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

Lori A. Weaver
 Commissioner

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 Deputy Commissioner

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December 1, 2023

The Honorable Ken Weyler, Chairman
 Fiscal Committee of the General Court and

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

REQUESTED ACTION

Pursuant to the provisions of RSA 9:16-a, authorize the Department of Health and Human Services to transfer General Funds in the amount of \$900,000, reduce Federal Funds in the amount of \$900,900, and create a new expenditure class code, effective upon approval of the Fiscal Committee and Governor and Executive Council, through June 30, 2024, and further authorize the funds to be allocated as shown below. 100% General Funds.

05-95-47-470010-79480000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT, DIVISION OF MEDICAID SERVICES, OFC OF MEDICAID SERVICES, MEDICAID CARE MANAGEMENT

Class/Obj	Class Title	Current Modified Budget	General Fund Decrease	Federal Fund Decrease	Revised Modified Budget
000-403978-16	Medicaid Grants-Federal Funds	\$450,727,632		(\$900,900)	\$449,826,732
001-403187-16	Trans from Other Agy-Refugee Med	-\$344,694			-\$344,694
005-402201-04	Agency Income: Medicaid Enhancement - Local	\$115,536,694			\$115,536,694
007-407139-44	Parental Reimbursement	\$0			\$0
007-407145-44	Drug Rebates - Regular Care	\$25,921,476			\$25,921,476
009-405615-12	Agency - MCO Liquid Damages	-\$3,046,856			-\$3,046,856
	General Fund	\$300,764,313	(\$900,000)		\$299,864,313
	Total Revenue	\$889,558,565	(\$900,000)	(\$900,900)	\$887,757,665
041-500801	Audit Set Aside	\$469,362		(\$900)	\$468,462
101-500729	Medical Payments to Providers	\$821,427,861	(\$900,000)	(\$900,000)	\$819,627,861
535-500376	Out of Home Placements	\$45,009,908			\$45,009,908
563-500915	Community Based Services	\$22,651,434			\$22,651,434
	Total Expense	\$889,558,565	(\$900,000)	(\$900,900)	\$887,757,665

**05-95-95-950010-50000000 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS
 DEPT, HHS: COMMISSIONER'S OFFICE, OFFICE OF THE COMMISSIONER,
 COMMISSIONER'S OFFICE**

Class/Obj	Description	Current Adjusted Authorized	Requested Action	Revised Adjusted Authorized
Revenue				
000-403978-16	Federal Funds	\$ 7,049,370	\$ -	\$ 7,049,370
009-407085-44	Agency Income	\$ 27,379	\$ -	\$ 27,379
	General Funds	\$ 2,152,715	\$ 900,000	\$ 3,052,715
Total Revenue:		\$ 9,229,464	\$ 900,000	\$ 10,129,464
Expense				
010-500100	Personal Serv Perm Classified	\$ 352,333	\$ -	\$ 352,333
012-500128	Personal Serv Unclassified	\$ 1,051,004	\$ -	\$ 1,051,004
018-500106	Overtime	\$ 2,000	\$ -	\$ 2,000
020-500200	Current Expenses	\$ 22,035	\$ -	\$ 22,035
022--500225	Rent-Leases other than State	\$ 5,400	\$ -	\$ 5,400
026-500251	Memberships	\$ 29,500	\$ -	\$ 29,500
039-500188	Telecommunications	\$ 7,800	\$ -	\$ 7,800
040-501587	Indirect Cost	\$ 5,663,774	\$ -	\$ 5,663,774
041-500801	Audit Fund Set Aside	\$ 7,073	\$ -	\$ 7,073
042-500620	Additional Fringe Benefits	\$ 127,078	\$ -	\$ 127,078
050-500109	Personal Services Temp	\$ 86,290	\$ -	\$ 86,290
060-500601	Benefits	\$ 684,053	\$ -	\$ 684,053
068-500562	Remuneration	\$ -	\$ 900,000	\$ 900,000
070-500707	In State Travel Reimb	\$ 6,945	\$ -	\$ 6,945
080-500717	Out of State Travel Reimb	\$ 1,000	\$ -	\$ 1,000
102-500731	Contracts for Program Services	\$ 1,028,138	\$ -	\$ 1,028,138
211-501530	Catastrophic Casualty Ins	\$ 155,041	\$ -	\$ 155,041
Total Expense:		\$ 9,229,464	\$ 900,000	\$ 10,129,464

EXPLANATION

Purpose: The Department of Health and Human Services is requesting authorization to transfer funds and create a new class line to comply with a court order in a timely manner and avoid threat of being found in contempt of court.

Background: The Department previously reimbursed Area Agencies, under the Home and Community Based Services (HCBS) 1915c waiver, for individuals placed in the Judge Rothenberg Educational Center (JRC), located in Canton, Massachusetts. However, on January 12, 2022, the Department was notified by the Centers for Medicare & Medicaid Services, that JRC is not an approved provider and no federal Medicaid dollars would be allowed under the waiver. The Department engaged with Area Agencies to transition the five (5) individuals that were at the center, as federal matching funds were no longer available.

Negotiations and reimbursement payments continued in the ensuing time period until a CMS HCBS settings rule took effect on March 17, 2023, which prohibits DHHS from using the funding provided under RSA 171-A to pay for individuals at the JRC. Specifically, RSA 171-A:18, II requires providers paid by the Department for the provision of developmental services to meet 42 C.F.R. section 441.301

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(i.e., HCBS settings rules), and any subsequent amendments thereto. The JRC does not meet the requirements of 42 C.F.R. section 441.301 and therefore in accordance with RSA 171-A:18, II, the Department could no longer use federal funds to pay for services at JRC. The Department ceased all payments to Area Agencies effective March 17, 2023.

A petition for writ, which included a motion to stay was filed with the courts on August 24, 2023. The NH Supreme Court ordered the Department to pay for services on September 20, 2023. The State filed a motion to reconsider September 29, 2023, which was denied by the Court on November 9. The Department received a demand letter from the petitioner's counsel on October 19, 2023, and second on November 10, 2023. On November 16, the Court issued a determination in response to the State's motion to clarify, requiring the Department to pay for all services, including any past services and those going forward, during the pendency of the appeal.

Requested Action: The Department is seeking to transfer \$900,000 from the Medicaid Care Management account (05-95-47-470010-79480000) Class 101 – Medical Payments to Providers, to the Commissioner's Office account (95-95-95-950010-50000000) and create a new class line, Class 068 – Remuneration, from which to make a court ordered payment for services provided by the JRC. Funds are projected to be available in the Medicaid Care Management account based on enrollment utilization trends and available appropriations. The Department is requesting to transfer \$900,000 to pay for services provided between March and September 2023 (\$584,131) and anticipated services to be provided through February 29, 2024 (\$315,869).

The Medicaid Care Management account, class 101, is used to make Medicaid Care management capitation payments. The Department receives a 50 percent federal medical assistance percentage (FMAP) on payments made for this purpose. Consequently, the federal funds are being reduced in the the Medicaid Care Management account because the matching general funds are being transferred to the Office of the Commissioner.

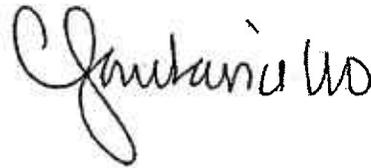
The following is the information specifically required when transfers are requested, in accordance with the Budget Officer's instructional memorandum dated April 17, 1985, to support the above requested actions:

- A. Justification:
As noted above, the Department is being ordered by the N.H. Supreme Court to make payments for individuals receiving services at the JRC.
- B. Does this transfer involve continuing programs or one-time projects?
Funds are being transferred to make payment for past services rendered, and to be rendered through February 2024.
- C. Is this transfer required to maintain existing program levels or will it increase the program?
This action would transfer funds sufficient to maintain services for two individuals at the JRC through February.
- D. Cite any requirements which make this program mandatory.
As noted above, this request is in response to a court order.
- E. Identify the source of funds on all accounts listed on this transfer.
The Department will be making the payments with 100% general funds.

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- F. Will there be any effect on revenue if this transfer is not approved?
Yes, there would be an additional \$900,900 of federal funds that could be claimed for the Medicaid program if the funds are not transferred. However, projections are currently showing that those funds are not needed to cover SFY 2024 expenditures.
- G. Are funds expected to lapse if this transfer is not approved?
The general funds in the Medicaid Care Management account would not lapse until June 30, 2025.
- H. Are personnel services involved?
No positions are being transferred as a result of this request.

Respectfully Submitted,



for:

Lori A. Weaver
Commissioner