

JOINT LEGISLATIVE FISCAL COMMITTEE

State House, Room 100

Concord, NH

Thursday, June 20, 2024

MEMBERS PRESENT:

Representative Kenneth Weyler, Chair

Representative Keith Erf

Representative Jess Edwards

Representative Mary Jane Wallner

Representative Peter Leishman

Representative Gerald Griffin (Alt.)

Senator Ruth Ward

Senator Timothy Lang

Senator Regina Birdsell

Senator Cindy Rosenwald

Senator Lou D'Allesandro

(1) Acceptance of Minutes of the May 17, 2024 meeting

KENNETH WEYLER, State Representative, Rockingham County, District #14 and Chairman: Okay. Good morning. We'll call the Fiscal Committee meeting to order for Thursday, June 20th, and note that we have some replacements. Um -- for the Senate side, Senator Ward is replacing Senator Gray, Senator Lang is replacing Senator Bradley, and I guess we'll expect Senator D'Allesandro momentarily.

Okay. First item is acceptance of the minutes of May 17th. I understand there'll be some abstentions for those who were not here.

****** CINDY ROSENWALD, State Senator, Senate District #13: So moved.

CHAIRMAN WEYLER: Moved by Senator Rosenwald, second by? {Representative Leishman raises his hand.}

JESS EDWARDS, State Representative, Rockingham County, District #31: Second.

CHAIRMAN WEYLER: Senator Leish -- Representative Leishman. Any changes or additions to the minutes? Seeing none, are you ready for the motion to accept the minutes of May 17th? All in favor say aye? Opposed no? Abstentions? One. Two. Okay.

***** {MOTION ADOPTED}**

(2) Old Business:

CHAIRMAN WEYLER: Moving on to Tab 2, Old Business. There is none.

CONSENT CALENDAR

(3) RSA 9:16-a, Transfers Authorized:

(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 WEYLER: Tab 3. So we have -- okay. Tab 3 was -- we didn't have anything there. Tab 3 is -- is the beginning of the Consent Calendar. There are three items removed from the Consent Calendar under Tab 3: Items 24-228 and 24-230, both with Department of Health and Human Services; and under Tab 4, 24-227, again the Department of Health and Human Services. I'll entertain a motion to adopt the rest of the Consent Calendar, minus those three that I just mentioned.

**** TIMOTHY LANG, State Senator, Senate District #02: So moved.**

CHAIRMAN WEYLER: Motion by Senator D'Allesandro, second by Senator Lang to accept the rest of the Consent Calendar. So we'll move on now to under Tab 3. All in favor say aye? Opposed no? Motion is adopted.

***** {MOTION ADOPTED}**

CHAIRMAN WEYLER: Moving on to number 228 under Tab 3, 24-228. Welcome the financial officer, Mr. White. And who else? We have some more people. Henry Lipman. Welcome, Director Lipman. And you are?

KAREN HEBERT, Director, Division of Economic Stability, Department of Health and Human Services: I'm Karen Hebert, Director for the Division of Economic Stability at DHHS.

CHAIRMAN WEYLER: Thank you. Representative Erf had a question on this. Representative Edwards first.

REP. EDWARDS: Thank you, Mr. Chair. Thank you for taking my question. I -- I don't have a problem with the transfer. I just want to dip into the eligibility system question in a couple ways.

One, I think DHHS overall uses NewHeights as an eligibility system, and I'm reading that there's another system involved, verify current income. That sounds like another IT system. I -- I -- why am I confused? Are there more than one eligibility system or just the one?

MS. HEBERT: It's the same system.

REP. EDWARDS: Okay.

MS. HEBERT: It's NewHeights.

REP. EDWARDS: So this is a module of NewHeights or why is there a different name if it's the same thing?

MS. HEBERT: The system is already in place. The differences is that we are now having to pay for this particular service, where previously it was paid for by the Center for Medicaid Services; but they changed that effective June of '24.

REP. EDWARDS: Okay. Go ahead.

NATHAN WHITE, Chief Financial Officer, Department of Health and Human Services: Nathan White, Chief Financial Officer of the Department of Health and Human Services.

During the Senate phase of the budget, we -- um -- received additional information from the Federal Government that this system which we were -- or this particular component that we were previously able to use for free now had a cost attached to it. So we didn't have a discussion about this during the House phase because that was information that came in late.

During the Senate phase a million dollars was added to the Medicaid Budget because that was our best anticipated -- um -- guess at that point as far as where it should fall and the Senate added that money into the Operating Budget at that phase. And then the function of this particular request here is to move those dollars into the DES budget because after some internal conversation we determined that was where it made the most sense to budget those funds.

REP. EDWARDS: Thank you. May I have a follow-up?

CHAIRMAN WEYLER: Follow-up.

REP. EDWARDS: Okay. So -- so in this eligibility system is one of the very specific precise verification steps including whether or not the person requesting eligibility is a legal resident of New Hampshire?

MS. HEBERT: So that is part of the process within the eligibility determination process. That's -- we -- we do establish that. Uh -- I can't say that the -- the -- this particular component of the system verifies citizenry. I'd have to look that up.

REP. EDWARDS: Okay. So I'd be curious later, not right now --

MS. HEBERT: Sure.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

REP. EDWARDS: -- on knowing yes or no. Is the IT system keeping track of -- a flag that indicates that the check on legal status has been made and has been determined to be yes or no?

MS. HEBERT: I will confirm with you where that lies within the process.

REP. EDWARDS: Thank you so much. And that it's in the IT system that we're storing the data.

MS. HEBERT: That's correct.

REP. EDWARDS: All right. Thank you, Mr. Chair.

CHAIRMAN WEYLER: Okay. Anyone else have any further questions on the item? Seeing none, I'll entertain a motion to adopt the item.

****** REP. EDWARDS: So moved.

CHAIRMAN WEYLER: Representative Edwards moves to adopt the item, second by Senator D'Allesandro. Is there any further discussion? Seeing none, you ready for the question? All in favor say aye? Opposed no? The item is adopted.

***** {MOTION ADOPTED}**

CHAIRMAN WEYLER: We're moving on to now to Item 24-230, next item. And I believe the Senate had a question on this one. Senator Rosenwald.

SEN. ROSENWALD: I think a number of us had questions on this item.

REP. WEYLER: All right. Who wishes to go first?

SEN. ROSENWALD: But I got a very long -- and thank you, Mr. Lipman, yesterday, complex explanation of how Nursing Facility Rates are set. But I understand that it's a combination of patient acuity and cost. And the cost includes clinical staff but also administrative cost. And I just wondered to what extent having a higher administrative cost is able to drive a higher reimbursement rate, and the corollary being if -- if a particular facility's reimbursement is lower, wouldn't that impact their ability to hire more clinical staff and take care of more acute residents?

HENRY LIPMAN, Medicaid Director, Office of Medicaid and Business Policy, Division of Medicaid Services, Department of Health and Human Services: Thank you for the question. Um -- the way I would describe it is we have a cost based methodology that's driven off a cost report, which is somewhat like a complex tax form. And the portion of Medicaid costs -- um -- they're in our rules. There are certain limits on certain costs that are recognized. I do feel like this issue in the long-term needs to be revisited because it's been the same system for -- for a long time, way before my time.

Um -- but basically the costs are within certain parameters are recognized in the system, and then there's also the Medicaid portion of cost. And then there's a component that's related to acuity. We measure acuity two times a year when we're involved in setting the rate. Usually, it comes out for January 1 and July 1.

No system of reimbursement is perfect. They each have some strengths and weaknesses. I think the -- the historical cost based reimbursement is in many ways like when you were going through HB 2 and looking at, you know, how we try to reimburse, you know, certain areas. When you don't have any basis of what the cost is, it's hard to know whether you're paying adequate rates. I do think that, you know, we did one piece of migration this past year, which is the acuity measurement. We went consistent with how Medicare does it with respect to measuring the nursing component; but there are potentially some incentives

that might be not exactly what we want. I think, though, those are some things we want to work on over the next year in terms of, you know, particularly seeing the number of nursing homes that are changing ownership hands, and the way that costs can be stepped up in that kind of transaction base. You know, we want to pre -- where we have a good operator we want to preserve them and not, you know, push them out. On the other hand, we want to be careful that we are not working in the other direction.

SEN. ROSENWALD: So we know that some nursing homes have changed ownership haven't had their rates re-evaluated. There's been a pretty long lag with this transfer, and the one we did I think last month. Will those rates now be readjusted or does -- do these transfers not help that situation?

MR. LIPMAN: They -- they would help that situation. The only caveat to what I'm saying is if there's another transaction I'm not aware of that's in -- in play, but we have to have a cost report for that facility. The ones that I think that have come up maybe in this past session were all past that point where we do have a cost report we can work with.

SEN. ROSENWALD: The final follow-up --

CHAIRMAN WEYLER: Follow-up.

SEN. ROSENWALD: -- if I could. So I think I've been on this Committee continuously for 12 years. And just yesterday you explained to me that on the Dashboard where the nursing home column is called budget. It isn't what we budgeted for, but it's a number of licensed beds in the state. So I guess my ask is could the Department please, instead of saying the number of licensed beds, tell us what we budgeted for so we can look at what the census is versus budget, because I know that the budget neutrality factor is going to come in there somewhere and depress rates.

MR. LIPMAN: The -- the column that has the number of beds is the beds in-service. The column preceding it is the actual.

The number of days that we projected was 3398 in the budget. So we can make -- I'm sure we can make a footnote change to include that.

SEN. ROSENWALD: Thank you. Thank you, Mr. Chair.

CHAIRMAN WEYLER: Senator D'Allesandro, then Senator Lang.

LOU D'ALLESANDRO, State Senator, Senate District #20: Thank you. Thank you, Mr. Chairman. First of all, Henry, thank you very much for the work that you spent yesterday helping me out, because we spent almost a whole God damn day trying to figure out what the hell was going on, and thank you. Because your perseverance in getting back to me, I truly appreciate.

The problem that seems to have manifested itself is level of expectation was high. How did -- how did this level of expectation get out there that these -- that these nursing homes thought they were going to get a significant, significant increase? Where did that come from? Because all of a sudden I got a deluge of calls.

MR. LIPMAN: I think maybe Nathan and I probably should address that question. Um -- but I think in terms of just the, you know, what was in HB 2 was fully put into -- to play, and we are actually with the two transfers were putting more into play. But I think in terms of what we've observed in terms of the draw on the 504 count, the -- the pool of what we fund through the budget, I think, Nathan, you -- you have some analysis that you've done there.

MR. WHITE: Sure. Um -- so Accounting Unit 2152 is the Accounting Unit through which we make the -- the Class 504, the nursing home payments. There's a special class note in there where at the end of the year if there's money left over that we haven't spent, then there's the 504 payout. That won't be happening this year. I think historically that has always happened. Last May we had a transfer \$6.5 million. Now we're transferring \$8 million 'cause what we've seen is just in the

past two months after we submitted that item our final April numbers came in, our final May numbers have come in, and they've been two and a half million plus dollars higher than the prior trending six months before that. And so we're starting to see an increase. And part of that is due to the increase rate. So we are starting to see that go up.

This year was unique in the sense that the rate setting process, which I'm assuming you talked about at -- at length yesterday --

SEN. D'ALLESANDRO: At length.

MR. WHITE: -- was impacted partly by some of the ownership changes that have occurred and some of the reporting that we received as well, and -- and the -- the county and Department -- I mean, we've met, we've talked about that to address some of those kind of issues in the future, and we are trying to implement controls as well to keep this to not have to do transfers going forward in the future. One kind of unique factor as well that we've been seeing this year, we went back and we looked at the history here.

In 2022, we had about \$3.8 million in back billing. But because we've seen I think it's -- I think it's something like 13 percent of change of ownership in the facilities, this has led to some confusion, as well as some late back billing. So this year, as of the last time I checked a week or two ago, we were at about \$15.5 million of back billing, which -- which is pretty significant compared to prior years. I -- we're going to be working with our actuaries for the next 26-27 budget to try to account for some of these variables that -- that are being affected by the volatility of the ownership.

SEN. D'ALLESANDRO: Is -- is one of the problems the fact that they have many unfilled beds because they can't staff them? Now, I -- I talked to one nursing home yesterday, and they have, I guess, 25 or 30 unfilled beds. They can't fill the beds, because they can't get people. What does that do to the rate?

I mean, obviously, if you're doing fewer people, what does that do to -- to a quick -- to a quick fix in terms of how can they -- how can they do this without falling into deep deficit? Because everybody seems to be suffering from that -- that situation.

There -- there are many beds that can't be filled. And -- and the other aspect that bothers me a little bit is this change in ownership that seems to be taking place around -- around the circuit. I mean, that happens, and -- and it sets this whole process back a little bit because you have got to redo this and you have to redo that. Is that -- is that what's happening around the country?

MR. LIPMAN: There is a lot of -- um -- I described as flipping of facilities. And, you know, we had conversations earlier in the year about when we get past the session that, you know, it's one of the things that we want to spend some time evaluating our rules and our incentives around that.

So I do think that that's a factor. And, as I said, we want to -- we don't want to have unnecessary churn because it affects -- it not only affects the finances, but the people who are receiving care in the facilities. It's not sometimes the best thing.

SEN. D'ALLESANDRO: Right.

MR. LIPMAN: And so I think we have some work to do there, and I think we have some work to do on whether the current system that we have in terms of the cost-based system, whether there are further adjustments we want to make because the -- the issue, I think, that with a high inflationary period, right, is the cost report has to be -- we use -- use an audited cost report, which means there's a lag sometimes of a couple years in terms of what the costs are. You can understand on a cost-base system you want to at least be able to tie back to the facility's audit, you know, financial audit, so that you know you have numbers that you can rely on.

So I think there's some things that we could do, but under current rules and current State Plan we would have to make some changes. And I think those changes need to be, you know, thought out, and we have to go through the process of, you know, interacting with the industry to get their thoughts on it. Because some things work better for some and others -- I'm sure the calls that you got were for the ones that didn't do as well typically as some, you know, some did better than others.

SEN. D'ALLESANDRO: Sure. And the thing that I saw, Henry, from the numbers that you gave me yesterday, the variance. I mean that's, in my opinion, that's fairly significant.

MR. LIPMAN: Yes.

SEN. D'ALLESANDRO: Fairly significant. I don't know -- I don't know how that happens. There's got to be -- that's got to be looked into, I think, because you can't get that kind of a variance because you're all delivering the same services; correct? Am I correct or am I off-base?

MR. LIPMAN: The basic -- the basic service, you know, is somewhat comparable, but some facilities take higher acuity patients and have a -- need higher staff to meet those needs.

SEN. D'ALLESANDRO: Yeah.

MR. LIPMAN: So I -- I would say that we need to look at this. It's not -- it's not perfect. No system is. But, you know, I think in a high inflationary period the -- the lag in recognizing cost is, also, I think, what the -- what the nursing facilities are -- are struggling with in terms of trying to meet current budgets.

SEN. D'ALLESANDRO: That's a problem. But -- but I don't want to, anyway, let my colleagues think that you aren't doing an outstanding job because your response to me was on target. You got to the basis. Got right back to me and I got back

to -- to my constituents. The problem I see is fundamentally how is all of this going to work out in -- in the future. We got a serious problem that's out there that's got to be dealt with, and it's going to take money, obviously, to do that. But -- but, indeed, the variance has kind of bothered me.

And -- and the other -- the other thing that bothers me is the ProShare aspect. We were told at a meeting quite some time ago that the ProShare money was -- was going to be huge. Now only that the -- the county nursing homes pick up the ProShare. Now that doesn't run through you, does it? Is that a direct appropriation or what?

MR. LIPMAN: So in terms of we used to do ProShare through intergovernmental transfers.

SEN. D'ALLESANDRO: Right.

MR. LIPMAN: And the State of New Hampshire would provide some funding to the counties. I think two years into the change in ProShare we were told that we couldn't do the loaning, if you will, of the money from the -- from the -- from State Treasury to do that. It had to be independent from the counties. We're still, based on other changes we made in the process, we're better off than what we were, but not as good as the '18 and '19-year turned out to be. But what we're doing there is we use the cost report again to now all nursing facilities benefit from the certified public expenditure approach, which is whatever the gap is between what Medicare would pay and what Medicaid has paid, that CMS will pay 50% of that, and no money has to be sort of put up. You just make it as a claim in the process.

Um -- that particular methodology in a high inflationary period is better because costs are more readily recognized. But, you know, the old days, if you will, of being able to use the State's money to -- to start the transaction just is no longer considered in any -- any state to be an approved methodology.

SEN. D'ALLESANDRO: So the complexity of the process is something that we have to deal with. We got to deal with that as we -- as -- as we move forward. Well, things seem to have quieted down to some -- to some degree; but, indeed, I'm sure my colleagues have received the calls and do your best to address them. Thank you, Mr. Chairman. Appreciate that.

CHAIRMAN WEYLER: Senator Lang for a question.

SEN. LANG: Thank you. So thank you, Henry, for taking my question. So, again, my question, I think all of us, sitting on my desk right now is from a nursing home in my -- in my district that is asking me about, A, reimbursement rates, and B, timing of payments. Has there been a lag in payments going back to nursing homes and is there -- is there a systemic reason? It seemed like all of us have a similar problem that in our -- and we were chatting and we've all got phone calls where either reimbursement rate or the timing of reimbursements are problematic.

MR. LIPMAN: I think on the timing of payments there's sort of this -- the challenge of meeting what I think you want us to do, which is to make sure that someone we're paying for is eligible, right? And some of that can be -- um -- complex, like having to review trusts, need to get information. That's not easy for the beneficiaries to do and we're trying to -- we're working on changes in our systems. And Karen, who was up earlier, oversees the unit that we're -- we're working on things to try to make it easier for facilities and for case managers to be able to help their people. Those things are going to start to come on, I think, in the late summer, early fall, in terms of the system changes that are being made now to help them get that.

The other thing that we had to do, just in terms of, you know, processing applications, you know, we had to do over 200,000 redeterminations since they weren't done for years. And that's the other thing that we're facing, I think, you know, the public. You know, we -- as a state, you know, again, we weren't

perfect but among the states we were, I think, you know, among the leaders in terms of getting through the process, and getting through it in an as humane way as we could.

Um -- but I think that, you know, we have a meeting this week with the -- the private nursing home group, The New Hampshire Health Care Association, to talk about their concerns. We're trying to address them. We've made -- we're making adjustments to try to work better with them.

In the end there's sort of though this -- there -- there is this tension between, you know, making a determination when you still need information and, you know, to a certain extent it's better that we sometimes take longer to work things through because as long as the application's open, we can go back to the date of the initial application to pay them. If we deny an application too soon, then they lose that start date. And I know that the nursing facilities are feeling that pressure. We're working to try to -- to close that gap down. I know they would like us to be doing it faster than we are. They have our attention. We are working on things. Um -- and I guess all I can say is that I do think that they're feeling some of that. Some of it is just, you know, trying to care for them as well in the sense that if we close it too early, you know, then they're going to lose that original date to get paid from and that's not good either.

SEN. LANG: One quick follow-up. So, again, so it sounds like you're addressing it. Hopefully, how long do you think it will be before we have some movement on either the rate setting or the closing the gap between application and -- and reimbursement? Because to Senator D'Allesandro's point, the longer we don't reimburse them, the less money they have to pay employees, which means they have less beds available to them and begin -- we start this downward spiral that because they're not getting reimbursed in a timely manner. So I want to be careful we don't crater our nursing home system.

MR. LIPMAN: Yes. I think that the rate setting is -- is we've been on time on that and the rates will get implemented. The issue, I think, is the completion of an initial application where -- where we're -- we've made some improvement and the average time it's still, you know, we have 90 days to complete what we call a non-MAGI application. Those are the ones where we have to go to bank records and life insurance policies and so forth versus the ones that are based like the MAGI applications which are just based on income. Those we, you know, process, you know, in a short period of time, like seven days or less in many instances.

It's the ones that are the more complicated ones where we have to look at, you know, sale of a home, was it done, you know, correctly and all that that we're trying to find ways to do that. Part of the system of care that you approved last session, those have elements to help them. Like we just implemented on January 1st an ability to modify the look back period, and also the asset disregards that were a part of that. You know, that those are things that just are starting to come into play, which I think are leading to some improvement. There's more that we're going to do.

SEN. LANG: Thank you.

CHAIRMAN WEYLER: Senator Birdsell and then Senator Rosenwald.

REGINA BIRDSELL, State Senator, Senate District #19: Thank you. Thank you, Henry, for all your work on this. Going back to the higher acuity level, are those nursing homes and have -- accept the higher acuity level, are they getting more of the pie?

MR. LIPMAN: That -- that's part of the factor that drives it. There are other factors, but that is a factor that, you know, if you have more nursing hours you're going to have more -- more reimbursement.

SEN. BIRDSELL: And follow-up.

CHAIRMAN WEYLER: Follow-up.

SEN. BIRDSELL: So how do -- how do we know which facilities are accepting the higher acuity levels?

MR. LIPMAN: So there's a -- a -- a reimbursement system called PDPM. It's another acronym to throw out there, but it's basically patient-driven method of assessing the amount of care that they have in -- and there's also an MDS form which is a standard form. Both these systems are based off of what Medicare does for -- for doing -- assessing patients' needs, and you know more about that than me.

MELISSA HARDY, Director, Division for Long-Term Supports and Services, Department of Health and Human Services: Yes, good morning. I'm Melissa Hardy. I'm the Division Director for Long-Term Supports and Services.

So all nursing homes use what Henry referenced for the MDS, that's a minimum data set. So it's a clinical assessment for each patient that's done upon admission and at least quarterly for everybody to measure nursing needs, therapy needs, psycho-social needs. So it's a comprehensive, nationwide assessment that every nursing home does.

SEN. BIRDSELL: Is there a way that we can have access to that information?

MR. LIPMAN: Yeah. I mean, I think we'd be happy to if there are people on this Committee or otherwise to -- to spend some time with you and get your perspective after we share that. That's something I certainly offered to -- to the legislators. It's good -- over time it's been helpful. I know on ProShare Representative Erf spent quite a bit of time with us to understand that. We'd be happy to work with you.

SEN. BIRDSELL: I'd like to. Thank you.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

CHAIRMAN WEYLER: Senator Rosenwald.

SEN. ROSENWALD: Thank you, Mr. Chairman. Does -- my question's about that 90-day statutory time limit. Does that begin when the case is opened or after the medical determination is made?

MR. LIPMAN: It's upon a completed application. Um -- so that's part of the challenge in terms of when you're counting days. The -- the -- the term that people tend to talk about is pending application. That there's a problem with pending applications. There's pending applications where we have everything and we don't complete it within 90 days.

Under State Law if we have a completed application and we don't do our work within that 90 days that person is deemed eligible, whether we completed it or not. The issue is the ones where we have challenges on, you know, getting records or, you know, people get frustrated sometimes where we -- we ask for certain financial records and they think, okay, I provided them. I should be done. But then based on a look at those records we may need -- we may see something that says we see a transaction. We see a life insurance policy. We see something that tells us we need to look at something else. And I know that from our State standpoint we want to make sure that, you know, we want to help those who meet the eligibility, but we all want to pay for those who don't. So I think that -- there's that tension all the time that we're trying to work through. And I know as a provider when you have someone in your facility you want to be paid.

SEN. ROSENWALD: Thank you.

CHAIRMAN WEYLER: Any further questions on the item? Entertain a motion to adopt 24-230. Motion by Senator Rosenwald, second by Senator Birdsell to adopt the item. Further discussion? Seeing none, all in favor say aye? Opposed no? The item is adopted. Don't get up yet.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

***** {MOTION ADOPTED}**

CHAIRMAN WEYLER: We are going to Tab 4. And Tab 4 it's 227. Okay. 227 is Human Services, authorization to budget and expend 2,530,113 in Other Funds and decrease General Funds by 2,530,113 through June 30th, 2025.

SEN. ROSENWALD: Thank you.

CHAIRMAN WEYLER: Senator Rosenwald for a question.

SEN. ROSENWALD: Thank you. So I question this item because the Department told us that some of the Other Funds that we're supplanting General Funds were Opioid Abatement Funds. And since I chair that Commission, I'm interested.

Uh -- we have one position that supports that Opioid Abatement Fund that we agreed to pay for with Opioid Abatement Funds, but we don't know if the Department has ever transferred the Opioid Abatement Funds to whatever Accounting Unit she's in.

MR. WHITE: And I -- I just want to give a little bit of broader context for this item. I will answer your question directly though.

Um -- the Department, for the past several years, we've been developing we call it internally just a budget system. And what this new system that recently went live is giving us the ability to do is to more accurately identify how we earn funds. So those are Federal Funds or Other Funds.

So you probably remember two years ago we had a significant amount of Federal funds that we earned that lapsed that we didn't spend because we didn't have the analytics available to easily identify where we earned those funds. This new system is now allowing us to do that. And in concert with that, I've internally within the Division of Finance we've repurposed some of our existing positions to act as business systems analysts to

assign resources to these kind of functions so we can better utilize the funds that are available.

This particular item, this is working with exclusively Other Funds here. There's Hampstead Hospital, opioid, a small amount of opioid, about 36,000, something like that, medical cannabis, and some ESU dollars here. And the purpose of this is to recognize the costs that have been earned. And the Department has a public assistance cost allocation plan. It's a several hundred page document, and that document is approved by the Federal Government. And we use that document to establish a system of controls for a cost allocation system so that each position earns a small piece of what it's due, so to speak.

So if you look at the, you know, some of the division directors, or some of the Commissioner level positions, there's potentially up to 190 or 200 different funding sources that are attribute to each of -- that are attributed to each of those positions. And the reason that we do that is to leverage the dollars that are available.

This particular item is dealing with the Other Funds, and I checked in with our staff on the discussions at the Opioid Commission and one position has been established, and then a second position will be established here or it's been established for -- we're seeking to -- to hire right now. And as part of those discussions, I believe what was discussed was the indirect cost. So what you're seeing in this item is those small, indirect costs being recognized by the executive level positions or in human resources, or in DoIT, or in other areas that support the -- the work of the Opioid Abatement Commission.

SEN. ROSENWALD: Follow-up. I had a conversation this morning with the Deputy AG who said, well, only the person who's staffing the Commission, only that position can qualify for Opioid Abatement Funds. No other administrative or executive functions can be claimed -- um -- to be funded by the Opioid Abatement Commission, unless the Commission votes to expend those funds in that way, which we haven't. So has the

Department -- let me ask the question again. Has the Department transferred the funds for the one position that we did agree to fund with opioid funds?

MR. WHITE: Yes, I believe so. And -- and when I spoke to the finance member that attended that, her understanding that was expressed to the Opioid Commission, that the dollars would be used to cover indirect costs through the cost allocation plan.

SEN. ROSENWALD: Can I follow-up, please?

CHAIRMAN WEYLER: Follow-up.

SEN. ROSENWALD: So last week the second position got posted. I think it was last week. Maybe it was the week before. I -- it's hard to imagine you're going to hire someone before June 30th, but that position which has been posted would not exist if it were not for Opioid Abatement Fund. So I honestly don't see how -- how you could -- how the Department could imagine that that position, the opioid funds could offset General Funds, because we would never create the position. And, yet, all of this two and a half million that you're claiming in Other Funds is being put towards the back-of-the-budget cut to say, look, we've cut two -- these two and a half million dollars towards our \$23 million back-of-the-budget cut; but some of these funds either you haven't been authorized to spend or you haven't incurred them yet.

MR. WHITE: So, as I said earlier, historically we haven't had this budget tool available to us to easily identify those funds. The biggest -- the largest amount of dollars here is for Hampstead Hospital for which when we went into the budget we didn't have a history as far as what would be earned, and that's why we're seeking to true that up here.

After we went through this exercise, again, this is the first time we've ever done this and this will be reflected in the next budget, and we also wanted to do this in advance so

that when we're looking at the base budget, we have a complete, more accurate year for State Fiscal Year 24 that -- that we move forward with this before that time frame just for that purpose.

After we did that, we looked at the back-of-the-budget cut. You'll see there's the informational item for the back-of-the-budget cut. For that item we went through every class line that we had. We scrubbed them down to see what was available, what would lapse to come up with that figure. And then after performing this analysis we said, okay, well, if we're going to be writing these General Fund dollars down, why -- why wouldn't we use those towards the required -- the mandatory required back-of-the-budget cut. And then this -- this exercise here is consistent with the cost allocation plan where we're recognizing those funds that should be earned so we don't end up in the same scenario where we did a few years ago where we lapsed a significant amount of Other and Federal funds that were earned that we didn't spend.

****** SEN. ROSENWALD: I'd like to move to table this item. Oh, I'm sorry. I'll withdraw that.

REP. EDWARDS: Question.

SEN. ROSENWALD: I'll withdraw.

CHAIRMAN WEYLER: All right. We'll have Representative Edwards question before we entertain your motion.

SEN. ROSENWALD: Thank you.

REP. EDWARDS: Thank you for your discretion, Senator. I appreciate you holding off on your motion. Um -- I -- I just had a couple tiny questions. You were referring to this on the front page as the new system, and it's meant to track all expenditures by source of funds and program. I -- I think I heard you use a specific name for this new system. Is there a specific name for this new system so that we know how to talk about it in the future?

MR. WHITE: Internally we've just been calling it the HHS budget system.

REP. EDWARDS: HHS budget system.

MR. WHITE: Yeah, internal.

REP. EDWARDS: Okay. And then in that introduction to that sentence it says the Department entered into a contract in April 2022. I -- I don't recall that. Is -- is that -- was that at the discretion of the Department or was that directed through legislative action?

MS. WHITE: Um -- the contract itself was approved through Governor and Executive Council.

REP. EDWARDS: I'm not talking about approved. I'm talking about who initiated the -- who wanted to do the contract?

MR. WHITE: It was at the Department's direction to address that sort of long-term issue that we've had where we weren't able to accurately identify where those Other or Federal funds were earned mid-year. And then, more importantly, the system will be used in this year's upcoming budget to more accurately identify the percentage so that we can better utilize Federal funds and offset General Fund dollars.

REP. EDWARDS: So one follow-up then.

CHAIRMAN WEYLER: Follow-up.

REP. EDWARDS: I -- I -- I just want to congratulate you and thank you. I -- I often don't sound like I'm applauding the work of the Department, but I am in this case. If you took the discretion or discretionary action to create a better internal control system and it's -- it's yielding some probable monies that we can re-allocate into the budget, I -- I just think this is really -- a really great management initiative, and I want

to -- I want to publicly thank you and the Commissioner and everyone else that's been involved and -- and that's it.

CHAIRMAN WEYLER: Thank you. Representative Rosenwald, this is the last meeting of this Fiscal Year. So depending on how this is going to affect the budget for this Fiscal Year, obviously it's the first year of the biennium, and the biennium hasn't ended.

SEN. ROSENWALD: Right.

CHAIRMAN WEYLER: So that might affect whether we table this or not, because we might want to finish up the Fiscal Year as it's scheduled.

** SEN. ROSENWALD: Move to table.

CHAIRMAN WEYLER: Okay. Motion to table this item.

PETER LEISHMAN, State Representative, Hillsborough County, District #33: Second.

CHAIRMAN WEYLER: Second. Further discussion? Seeing none. All in favor say aye? Opposed no? All right. Let's show of hands. All in favor of tabling? One two, three, four, five, six, seven. All right. The item is tabled. Thank you. And all opposed? Obviously, it's less than seven.

*** {MOTION TO TABLE ADOPTED}

(9) RSA 9:16-a, Transfers Authorized, RSA 9:16-c, Transfer Of Federal Grant Funds, and RSA 9:17-a, III, Limitations:

CHAIRMAN WEYLER: All right. So we'll now move to the Regular Calendar, Tab 9. And what do you know, Department of Health and Human Services, FIS 24-222. Questions on this item. Seeing none.

** SEN. LANG: Move to approve.

SEN. ROSENWALD: Second.

CHAIRMAN WEYLER: Senator Lang moves to accept item 24- 222.
Is there a second?

SEN. ROSENWALD: Yeah.

CHAIRMAN WEYLER: Second by Senator Rosenwald. Further discussion? Seeing none, all in favor say aye? Opposed no? That item is adopted.

*** {MOTION ADOPTED}

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

CHAIRMAN WEYLER: Moving on to Tab 10, item 24-215, Office of the Consumer Advocate.

REP. LEISHMAN: I have a question, Mr. Chairman.

CHAIRMAN WEYLER: Representative Leishman has a question. Is someone here from Consumer Advocate? Thank you.

DONALD KREIS, Consumer Advocate, Office of Consumer Advocate: Good morning.

CHAIRMAN WEYLER: Good morning.

MR. KREIS: Excuse me. Good morning, Mr. Chairman, Members of the Committee. I'm Donald Kreis, the Consumer Advocate.

CHAIRMAN WEYLER: Thank you for coming. Representative Leishman is recognized for a question.

REP. LEISHMAN: Thank you, Mr. Chairman. And thanks for taking my question. I'm just curious what's in the Special

Utility Assessment Account that you're going to use to fund this extension or addition to the contract?

MR. KREIS: You're curious about what's in the assessment? I'm not sure --

REP. LEISHMAN: The amount of money that's in the -- the Special Utility Assessment Fund.

MR. KREIS: There is no amount of money. There's no fund. The special assessment provision of our enabling statute simply authorizes me to enter into contracts with consultants that are not already part of my office's budget, as long as I bring that request to you for approval and then to Governor and Council. So that's what I've done here. And all of it -- all of our -- all of the costs of the Office of the Consumer Advocate as with the costs of the PUC and the Department of Energy, are ultimately billed to the utilities and the utilities, in turn, recover those costs from customers. So, essentially, the customers, the utility customers whose interests our office represents ultimately pay for us.

CHAIRMAN WEYLER: Follow-up.

REP. LEISHMAN: Thanks, Mr. Chairman. I guess what confused me is that in your -- on the second page it said the Special Utility Assessment Funds, if they're no longer available, General Funds will not be used. So I -- that's where I get somewhat confused. It's a third paragraph in your letter to us. In the event that Special Utility Assessment Funds are no longer available.

MR. KREIS: I -- I don't have a good explanation for why that sentence is worded that way. Uh -- I work with the business office of the Department of Energy on drafting letters like this to make sure that they meet the technical requirements of the whole process. So that's what I did here. But the explanation I have just given you is -- is, I'm pretty, sure an accurate

characterization of what the financial realities of the situation are.

REP. LEISHMAN: Okay. I guess it's a non-related question then. This may be out of your realm, but I know your job is to protect the consumers and the rates as far as electrical rates and all the utility rates. We heard that we're entering into a period that there may be a number of hurricanes on the East Coast, and I was just curious if you had any comment whether our utilities are able to handle a catastrophic event that occurred like in 1938 when people were without power for months. If you get into that part of the utilities, are they prepared to handle major disasters like that and get power restored quickly?

MR. KREIS: We absolutely do get involved in that. And I, of course, I am not a utility executive myself, and I don't supervise the utilities directly. But they do have all sorts of very expensive measures in place that are designed to allow the utilities to respond rather quickly to major weather related disasters like hurricanes. So it is true that if a significant hurricane passed through New Hampshire or the Northeast, it would cause outages in the electric system. We would expect those to be restored, in the case of a hurricane, I would say within a matter of a day or two or three, certainly not weeks or months.

REP. LEISHMAN: Okay. Thank you, Mr. Chairman. Thank you.

CHAIRMAN WEYLER: Senator D'Allesandro for a question.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. Nice to see you as always. I love the bow tie.

MR. KREIS: Thank you. This is my Winston Churchill bow tie.

SEN. D'ALLESANDRO: It's a classic. No question. I want to ask you just a key question as a consumer. Why are the trans -- the transmission rates so high and the cost of the

product so low? It costs twice as much to trans -- transmit that energy to my home than it does for the energy. What's -- what's built into the transmission costs?

MR. KREIS: I think that we as a -- transmission costs are subject to federal regulations. So the Federal Energy Regulatory Commission is tasked with overseeing those rates and assuring that they're just and reasonable within the meaning of the Federal Power Act. And I think that to a pretty significant degree the need to conduct the kind of rigorous oversight that that requires has been abrogated. And as a result, there are billions, and billions, and billions of dollars being spent on transmission projects in New England that are really going unreviewed by anybody.

My office and my counterparts around the region are very, very concerned about that. While we're sitting here there's a body called The PAC that is talking about a project to spend -- I think it's something like \$400 million rebuilding the transmission line that connects the Coos Loop in the North Country to the rest of the electricity grid. I don't think that project should go forward. And when you multiply that \$400 million project by all of the other similar projects around the region, you start to understand why we in New England are paying the highest transmission rates of anybody in the country. It is without a doubt, Senator D'Allesandro, the most pressing problem that I think my office confronts, and we're very concerned about that. So it's very astute of you to ask a question about.

SEN. D'ALLESANDRO: I've looked -- I look at it every month, and I can't believe it. I really I can't -- I can't believe it. Because I -- I look at that energy cost and I look at that transmission cost, and I say what -- what -- what is -- what is going on here?

Uh -- anyway, I -- I appreciate your comments on it. That's something that -- that we as a state, we now have a Department of Energy, but we should be looking at that because the burden

on the consumer for those costs is enormous when you put it all -- when you put it altogether. It's an enormous cost. And I -- I -- look it, poles and wires have always been contentious in this state, right? We've been dealing with poles and wires for years, and years, and years. Well, it never ends. Some -- somehow, some way somebody has to address that, because I think the consumer is being short-changed.

MR. KREIS: I heartedly agree.

SEN. D'ALLESANDRO: Thank you. I very seldom get agreement, so I appreciate that very much. Thank you.

MR. KREIS: If I might even push my luck even further, Senator D'Allesandro. I was in a hearing the day that you announced your retirement. So I didn't get down to come to the State House. So I would just like to salute you on your distinguished career as a member of the General Court.

** SEN. LANG: Move to approve.

CHAIRMAN WEYLER: Okay. Motion to approve the item of the -- second. Motion was from Senator Lang, second was from Senator Birdsell. Further discussion? Seeing none, are you ready for the question? All in favor of adopting the item say aye? Opposed no? The item is adopted.

*** {MOTION ADOPTED}

(11) Chapter 79:11, Laws of 2023, Department of Corrections; Transfer Authority:

CHAIRMAN WEYLER: Moving on to Tab 11, Department of Corrections. 24-214, and people have questions. Senator D'Allesandro, Commissioner Hanks.

SEN. D'ALLESANDRO: Thank you, Mr. Chairman. Commissioner, great to see you. Commissioner, as always, having been working the budget for a number of years, the overtime, the overtime and

the vacancy rate continue to bother me because the overtime puts a lot of pressure on the employee, and -- and I look at it and those numbers drive me bananas. What, 12 million and another 8 million? That's amazing that kind of money is being spent on overtime. And you got, what, a 279-person vacancy rate? You have about 700, almost 800 people? So 26% vacancy rate now. There's got to be -- we've got to address that somehow, some way somebody's got to address that, because that can't -- that can't go on, in my opinion. Because the people that -- that are working for you, they're burning out. They got to be burning out working -- working all of that overtime. Just -- and I think it creates a difficult environment. I'd like you to comment on that. I've been looking at this for years, you know. And we've tried -- we've tried incentives. We've tried to increase the salaries. We've done all of -- all of these things and it -- it -- it seems like -- it seems at this point we're not getting to where we want to be.

HELEN HANKS, Commissioner, Department of Corrections: So thank you for that question. For the record, Helen Hanks, Commissioner of the Department of Corrections, and with me is Lisa Stone, our Director of Administration. And the cost of overtime has increased, in general, because of the collective bargaining process. So the hours themselves cost more.

Um -- we've actually made great strides in increasing our recruitment, specifically of corrections officers. So when we were at 50% just six months ago, we've already dropped that down to 46% and that actually matters significantly.

Um -- the creation of - we refer to them as per diem positions - has reduced the burden of the overtime fill rate from our officers to using these positions we created from our lessons learned in using the National Guard. So we are reducing the number of times an officer is forced into an overtime spot through use of those resources and relief pool.

So the comments that you share about the employee are absolutely our first and foremost concerns within the Agency is

reducing that burden. The costs of overtime are not controlled. And from the perspective that bargaining did happen, and is appropriately so, paying people proper rates for proper service, but we are making good strides post the pandemic, which was a major hit to the organization in adjusting and improving our acquisition of talent. And so, for example, right now we are at -- we've hired 50 new officers this Fiscal Year and that's significant.

Our retirement rate has gone back to what has been normal for the Agency. We only had 15 people choose to retire in the last 12 months. And my thanks to the -- to this Committee and the Legislature in affording us the opportunity to continue to offer that \$10,000 incentive through November.

So all of the work that's outlined in this ask is making a difference, and we are improving our staffing. And I just want to reiterate this is a national correctional issue. And I participate with the Correctional Leadership Association on a Recruitment and Retention Committee, and we are mindful that even before the pandemic the Department of Labor forecasted a significant decrease in corrections, and we're trying to fight that statistic here in this state.

CHAIRMAN WEYLER: Follow-up.

SEN. D'ALLESANDRO: Listen, I auth -- I authored the recruitment and retention statute. That was my piece of legislation. Now we can only have that in place so long, because the money's going to run out. Okay. The money is going to run out. So -- so, indeed, there's got to be something in place that -- that, A, retains people, and you seem to be doing a better job with that because your retirements are -- are less now. The money is better. The salaries are better and so forth. But, indeed, this situation, if it continues, you know, it's a no-win situation. It -- and we've got to get ourselves out of this no-win situation. That -- that has to happen. And on the plate now is a new prison, right, that you have? So we're talking about a new prison. We're talking about you got 40

million now in the -- as a legislature special to build a prison. The consensus I think that we heard was it's going to cost maybe 400 million to build a building, to get it altogether. I don't know how that number -- that number came about; but all -- all of these things are leading to a situation that -- that we can't -- we can't handle. It's some way -- some way, somehow this -- those controls have got to be put in place. People have to be retained. You've got to fill the jobs, and we've got to have some -- some maintenance there, some predictability and -- and -- and some stability.

I just think future legislators can't live with it -- can't live with the situation. It's got to -- it has to be adjusted. We have the -- we've had these across the board vacancies in State Government. We've been funding ourselves with lapses. We've been funding ourselves by filled, you know, appropriated but not filled positions. That's how you get a lapse. And these 4% lapses can't exist forever. They just can't, in my -- in my opinion. This is -- this is one that I really worry about because of the future. So just a point that I wanted to make. Thank you, Mr. Chairman. Thank you, Commissioner.

CHAIRMAN WEYLER: Senator Lang on the item.

SEN. LANG: Thank you, Commissioner, for taking my question. Can you tell me how many -- what was the vacancy high rate for CO's, total number of vacant positions? What was your high number, do you know?

MS. HANKS: I do know. So the high we were at 197 vacant security positions across the Agency, and now we're -- I should have printed this in a larger state. Excuse me. One -- forgive me, Senator. I believe that's 161, but I'm going to have to reconfirm that.

Again, I appreciate the sentiments of Senator D'Allesandro, but I believe we provided information to show you that for years now we've taken this very seriously, made great strides, and we are going to continue to do that. And the support we've received

to replace the New Hampshire State Prison for Men is part of our retention issue.

Again, as I sit comfortably in this room, I'm fully aware and keep in the forefront of my mind, I have hundreds of staff that are not sitting comfortably or working comfortably in a facility that foundation was from 1878. And, in fact, yesterday when I went there in the afternoon and walked around and thanked my staff for being there, and perspired with them, I can appreciate the support that we've received to really move that conversation forward.

And I -- I do want to take the opportunity, as I did in my Capital Budget presentation, to share with you we're not just taking strides with our staff and building wellness programs and all of those elements that are naturally appropriate for the work we do in corrections, but we're also looking at the population of people incarcerated and we're reducing our recidivism rate in the state. From 2018 to now we've dropped that rate from 48% down to 41%. That's a 7% change in the work that we're doing to help people stay in New Hampshire communities and reduce the population incarcerated in state facilities. That also matters.

We've continued to keep the second floor of our Hancock Building closed because our population has been down reducing 14 posts that we don't have to fill. So we're very mindful and balanced in the work that we're doing in building those bridges to the New Hampshire communities to help people stay out. And if they're not appropriate to stay out, they do come back and we continue to work and improve that process.

As I affirmed on Tuesday, our women's facility has made a difference in that recidivism rate. It's no surprise to me that women in New Hampshire have a lower recidivism rate than men and some of that is due to the physical plant changes. So, again, thank you for the support, and I affirm for you we continue to work on this issue.

CHAIRMAN WEYLER: Follow-up.

SEN. LANG: So you were talking about -- I'm -- I'm highly concerned, like Senator D'Allesandro, overtime, right, and especially forced overtime in a corrections facility where it's going to create higher burnout rates for our COs. You were talking about a per diem system that was put in place. Can you just briefly tell me about that because I -- I could see where that would dramatically help your overtime problem?

MS. HANKS: Yeah, thank you, Senator. We, again, learned from our experience with the National Guard in creating and training people to work in our non-armed control rooms. So what we did is so that we do not have to lean on the National Guard in the future, is created a -- a non-benefited relief pool of per diem employees. It's done two things. For retirees who did not want to maintain their certification as officers, they've come back and filled those positions. And we've drawn in a new group of individuals whom they're on an actual system where they get a text saying we have posts available, and they voluntarily sign up for those posts. And that happens across all of our facilities. It's been working really great. Um -- and it, again, it creates an opportunity not to force an officer to work in a post where we really want our certified law enforcement officers to be working in the housing units and doing that frontline work with those incarcerated. It's -- it's a great system and it's working really well.

SEN. LANG: Thank you.

MS. HANKS: Thank you.

CHAIRMAN WEYLER: Further discussion. Representative Leishman for a question.

REP. LEISHMAN: Thank you, Mr. Chairman. I did have just one question on the retention mapping under technology. It says RFID. What is that?

MS. HANKS: Thank you for that question. RFID is a type of technology so that we can get off paper. So currently right now when we do a literal count of people in housing units we go around and we -- our officers are literally checking paper and making sure 64 people or 64 people are there. This allows us to put technology in the hands of our officers and scan ID's to affirm that that person is this person, and we can more quickly do our work more efficiently. Thank you.

REP. LEISHMAN: Thank you, Mr. Chairman.

CHAIRMAN WEYLER: Thank you. Further discussion on the item?

** SEN. LANG: Move to approve.

CHAIRMAN WEYLER: Senator Lang moves to approve item 24-214, and Senator Blaisdell seconds. Further discussion. Seeing none, are you ready for the question? All in favor say aye? Opposed no? The item is adopted. Thank you.

MS. HANKS: Thank you.

*** **{MOTION ADOPTED}**

CHAIRMAN WEYLER: Did I say Blaisdell?

SEN. LANG: We were giggling over here.

CHAIRMAN WEYLER: Known her for 20 years. So I will now recognize Senator Birdsell who has a question on a previous item.

SEN. BIRDSELL: One of the previous items from -- I -- can I have Deputy Commissioner from HHS?

CHAIRMAN WEYLER: It's not -- it's not in the present agenda. It was something that was removed last -- last month from the agenda.

SEN. BIRDSELL: Right. Thanks for coming up. I wasn't here last month, and I understand that the -- the agenda item for the pilot payment for Hampstead was taken off as a late item. Um -- has there been any update on that?

MORISSA HENN, Deputy Commissioner, Department of Health and Human Services: Good morning. Morissa Henn, Deputy Commissioner at DHHS. Thank you for the question, Senator. And the best I can say is just to refer all of your questions to the Governor's Office and that's -- that's what we can share today. Our Chief Financial Officer can provide anymore history, but that's -- that's all I can share at this time.

SEN. BIRDSELL: Well, and I will add that Senate Bill 311 is going through the system. I have attempted to contact the Governor's Office to have a conversation with him -- um -- as well as the Select Board and the State Reps. I contacted him on Tuesday. I have not heard back. I understand that you have meetings with him on Mondays. If our -- the Commissioner does. If you could relay that message to him that we have reached out to him to try and contact him. Thank you.

DR. HENN: We'll absolutely do that.

SEN. BIRDSELL: Thank you.

(12) Chapter 106, Laws of 2023, Agency Footnote:

CHAIRMAN WEYLER: Okay. Tab 12, item 24-223, the Department of Administrative Services. Are there any questions on this item?

SEN. BIRDSELL: {Inaudible}.

SEN. LANG: Second.

CHAIRMAN WEYLER: Senator Birdsell moves to approve, Senator Lang seconds. Is there any further discussion? Seeing none, are

you ready for the question? All in favor say aye? Opposed no?
That item is adopted.

***** {MOTION ADOPTED}**

(13) Miscellaneous:

(14) Informational Materials:

CHAIRMAN WEYLER: Moving on to Informational Material. Is there anything that anyone on the Committee wishes to question?

SEN. ROSENWALD: HHS, the Dashboard, I guess.

CHAIRMAN WEYLER: Dashboard.

SEN. ROSENWALD: The closest. Really -- um -- I have a question about the DSH Program.

CHAIRMAN WEYLER: All right. So it's item 24-226, the Dashboard.

SEN. ROSENWALD: Thank you, Mr. Chairman. Um -- I had another great conversation the other day with Mr. Lipman who seems to work late into the night, and I thank you for that. So you told me that the Department is working on rate increases for the hospitals that would take place by September 1st. So this morning when I came in I reread the letter from the Governor dated -- undated, undated, that said that no more than 80% of the MET would be returned to hospitals in any form of DSH Payments or rate increases or any other kinds.

Uh -- I think you and I discussed that that equates to about \$35 million a year cut to hospitals. So I guess my question is the -- these rate increases are not going to mitigate the \$35 million a year cut. They're just going to redistribute some of the MET from the way we've been doing it the last five years?

MR. LIPMAN: So in terms of the -- the way that it's -- I think the Governor's letter is directing the Commissioner. We're working on a plan that would, I think, from a policy perspective start the shift away from DSH, which we're expecting state reductions, all states are, but New Hampshire is expecting a fairly significant reduction in what we're going to be able to pay in DSH in the future. So I think the plan, the Governor's plan that -- Commissioner's plan that we're working on will have less -- less DSH; but you're right in terms of the 80%. If you base that on this year's MET Tax, which was 319.2, would be about \$255 million. That 255 would be, you know, put in a way that would support the, if you will, the best that we can do in terms of improving rates for hospitals and through either direct rates or through directed payment mechanism, and it would be less DSH. But, you know, the pool of money that's available to pay out is 80% of the -- in this current year. By example we had -- we paid up 220 million in DSH -- in -- in DSH, and then the balance to 290.4, which is 91% of the 319 tax. That the 220 plus the payments and supplemental and directed payments we made to critical access hospitals equal that 290.4 which was 91%.

SEN. ROSENWALD: Follow-up.

CHAIRMAN WEYLER: Follow-up.

SEN. ROSENWALD: But so no matter how you slice the pizza, we're still talking about basically this Fiscal Year a \$35 million cut to hospitals. You'll just be paying it out differently. It won't be all in Uncompensated Care. Some will be in rate increases, some will be directed payments, but not increasing the size of the pie.

MR. LIPMAN: The pie will be from 290 -- using this year's MET Tax would be 290 versus 255. But the benefit of putting into rates and directed payment is that all from September 1, assuming Governor and Council approval of the contract, would be from September 1, you know, all the way up till the time that they would pay their tax in April they would be getting, you

know, higher rates. They do then pay the tax in April, but the DSH Payment is likely to be lower.

SEN. ROSENWALD: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WEYLER: Senator D'Allesandro, then Representative Edwards.

SEN. D'ALLESANDRO: Thank you. Thank you, Mr. Chairman. Just for clarification, Henry, the DSH payments have been made for this year.

MR. LIPMAN: Correct.

SEN. D'ALLESANDRO: Okay. And the money has been returned to the hospitals.

MR. LIPMAN: Correct.

SEN. D'ALLESANDRO: So the deal ends this month. It's over. The six-year deal that's in place is over. So the real problem begins when monies are due in April or what's going to -- what's going to be there, and right now there's nothing there. We've seen proposals by the Senate, Senator Bradley's proposal. I -- I think that there was some communication with the House; but -- but at the present time, I think people should understand it's done for this year. The payments have been made. The payments have been returned to the hospitals. The six-year deal is over. So there's nothing in place from -- from this point on. It's -- it's negotiations. So either -- we either have to create it legislatively or this letter -- this letter that went to the Governor or went from the Governor to the Commissioner grants to the Commissioner total authority to go to CMS and ask for plan change; correct?

MR. LIPMAN: So I -- I think that's the current statute, 167:64, when had the payment terms through 2024, and thereafter that what you said is correct in terms of the Commissioner has

discretion in terms of the plan, in terms of how to use the -- the tax money.

SEN. D'ALLESANDRO: So, in essence, and I say this to my colleagues, the Legislature has been taken out of the process. Legislature has no role at this point in time. Governor has said to the Commissioner you will go to CMS, ask for a change in the plan, and you will ask your -- your staff to create an 80% deal. That's -- that's what's on the table as we speak.

Now, we legislated an arrangement. Senator Morse, I was a party to that to some extent but not to any great extent, but President Morse and the Legislature negotiated this six-year arrangement. That -- that proved nobody's happy all the time but at least it was satisfactory.

Now we have a situation where Legislature is totally out of the picture. And unless you have a Special Session, or you -- or -- or -- or reconvene for some reason in January there's nothing in place. And my question to Henry is does -- does -- or do the hospitals have to accept this new arrangement that you're working on by virtue of that demand by the Governor? It just goes to the hospitals. I mean, that's -- that's not -- that's not the legislative process.

CHAIRMAN WEYLER: No, it isn't.

SEN. D'ALLESANDRO: That's -- that's totally disregarding the Legislature and the Legislature's ability to work this out. And we all represent hospitals. All right. There are -- there are critical access hospitals that will be impacted severely, and there will be hospitals that will be impacted significantly, and that's the public that we're talking about. The public is served by these hospitals. Think of this. And we -- look, this deal was as a result of a lot of court action and so forth and so on. Those of us who were here --

CHAIRMAN WEYLER: Remember the court action.

SEN. D'ALLESANDRO: -- recognize that. But we're faced with nothing at this point in time. The Legislature has been totally, totally left out of the picture.

CHAIRMAN WEYLER: I guess it was up to the Legislature realizing that the six-year plan was expiring. I was not aware of it, but if we were we should have done something earlier so it could -- it could be the law now.

SEN. D'ALLESANDRO: Right. Well, no question. Conversations have been going -- have been ongoing.

CHAIRMAN WEYLER: Yep.

SEN. D'ALLESANDRO: Ongoing for a long period -- for a long period of time. And -- and this is, as I -- I said, I'm not going to be here. So -- so, you know, there -- there's no burden on my shoulders; but those of you that are coming back got to figure this out.

CHAIRMAN WEYLER: Yep.

SEN. D'ALLESANDRO: And, as I said, there are 15 critical access hospitals that will be affected. There are major medical centers that will be affected. We're talking about a ton of money, a ton of money. I mean, the tax was what, three --

MR. LIPMAN: Three hundred nineteen million point two is what the Department received from DRA. And --

SEN. D'ALLESANDRO: I mean, just -- and I say to my colleagues think about that. Because we -- we have a responsibility. We've got a responsibility. People elected us to serve them in the best possible fashion. This is something I've never seen before. I've never seen anything like this before. It really bothers me at this point in time to see this -- this happening. And we've made -- we've made big strides. Look it, we talked about the first year we had a budget that we -- everybody loved, everybody passed it. We were dancing

in the streets the first year, and we're hanging ourselves in the second year. Doesn't -- doesn't make any sense to me. Just doesn't make any sense. And as I said to my colleagues who are coming back, you've got to face this. Thank you, Mr. Chair. Thank you, people, for your work.

CHAIRMAN WEYLER: Representative Edwards.

REP. EDWARDS: Thank -- thank you. I have another point I wanted to make. But in response to the Senator's comments, I -- I just wanted to say as a member of the Committee of Conference that dealt with this issue at the last minute -- um -- I -- I applaud Senator Bradley for all the work he did trying to bring the hospitals together with the Department and -- and -- and -- and with the other Senators. Unfortunately, that process had trouble getting over the goal line, because the -- the -- the House process had been left out of it. The House Committees, the Policy Committees, Finance Committees of the House never had an opportunity to see a regular bill. So at the end of the day we were asking four representatives out of 400 to basically cut a deal at the last minute without having been involved. And so -- so I -- I -- I think the Legislature can do and needs to do a better job; but -- but there's something in place.

The -- the -- the Commissioner has a -- a -- a directive from the Governor to put together a plan and to -- and to work it out. And I think that's what's being done. I -- so I -- I -- I -- I don't want because the Department is sitting in front in us, I don't want it to look to the public like the Department has let us down. I think we just sort of didn't get it -- we didn't get it done when it needed to get done and -- and that's on us. But -- um -- the -- um -- the thing I wanted to -- can I go to my main point?

CHAIRMAN WEYLER: Certainly.

REP. EDWARDS: Thank you. And this -- this may be for Dr. Henn, in part; but -- um -- there's been discussion about

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

a -- I'm talking about Item 226, the statistical summary. I -- I -- I don't know what the process is that we use to add a table or add information to a table, you know, to formally request one. But I would really like to see a proposal from the Department to add a table to the statistical document here that gives us a nice snapshot of what's going on at Hampstead. And, obviously, we've got patients we're seeing. We've got vacancies we're trying to fulfill. And then we have the issues with the local community and -- and calling in emergency services on an ad hoc basis. And -- and that third component is -- is really important for the Legislature to have visibility on because, obviously, it's a hot topic in that community and it drives things like Fiscal requests to transfer money and to solve infrastructure problems and it, you know, causes us to know whether we should be supporting the payment in lieu of taxes.

So -- so I would like, if you could develop and propose a table that would be a nice Hampstead snapshot. And I've mentioned like three things that could be in it, but -- but I'll leave it to you. You're -- you're the Ph.D. Um -- the -- I don't know if Table 12 intends to already try to capture that somehow; but as I'm reading the columns, I'm not seeing a Hampstead column. So -- um --

DR. HENN: Thank you for the idea and the recommendation, and I'll just note that under Senator Birdsell's leadership, the YDC Impact Commission, we've been able to bring together a lot of key players in better analyzing this data to understand the impacts to the town including, as you know, visits by police and first responders, which I may note have, knock on wood, reduced significantly as we seek a period of stability.

So I think what I hear you asking for is to -- is to show that data. And one of the things Senator Birdsell has encouraged us to do is to work as a Department with the local first responders to make sure we're essentially counting the same units and agreeing on a methodology there. So as soon as we come up with that methodology this summer, we'd be happy to put together some options.

REP. EDWARDS: Thank you. Thank you, Mr. Chair.

CHAIRMAN WEYLER: Senator Birdsell.

SEN. BIRDSELL: Thank you. And I haven't forgotten the fact that I need to contact the Chief of Police to make sure that you guys get together to connect so that you have the same numbers. Okay.

CHAIRMAN WEYLER: We should also consider that the alternative is that the YDC would have to provide its own security force and that would be far more money than what we're asking to be given to Hampstead. So keep that in mind. If we're not going to get that payment to Hampstead, then we're going to request a security force at the YDC.

REP. EDWARDS: So -- so Mr. Chair --

CHAIRMAN WEYLER: Yes.

REP. EDWARDS: -- if I may? Because I've been struggling to make sure the community understands the distinction that the YDC is a separate entity from Hampstead Hospital. And although they're co-located to share services, we've already designed or intended to design the YDC with the manpower necessary to provide their own internal security. The issue is we're putting it next to Hampstead Hospital, which has come under a rash of issues over the last 15 months. And so -- so if we have to beef up the internal security of one of those facilities, it would be Hampstead, not yet the YDC, because we've not seen the personnel plan for YDC yet.

CHAIRMAN WEYLER: Thank you. Further discussion. Senator Rosenwald.

SEN. ROSENWALD: Thank you. I'd like to follow-up on Senator D'Allesandro's comments. I mean, I think we've known since 2018 that the settlement on the MET was going to expire at the end of

this month. Um -- it's -- I thought about this term as it being one of the two major things we had to accomplish, the other one being re-authorizing Medicaid Expansion. We got that done.

Last fall we started having conversations within the Senate about the need to get something in place, and at that time the Governor said, apparently, that he wanted the Attorney General to put together a small working group to make progress on this. I -- I don't know if that ever happened. I was not part of it. Um -- it would have, obviously, been better if negotiations had proceeded in time for a late filed bill that would meet the deadlines but they didn't.

So as often happens, and is consistent with both Senate and House rules, an Amendment was put onto a House bill that was germane because it was in the Senate version. I wish I had been part of these negotiations. I wasn't. I thought the plan the Senate sent over was reasonable, but I -- I just -- I mean, there have been times where we've inserted policy into House Bill 2 during Committee of Conference where nobody's had a public hearing. And so I don't think that sending the DSH settlement over on a House Bill was -- um -- very unusual from the way the legislative process happens.

But all that being said, I think a \$35 million cut a year to hospitals, when we know that at least 17 of the 26 hospitals are going to be in the red, is really problematic for the people who live in New Hampshire. Because hospitals are the backbone of our health care system. They are responsible for a lot of the outpatient care, as well as the inpatient care. And they're also huge employers and they have the inability to move. So they can't pick up and move. We need them. They're spread all over the North Country and western New Hampshire, and I'm very concerned about the impact of a \$35 million a year cut, and that's considering that just this year when we've gotten the tax payment from the hospitals. Thank you, Mr. Chairman.

CHAIRMAN WEYLER: Thank you. Further discussion.
Representative Edwards.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

REP. EDWARDS: So -- so the four out of the 400 were really close to the -- what the Senate position turned out to be. We were 5.72 million apart, which was not too bad given the fact that we've been left out of the policy and finance part of the process. It just -- sometimes things just don't happen, and -- and this was one of those times where the Legislature failed. And if we want to come back, if you're coming back next year, and I'm back next year, I'd be happy to -- to -- to do a bill. We have Senator Bradley's work to draw from and -- and -- and let's just do better.

CHAIRMAN WEYLER: Further discussion. Senator D'Allesandro.

SEN. D'ALLESANDRO: I think the Representative's remarks are consistent. We got to do better. But I represent one of the larger hospitals in the state. Two thousand employees in Manchester, 2,000 employees. A negative economic impact on the institution that I represent has a devastating effect on those employees; but what about the people we serve in the immediate area?

Now, we had a six-year deal in place. I mean, there wasn't anybody in this Legislature who didn't understand when the deal expires, the deal expires.

CHAIRMAN WEYLER: I was not made aware of it.

SEN. D'ALLESANDRO: Well, those who worked on it were certainly aware of it. And I -- I -- I think it's incumbent on us -- it's incumbent upon us to bring this issue forward.

CHAIRMAN WEYLER: Why couldn't it have just been extended?

SEN. D'ALLESANDRO: I -- I -- I wasn't -- I wasn't part of the process. I think the fact of the matter is it's getting all kinds of noise now.

CHAIRMAN WEYLER: Yep.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

SEN. D'ALLESANDRO: All kinds of noise. And that -- that's not -- not good for the hospitals, it's not good for our constituents. It -- it -- it makes us look bad in the public's view, and I think that's terrible. We have the third largest legislative body in the English-speaking world, and we can't get anything done? Four hundred members of the House, 24 more members of the Senate, and this issue as my colleague pointed out, look at -- look at the people that are affected by this. I think it's-- I think it's quite dramatic to be honest with you. And there's an ongoing diatribe between the Executive and I don't know who at this point in time because it's a mystery. It's -- it's -- it's the hospitals that -- that -- that isn't -- that isn't helping anybody.

CHAIRMAN WEYLER: All the problems we've discussed are as a result of ridiculous inflation. Until something is done about that, these problems will persist.

SEN. D'ALLESANDRO: Well, just -- good luck. That's all I have to say.

CHAIRMAN WEYLER: Yeah. Senator Rosenwald.

SEN. ROSENWALD: Thank you. I actually asked if we could just extend the current program and was told that we couldn't because the federal regulations around DSH have changed. So we really didn't have better options; but now we're faced, I think, with something that is potentially damaging to the people and could wind up in more litigation that we've already lost --

CHAIRMAN WEYLER: Well, as I recall --

SEN. ROSENWALD: -- which led to the settlements in the first place.

CHAIRMAN WEYLER: -- having been involved with the MET since its beginning, all the money that came in from MET all went back to the hospitals. They were happy. We got a match from the Feds.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

We got to spend it as we wanted. Then we were giving it back to the hospital, all of it. And then the hospitals because of the MMS said, wait a minute, you can't pay them back for this because they didn't cross this "t" or dot this "i" or whatever. Their rules we were giving them back too much.

So that's when we had to reduce it because of the federal rules. So that was what tied a lot of it up, and it's the same thing again. When we try to say give us the money and the tax, we'll give it back to you, the Feds will match it, we'll all be happy. The Feds won't match it if they say you shouldn't have paid them back for this. That's where the problem came from from the Feds, so. Senator Lang.

SEN. LANG: Thank you, Mr. Chair. Again, I'm not going to look backwards because we can't do anything about what's already happened. We only look forward. And I'll just remind all of us that it's not uncommon for us to look at veto day and come to an agreement by veto day. If you remember a couple years ago we did that for -- we were in an energy crisis. We we're in the middle of Covid and people had no jobs and we ended up putting \$36 million aside to be able to help people keep their lights on. So it doesn't mean it's closed for the year if people are willing to sit down and work. We can bring a bill forward on veto day if we can suspend the rules and move it forward. So I just -- it's not necessarily completely dead, but it's going to take a willingness of everyone to sit down and have conversation and get to a solution that can be dealt with in one day on veto day, so.

CHAIRMAN WEYLER: And remember the Senate has more flexibility in introducing legislation than the House has. So we'll rely on my colleagues over on that side.

SEN. LANG: Again, but it goes back to Senator Edwards' point that there's policy committees and fiscal committees that want to have an input and conversation in this, and then if it doesn't do us any good if the Senate does waive the rules and introduces something only to have the House say no, we're going

to do the same outcome as Committee of Conference. We're going to kill it because we don't want -- because we weren't involved.

So all I'm saying I want to remind the issue is not necessarily dead. There is an opportunity to go forward, and we should try to look -- I know I have my hospital in my -- a couple of my hospitals in my area are losing money on this deal, right. So, again, I -- I'm eager to see a solution go forward that -- that -- that is good. 'Cause, again, when our hospitals don't have the money they need to operate, all of our constituents suffer. So we need a solution for this and not -- and not just be angry because I wasn't involved or -- or anything else, so.

CHAIRMAN WEYLER: Thank you. Further discussion.

SEN. D'ALLESANDRO: It takes more than just the Legislature to play in this game.

CHAIRMAN WEYLER: Yes. Yeah. The information should have been brought to us with some urgency but it wasn't. So do we have anything further in the Miscellaneous items that people would like to discuss? Seeing none.

(15) Date of Next Meeting and Adjournment

CHAIRMAN WEYLER: Then the next item would be to choose our next meeting. We're coming toward the end of a Fiscal Year, which ends in just a few days. So we've done all the rearrangements for all the Departments where they wanted to balance their budget, and that's been a big part of our last two months. So that should have been settled.

Going forward we don't always meet in July and we don't always meet in August. Ask the Commissioner of Administrative Services if he thinks there would be anything pressing in those two months that might come up.

CHARLES ARLINGHAUS, Commissioner, Department of Administrative Services: The first two months of the Fiscal Year are better. Um -- I don't know of anything pressing that might come up. The only thing I would tell you is that something pressing might come up.

CHAIRMAN WEYLER: If it does.

MR. ARLINGHAUS: But I don't know of anything right now. But there's certainly no -- the -- the Legislature's historically skipped at least one of those two meetings without everything falling apart. Um -- I -- maybe you could consider -- I don't want to tell you what to do -- maybe you could consider not doing one of the meetings and waiting to make your mind up on whether to not do the other one later.

CHAIRMAN WEYLER: So --

MR. ARLINGHAUS: I don't want to get in trouble with other agencies who go, well, you just told me they didn't have to meet and now I got a thing.

CHAIRMAN WEYLER: We'll tentatively, with the permission of the Committee, I suggest we skip July, tentatively set a date in August. But if we don't hear enough to have a meeting, then we'll cancel August and probably plan, as one of my colleagues pointed out, everybody should be around by September 10th for the -- for the Primary. So if we have it within that next -- the week following the Primary, we should have everybody here, even those that wanted to take vacations and be miles away and not attend. That may work. So, tentatively, what would be the date in August if we went --

REP. EDWARDS: September 13.

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: So the August date, tentative August, the third Friday is August 16th, and then September, if you do the Friday after Primary, would be September 13th.

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024

REP. WEYLER: So the date again in August would be?

MR. KANE: The 16th.

CHAIRMAN WEYLER: Sixteen. So let's set a tentative date for August 16th with the possibility that within the week before or perhaps further out than that I will notify you if there is no meeting.

KEITH ERF, State Representative, Hillsborough County, District #28: 10 a.m.?

CHAIRMAN WEYLER: Say that again.

REP. ERF: 10:00 a.m.?

CHAIRMAN WEYLER: 10:00 a.m. as usual. And if we don't have any air-conditioning we'll rely on the Senate to host us again in an air-conditioned room. So --

SEN. D'ALLESANDRO: {Inaudible}.

CHAIRMAN WEYLER: Appreciate it, and yours as well. So tentatively August 16th. If there's not enough items to -- that have urgency, we may go to September 13th. Is that -- is that approved by -- all in favor say aye? Opposed no? I guess that works out. So thank you all. Enjoy the rest of your summer, and I look forward to seeing you all either in August or September.

** REP. ERF: Move to adjourn.

CHAIRMAN WEYLER: Motion to adjourn. Is there a second? {Inaudible}. Second by Senator Lang. All in favor say aye? Opposed no? Thank you all for your attendance. Thank you all for your good work. We are adjourned.

(Meeting adjourned.)

C E R T I F I C A T E

I, Cecelia A. Trask, a Licensed Court Reporter, do hereby certify that the foregoing is a correct transcript from the YouTube video of the proceeding in the above-entitled matter. I was not physically present at the meeting and have transcribed the video to the best of my professional skill and ability.

Cecelia A. Trask, RPR, RMR, CRR
NH Licensed Court Reporter - #00047

JOINT LEGISLATIVE FISCAL COMMITTEE

June 20, 2024