



OFFICE OF MANAGEMENT & BUDGET

STATE BUDGET OFFICE


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MEMORANDUM

To: The Honorable Marvin L. Abney
Chairman, House Finance Committee

The Honorable Ryan W. Pearson
Chairman, Senate Finance Committee

From: Joseph M. Codega Jr. 
State Budget Officer

Date: December 2, 2021

Subject: Amendments to FY 2022 Appropriations Act (21-H-6122Aaa)

The Governor requests immediate review by the General Assembly of the attached amendments to the enacted FY 2022 Appropriations Act in support of the State's compliance requirements set forth in the Consent Decree entered into by the United States of America and State of Rhode Island¹ and recent Action Plan.²

Per the terms of the Action Plan, the State agreed to dedicate \$12 million to the creation of a "Transformation Fund" which shall be used solely for integrated day activities and supported employment services for individuals with intellectual and developmental disabilities. Of this amount, the Action Plan stipulates that \$4 million be requested via budget amendment for immediate use.

Through the amendments described in the attachment to this memorandum, the Governor requests an additional \$4 million in the appropriation amounts included Article 1, Relating to Making Appropriations in Support of FY 2022 within the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) and the Executive Office of Health and Human Services (EOHHS). The funding source for these funds is the American Rescue Plan enhanced federal matching rate (FMAP) for spending on Medicaid Home and Community Based Services (HCBS) detailed in the EOHHS "RI State Spending Plan for ARPA HCBS FMAP" which was submitted to the Centers for Medicare and Medicaid Services (CMS) on July 9, 2021 and updated with CMS on October 18, 2021.³ The budgeting mechanism by which the ARPA HCBS FMAP funds are recognized in this amendment is through a combination of restricted receipts and federal funds. The enhanced ARPA HCBS FMAP is anticipated to offset general revenue expenditures which will be segregated in a restricted receipt account within EOHHS. As these restricted receipts are expended, they will be matched with additional federal funds at the prevailing FMAP benefit rate during the applicable period.

Furthermore, the Governor includes two amendments for the creation of a new restricted receipt account within the Executive Office of Health and Human services to capture the additional funds resulting from the federal ARPA HCBS FMAP program and requests that this new account be exempt from the indirect cost recovery charge.

¹ See C.A. No. 14-0175 at Doc. No. 5.

² Consent Decree Action Plan Attachment

³ Additional information available: <https://eohhs.ri.gov/initiatives/american-rescue-plan-act/home-and-community-based-services-hcbs-enhancement>

If you have any questions regarding these amendments, please feel free to call me or my staff at 574-8430.

JC:21-Amend-21

Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
James E. Thorsen , Director of Administration

ARTICLE 1, RELATING TO MAKING APPROPRIATIONS IN SUPPORT OF FY 2022
SECTION 1, APPROPRIATIONS IN SUPPORT OF FY 2022

Behavioral Healthcare, Developmental Disabilities and Hospitals

Increase Federal Funds, Page 17, Line 12 by \$2,843,200 from \$189,882,388 to \$193,493,188.

Insert after Line 21 on Page 17 the following, “Of this amount a total of up to \$2,843,200 or such federal funds amount that when combined with restricted receipts under the ARPA HCBS program shall not exceed a total of \$4,000,000 shall be appropriated towards the fulfillment of the Consent Decree requirement of establishing a \$4,000,000 Transformation Fund to be utilized solely for integrated day activities and supported employment services for individuals with intellectual and developmental disabilities. With respect to this portion, all unexpended or unencumbered balances, at the end of the fiscal year, shall be reappropriated to the ensuing fiscal year and made immediately available for the same purposes.”

Office of Health and Human Services

Increase Restricted Receipts, Page 12, Line 13 by \$1,156,800 from \$17,792,796 to \$19,527,996.

Insert after Line 13 on Page 12 the following, “Of this amount a total of at least \$1,735,200 or such restricted receipts amount that when combined with federal funds under the ARPA HCBS program shall not exceed a total of \$4,000,000 shall be appropriated towards the fulfillment of the Consent Decree requirements of establishing a \$4,000,000 Transformation Fund to be utilized solely for integrated day activities and supported employment services for individuals with intellectual and developmental disabilities. With respect to this portion, all unexpended or unencumbered balances, at the end of the fiscal year, shall be reappropriated to the ensuing fiscal year and made immediately available for the same purposes.”

ARTICLE 2, RELATING TO STATE FUNDS

On Page 7, After Line 19 Add following language:

“HCBS Enhanced FMAP”

On Page 11, After Line 17 Add new Section 8 and renumber subsequent sections:

“Section 42-7.2 of the General Laws entitled “Office of Health and Human Services is hereby amended by adding thereto the following section:

“(c) For the purpose of recording federal financial participation associated with the American Rescue Plan enhanced FMAP for all state expenditures on home and community based services, and pursuant to the Rhode Island Spending Plan for Implementation of American Rescue Plan Act of 2021, Section 9817, as submitted and approved by the Centers for Medicare & Medicaid Services (CMC), there is hereby established a restricted-receipt account entitled "HCBS Enhanced FMAP" in the general fund of the state and included in the budget of the office of health and human services.”

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA
Plaintiff,

v.

C.A. No. 1:14-cv-00175-JJM-PAS

STATE OF RHODE ISLAND
Defendant.

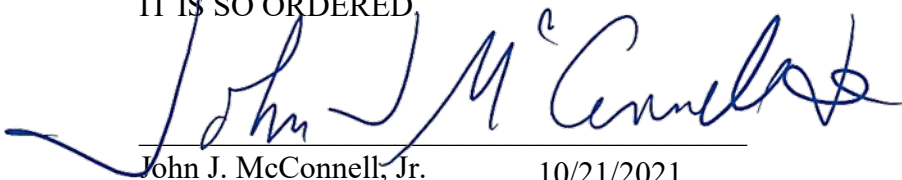
ORDER

After hearing thereon and having reviewed and accepted the Settlement Terms, it is hereby:

ORDERED, ADJUDGED, AND DECREED

1. The States’ motion to enter this order is **granted**;
2. The Court finds that, in view of the Action Plan, cause has been shown and that the State should **not** be held in contempt¹;
3. The Action Plan, attached hereto, are incorporated by reference in this order; and
4. The State shall comply with the terms set forth in said attachment.

IT IS SO ORDERED.



John J. McConnell, Jr. 10/21/2021
Chief Judge
United States District Court

¹ The Show Cause Order, ECF No. 142 states “[that] the State is ordered to show cause why the Court should not hold the Sate in contempt (or any other appropriate judicial remedy) for failing to comply fully with the prior Orders of this Court.”

Action Plan

System Overhaul and Longitudinal Stability

Rate Revision – The State of Rhode Island (“State”) anticipates that the contract for the rate revision work will be awarded by November 1, 2021 and work will be completed by December 1, 2022. The Governor’s recommended budget for FY23 will recognize the work undertaken by the rate review process and preliminary recommendations. The State will work in good faith to incorporate the reasonable recommendations set forth in the final rate review project into the Governor’s recommended budget for FY24. Nothing herein abrogates either the Court Monitor’s (“Monitor”) or the United States’ ability to contest the State’s determination of reasonableness. The cost of implementing community-based employment and integrated day activities and smaller staffing ratios and the likely need for additional staff, will be included in the new rate structure. Indexing of rates will be included in the new rate structure.

Administrative Process Changes – The Administrative work group efforts will be completed by March 31, 2022.

Caseload Estimating – DD will be included in the Caseload Estimating Conference beginning November 2021, pursuant to R.I. Gen. Laws § 35-17-1 et seq. The Caseload Estimating conference will budget IDD funding based on BHDDH testimony, an increase and/or decrease in population estimates, and any other applicable factors.

Wages and Stability of Workforce

The United States of America and the State (“Parties”), and the Monitor recognize that there is need for increasing the workforce, both to increase capacity of the system but also to ensure that the system is community-based and has well trained workforce, including DSPs, Supervisors, Job Coaches, and other Employment and Community Activity Staff.

Wages – For FY23, the Medicaid reimbursable rate will be increased to support the starting wage for DSPs to \$18/hour. For FY24, the Medicaid reimbursable rate will be increased to support the starting wage of DSPs to \$20.00/hour. For both FY23 and FY24 overnight worker and supervisor wages would proportionally increase. For FY24, by January 2023, \$20/hour will be included in the Governor’s proposed budget, and if passed by the General Assembly, would be effective July 1, 2023.

Statewide Infrastructure and Recruitment – Create statewide workforce initiative focused on recruiting, creating pipelines, and credentialing. The State will explore the best way to develop this initiative, though options include a partnership between DLT and other entities, such as CCRI, any/all public and/or private postsecondary training agencies, Skills for Rhode Island’s Future, or others. The State agrees, in consultation with DOJ, the Monitor, and those Stakeholders identified by the Monitor, to submit a plan to address statewide infrastructure and recruitment by November 15, 2021, subject to modification by the Parties and the Monitor. The plan will include a contract to a private organization to coordinate and implement an intensive statewide recruitment initiative.

One Time Transformation Costs

Transformation Fund – Creation of a \$12 million transition fund, which shall not supplant or replace existing I/DD funding and must be used solely for I/DD integrated day activities and supported employment services as defined in the Consent Decree.

From this fund, \$2 million will be utilized to create a fund specifically for those who Self-Direct for creation of regional service advisement models and pool of substitute staff.

The remainder of this fund would create a grant process with defined tasks, funding, and outcomes. There will be three phases (1) model development (2) implementation in a smaller subset of the population and (3) full system implementation. Phase 1 will take approximately 6 months. Phase 2 will take approximately 6 months. This Transformation Fund will be reviewed during Phase 2 to determine whether additional funding is needed for implementation. Additional funding will be tied to HCBS funding and/or other sources.

The review of additional funding during Phase Two is anticipated to occur in March, 2022; but may be subject to change based on the agreement between the Monitor and the State and progress made during Phase 1 and Phase 2.

Additionally, the Executive Branch agrees to submit a budget amendment, requesting immediate review by the General Assembly for \$4 million to be appropriated for this Transformation Fund for immediate use, subject to appropriate model development. In the interim, a model will be developed by the State, in consultation with the Monitor and those Stakeholders identified by the Monitor in accord with this fund.

Technology - The State Commits to a \$2 million fund for technology acquisition for individuals within the DD system. The mechanics of how this fund is to be implemented will need further discussion and negotiation with the inclusion of individuals from BHDDH, at minimum.

The State, in consultation with the Monitor and those Stakeholders identified by the Monitor will develop a plan by November 15, 2021, subject to modification by the Parties to address implementation of this fund. Funding will be available 6 weeks after CMS approval of the State's HCBS plan, so long as the implementation plan is also complete.

Transportation - The State commits to continuing to work through the mechanics of RIPTA as a Medicaid provider in an effort to increase funding available for transportation. Transportation rates and increased options for people with I/DD will also be part of the rate review process.

Indicators of Change – Three measures will be used by the Monitor to document impact of these systemic changes:

- Increased stability of the workforce – the NCI Staff Stability Survey will be completed during November/December, 2021 as baseline and every six months thereafter.
- Increases in the number of target population members in individualized employment and integrated community activity – semi-annual collection and reporting of the Sherlock Survey will be used to measure trends.
- Increases in the number of integrated service hours for target population members.

- A measure will be selected and used as part of annual person-centered planning. Data documenting change in individual lives will be aggregated every June.
- A sample of target population members will be taken by the Monitor and the United States every 90 days to evaluate, based on that point in time sample, whether the target population members in the sample have experienced an increase in the number of hours per week of integrated day and/or supported employment services sufficient to bring the State into substantial compliance with CD section VI(b) by August 1, 2023.

Compliance and Consequence –

The specified dates herein can be amended by the Parties upon a showing that the State made diligent and good faith efforts but is unable to meet the specified dates. If not amended, the specified dates are subject to appropriate action and/or further orders of this court, if not timely met. The Parties shall have a status conference 30 days before each specified time period with the Court and the Court Monitor, wherein the State shall report on its progress. Nothing in this order modifies the Consent Decree.