part Time
Infants						
Toddlers						
Preschoolers						
Kindergarteners						
School Aged Grades 1- 3						
School Aged Grades 4 - 5						

30. Current Staff Numbers Table: (please complete)

Current Staff Numbers	Infant FT	Infant PT	Toddler FT	Toddler PT	Preschool FT	Preschool PT	Kinder FT	Kinder PT	SA Grd 1-3 FT	SA Grd 4-5 PT	Non-classroom	Floater multiple ages	FT Openings	PT Openings
Assistant Teacher														
Teacher														
Lead Teacher														

Assistant Director														
Director														
Bus Driver														
Cook														
Group Leader														
Other:														
Other:														

31. Current Staff Benefits Table: (please complete)

Current Staff Benefits					
Staff Type	Medical	Dental	PTO	Child Care	Other
Full Time Staff					
Part Time Staff					

32. Current Staff Wages: (please complete)

Current Staff Wages (Average Hourly – whole numbers only)	Infant FTs	Infant PT	Toddler FT	Toddler PT	Preschool FT	Preschool PT	Kinder FT	Kinder PT	SA Grd 1-3 FT	SA Grd 4-5 PT	Non-classroom	Floater multiple ages	FT Openings	PT Openings
Assistant Teacher														
Teacher														
Lead Teacher														
Assistant Director														
Director														
Bus Driver														
Cook														
Other:														
Other:														

**DHHS Child Care Operations Expense Reduction  
(CCOER) Grant Program Agreement**

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The State of New Hampshire Department of Health and Human Services (DHHS) and the Grantee hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION:**

- 1.1. State Agency Name: New Hampshire Department of Health and Human Services (DHHS)
- 1.2. State Agency Address: 129 Pleasant Street Concord, NH 03301
- 1.3. Grantee Business Name (aligned with New Hampshire Vendor Number):
- 1.4. Grantee Contact Name:
- 1.5. Grantee Address:
- 1.6. Grantee Phone Number:
- 1.7. State Vendor Number:
- 1.8. Completion Date: September 30, 2024
- 1.9. Grant Amount (not to exceed): \$TBD
- 1.10. Grant Officer for DHHS: Dianne R. Chase
- 1.11. DHHS Telephone Number: 603-271-4242
- 1.12. Grantee Signature: Designated Signing Authority

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

1.13. State of New Hampshire Signature:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

**2. SCOPE OF ALLOWABLE USE OF FUNDS:** In exchange for grant funds from the State award under the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") established by the American Rescue Plan Act of 2021 ("ARPA"), H.R. 1319, Section 9901 on March 11, 2021, provided by the United States Department of Treasury ("Treasury"), Assistance Listing Number (ALN) 21.027, Federal Award Identification Number (FAIN) SLFRP0145. to the State of New Hampshire ("the State"), acting through the Agency identified in Paragraph 1.1., the Grantee Business Name identified in Paragraph 1.3., (hereinafter referred to as "the Grantee"), agrees and covenants that the funds will be used solely for an allowable purpose as defined in H.R. 1319, Section 9901, for which the Grantee has not received payment or reimbursement from any other source. The funds must be used to enable the Grantee to strengthen and invest in the workforce retention and recruitment by providing reimbursement for allowable operating expenses incurred between March 3, 2021, through September 30, 2023, as stated in the Grantee's grant application as approved by the DHHS.

3. **AREA COVERED:** Except as otherwise specifically provided for herein, the Grantee shall perform the Agreement in, and with respect to, the State of New Hampshire.
4. **EFFECTIVE DATE: COMPLETION OF GRANT.**
  - 4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement upon signature by the Department of Health and Human Services (herein referred to as "DHHS"), as shown in Paragraph 1.12., ("the Effective Date").
  - 4.2. Except as otherwise specifically provided herein, the Award, including all reports required by this Agreement, shall be completed in its entirety prior to the date in block 1.8., (herein referred to as "the Completion Date").
5. **GRANT AMOUNT: LIMITATION ON AMOUNT:**
  - 5.1. The Grant Amount is identified in Paragraph 1.9. For the purposes of this Agreement, the indirect cost rate is 0%.
  - 5.2. The manner of, and schedule payment by DHHS of the Grant amount shall be the only payment to the Grantee for reimbursement of expenses, of whatever nature, incurred by the Grantee and claimed as allowable expenses under this Agreement. To the extent that the Grant amount does not cover all the Grantee's allowable expenses, nothing in this Agreement shall be construed to limit the Grantee's ability to pursue other COVID-19 relief that may be available. However, under this Agreement, DHHS shall have no liabilities to the Grantee other than the 'maximum' Grant Amount that is supported by documentation of proof supplied by the applicant.
  - 5.3. The Grantee shall receive awarded funds by check or electronic transfer, in one increment from the DHHS after submitting a completed and signed Grant Program Agreement.
  - 5.4. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or made, hereunder exceed the Grant limitation set forth in Paragraph 1.9., of these general provisions.
6. **CERTIFICATION.**
  - 6.1. The Grantee certifies to the best of its knowledge and belief, that it and its principals:
    - 6.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    - 6.1.2. Have not within a three-year period preceding this Grant Award been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    - 6.1.3. Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (l) (b) of this certification; and
    - 6.1.4. Have not, within a three-year period preceding this Grant, had one or more public transactions (Federal, State or local) terminated for cause or default.
  - 6.2. As provided in the application for said funds, the Grantee shall comply with DHHS regarding the following goals:
    - 6.2.1. Submission of data to document and verify the use, impact and outcomes of funding on the Grantee's program to be provided through, but not limited to, the invoices, progress

inquiries, surveys, and any required reports;

6.2.2. Acknowledgment and adherence to the requirements of the Grant including, but not limited to, complying with the allowable uses of these funds and the requirements herein to.

6.2.3. Confirmation, through documentation of expense and any requested self-attestation, of compliance with this agreement and the appropriate reinvestment in enhancing retention and recruitment of the child care workforce.

7. **COMPLIANCE BY GRANTEE WITH LAWS AND REGULATIONS:** In connection with the use of this Award, the Grantee shall comply with all statutes, laws, regulations, and orders of federal, State, county, or municipal authorities which shall impose any obligations or duty upon the Grantee, including all applicable labor laws, and workers compensation requirements and the acquisition of all necessary permits.
8. **COMPLIANCE BY GRANTEE WITH GRANT REQUIREMENTS:** In connection with the use of this Award, the Grantee shall comply with all requirements of the grant. Failure to comply with the grant requirements in whole or in part, may result in recoupment of grant funds.
9. **RECORDS AND ACCOUNTS:** Between the Effective Date and the date seven (7) years after the Completion Date, at any time during the Grantee's normal business hours, and as often as DHHS, the U.S. Department of Treasury or The Office of Management and Budget (OMB) shall demand, the Grantee shall make available to DHHS, the U.S. Department of Treasury or OMB all records pertaining to matters covered by this Agreement. The Grantee shall permit the DHHS, the U.S. Department of Treasury or OMB to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, and records of personnel, data, and other information relating to all matters covered by this Agreement. As used in this paragraph, the "Grantee" includes all persons affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in Paragraph 1.3., of these provisions, shall keep detailed accounts of all reimbursed expenses received in connection with this Grant. The Grantee shall also keep record of how or what they re-invested these funds in toward the retention or recruitment of childcare workforce, and keep detailed accounts of all other negative impact from the COVID-19 public health emergency that are the eligibility criteria that are the basis of this award. Such accounts shall be supported by receipts, invoices, bills and other similar documents and tax or accounting records.
10. **PERSONNEL:** The Grant Officer shall be the representative of the DHHS hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.
11. **REPORTING:** The Grantee shall complete and submit a final progress report on or before **September 30, 2024, by 4:30 PM, EST.** A template will be provided by the DHHS, Bureau of Child Development and Head Start Collaboration (BCDHSC) upon Award of funds in this Agreement.
- 11.1. The Grantee shall submit a detailed final report on how they re-invested the grant funds to enhance the retention and recruitment of child care workforce.
- 11.2. The Grantee shall provide baseline documentation of program information that includes the capacity for enrollment, the number currently enrolled, and the number of children on the waiting list, current staffing positions, and wages.
- 11.3. The Grantee shall provide any and all data required and/or requested for quarterly and annual federal reporting, as it pertains to use of awarded funds.
12. **CONDITIONAL NATURE OR AGREEMENT.** Notwithstanding anything in this Agreement to the contrary,

all obligations of the DHHS hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the DHHS be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the DHHS shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

**13. EVENT OF DEFAULT: REMEDIES.**

13.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

13.1.1. Failure to submit any report required hereunder; or

13.1.2. Failure to maintain, or permit access to, the records required hereunder; or

13.1.3. Failure to maintain any required licenses, permits or approvals that results in a change to program operational status, including, but not limited to: sanctions, criminal action, closure – permanent, suspension or revocation of child care or camp license and/or other required permits such as fire, health, etc. as required for lawful operation.

13.1.4. Elect to sell, permanently or temporarily close your business, before **September 30, 2024**.

13.1.5. Failure to notify DHHS, in writing, prior to or at the time of the implementation of significant changes that impact the program's operational status. This may include, but not be limited to, voluntary closure, mergers, reduction in number of children served by more than 50%, extensive changes in the program's services or populations being served.

13.1.6. Failure to perform any of the other covenants and conditions of this Agreement.

13.2. Upon the occurrence of any Event of Default, DHHS may take anyone, or more, or all, of the following actions:

13.2.1. Recoup from the Grantee, including by withholding any other payment of funds that becomes due to Grantee from the State, any payments under this Agreement that have been used in a manner contrary to the terms of this Agreement as referenced in Section 2.

13.2.2. Treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**14. WAIVER OF BREACH:** No failure by the DHHS to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of DHHS to enforce each and all of the provisions hereof upon any further or other default on the part of the Grantee.

**15. TERMINATION:** Notwithstanding anything in this Agreement to the contrary, the State may terminate this Agreement without cause upon thirty (30) days written notice to the Grantee.

**16. CONFLICT OF INTEREST:** No Officer, member of employee of the Grantee, and no representative, officer or employee of the DHHS or of the governing body of the locality or localities in which the Agreement is to be performed, who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of such Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any

personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

- 17. GRANTEE'S RELATION TO STATE:** In the performance of this Agreement the Grantee, its employees, and any subcontractor of the Grantee are in all respects beneficiaries of the grant (funded by DHHS's allocation referenced in Section 2.), and are neither agents nor employees of the State or DHHS. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors, shall have authority to bind DHHS nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the DHHS to its employees.
- 18. INDEMNIFICATION.** The Grantee shall defend, indemnify and hold harmless the DHHS, its officers and employees, from and against any and all losses suffered by the DHHS, its officers and employees, and any and all claims, liabilities or penalties asserted against the DHHS, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee or subcontractor, or sub grantee or other agent of the Grantee. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the DHHS, which immunity is hereby reserved to the DHHS. This covenant shall survive the termination of this Agreement.
- 19. INSURANCE.** Grantee shall, at its own expense, obtain and continuously maintain in full force throughout the term of this Agreement, the following types of insurance coverage:
- 19.1. Commercial general liability insurance against all claims of bodily injury, death, or property damage in an amount of not less than One-Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two-Million and 00/100 Dollars (\$2,000,000.00) in the aggregate; and
  - 19.2. Workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Participating Addendum with limits not less than Five-Hundred Thousand and 00/100 Dollars (\$500,000.00) per accident.
  - 19.3. Grantee shall provide DHHS with certificates of insurance for all insurance required under this Section 19 before receiving any funds hereunder.
- 20. PUBLIC DISCLOSURE NOTIFICATION.**
- 20.1. The names and business addresses of all Applicants and the names, business addresses and amount of any Award, actually made to all Applicants/Grantees shall be public information, subject to disclosure and may be posted on the DHHS and/or Governor's Office for Emergency Relief and Recovery (GOFERR) website.
  - 20.2. DHHS will assert that the other financial information submitted in support of this Award in an application or report is confidential financial information that is exempt from disclosure under RSA 91 -A:5,IV, unless ordered to disclose such information by a court of competent jurisdiction.
- 21. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the law of the State of New Hampshire and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.
- 22. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.
- 23. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

**24. FEDERAL EXHIBITS.** The Grantee must comply with all Exhibit A, Federal Requirements, which are attached hereto and incorporated by reference herein.

# New Hampshire Department of Health and Human Services

## Exhibit A – Federal Requirements

### SECTION A: CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Grantee identified in the Agreement agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Grantee's representative, as identified in Grant Agreement execute the following Certification:

#### ALTERNATIVE I - FOR GRANTEE S OTHER THAN INDIVIDUALS

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - GRANTEE S  
US DEPARTMENT OF EDUCATION - GRANTEE S  
US DEPARTMENT OF AGRICULTURE - GRANTEE S

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by Grantee s (and by inference, sub- Grantee s), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a Grantee (and by inference, sub-Grantee s) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each Agreement during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the Agreement. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of Agreements, or government wide suspension or debarment. Grantee s using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street  
Concord, NH 03301-6505

1. The Grantee certifies that it will or will continue to provide a drug-free workplace by:
  - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee 's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
    - 1.2.1. The dangers of drug abuse in the workplace;
    - 1.2.2. The Grantee's policy of maintaining a drug-free workplace;
    - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 1.3. Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (a);
  - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Agreement, the employee will
    - 1.4.1. Abide by the terms of the statement; and
    - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every contract officer on whose contract activity the convicted employee was working, unless the Federal

# New Hampshire Department of Health and Human Services

## Exhibit A – Federal Requirements

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- agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected Agreement;
- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
    - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.
2. The Grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific Agreement.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

# New Hampshire Department of Health and Human Services

## Exhibit A – Federal Requirements

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### SECTION B: CERTIFICATION REGARDING LOBBYING

The Grantee identified in the Agreement agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), and further agrees to have the Grantee's representative, as identified in the Grant Agreement execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES – GRANTEE S  
US DEPARTMENT OF EDUCATION - GRANTEE S  
US DEPARTMENT OF AGRICULTURE - GRANTEE S

Programs (indicate applicable program covered):

- \*Temporary Assistance to Needy Families under Title IV-A
- \*Child Support Enforcement Program under Title IV-D
- \*Social Services Block Grant Program under Title XX
- \*Medicaid Program under Title XIX
- \*Community Services Block Grant under Title VI
- \*Child Care Development Block Grant under Title IV

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, loan, or cooperative agreement (and by specific mention sub-Grantee ).
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, loan, or cooperative agreement (and by specific mention sub- Grantee ), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, see <https://omb.report/icr/201009-0348-022/doc/20388401>
3. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352; Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

# New Hampshire Department of Health and Human Services

## Exhibit A – Federal Requirements

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### SECTION C: CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO FEDERAL REQUIREMENTS

The Grantee identified in the Agreement agrees by signature of the Grantee's representative as identified in Grant Agreement, to execute the following certification:

Grantee will comply, and will require any subcontracts to comply, with any applicable federal nondiscrimination requirements, which may include:

1. The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
2. The Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
3. The Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
4. The Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
5. The Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
6. The Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
7. The Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
8. 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
9. 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

# New Hampshire Department of Health and Human Services

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10. The Clean Air Act (42 U.S.C. 7401-7671q.) which seeks to protect human health and the environment from emissions that pollute ambient, or outdoor, air.
11. The Clean Water Act (33 U.S.C. 1251-1387) which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.
12. Domestic preferences for procurements (2 CFR 200.322) which provides a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
13. Procurement of recovered materials (2 CFR 200.323) which established compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
14. Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) (41 U.S.C. 1908) which establishes administrative, contractual, or legal remedies in instances where Grantee s violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
15. Davis-Bacon Act (40 U.S.C. 3141–3148) which establishes the requirement to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
16. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) which ensures that all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
17. Rights to Inventions Made Under a Contract or Agreement 37 CFR § 401.2 (a) which establishes the guidelines for when the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the Agreement. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of Agreements, or government wide suspension or debarment.

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

## New Hampshire Department of Health and Human Services Exhibit A – Federal Requirements

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The Grantee identified in the Agreement agrees by signature of the Grantee's representative as identified in Grant Agreement, to execute the following certification:

1. By signing and submitting this Agreement, the Grantee agrees to comply with the provisions indicated above.

# New Hampshire Department of Health and Human Services

## Exhibit A – Federal Requirements

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### SECTION D: CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Grantee identified in the Agreement agrees, by signature of the Grantee 's representative as identified in Grant Agreement, to execute the following certification:

1. By signing and submitting this Agreement, the Grantee agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

# New Hampshire Department of Health and Human Services

## Exhibit A – Federal Requirements

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### SECTION E: CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Grantee identified in the Agreement agrees to comply with the provisions of Executive Office of the President, Executive Order 12549, 12689 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Grantee's representative, as identified in Grant Agreement execute the following Certification:

#### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Agreement, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this Agreement is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See <https://www.govinfo.gov/app/details/CFR-2004-title45-vol1/CFR-2004-title45-vol1-part76/context>.
6. The prospective primary participant agrees by submitting this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties) <https://www.ecfr.gov/current/title-22/chapter-V/part-513>.

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9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

### PRIMARY COVERED TRANSACTIONS

11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - 11.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - 11.2. Have not within a three-year period preceding this proposal (Agreement) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 11.3. Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (l)(b) of this certification; and
  - 11.4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

### LOWER TIER COVERED TRANSACTIONS

13. By signing and submitting this lower tier proposal (Agreement), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:
  - 13.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 13.2. Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (Agreement).
14. The prospective lower tier participant further agrees by submitting this proposal (Agreement) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.