

HB 1593-FN - AS AMENDED BY THE SENATE

22Feb2024... 0709h

11Apr2024... 1161h

05/23/2024 2117s

05/23/2024 2152s

2024 SESSION

24-2282

05/10

HOUSE BILL ***1593-FN***

AN ACT making an appropriation to the department of health and human services to support recreational activities for individuals with developmental disabilities and relative to the uncompensated care and Medicaid fund.

SPONSORS: Rep. Stringham, Graf. 3; Rep. Edwards, Rock. 31

COMMITTEE: Health, Human Services and Elderly Affairs

AMENDED ANALYSIS

This bill:

I. Makes an appropriation to the department of health and human services to fund recreational activities for individuals with developmental disabilities.

II. Temporarily restructures the uncompensated care and Medicaid fund under RSA 167:64 as the Medicaid payment fund and disproportionate share hospital fund, administered by the department of health and human services. The bill sunsets changes to the funding distribution mechanism June 30, 2028.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT making an appropriation to the department of health and human services to support recreational activities for individuals with developmental disabilities and relative to the uncompensated care and Medicaid fund.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Department of Health and Human Services; Individuals with Developmental Disabilities; Funding for Recreational Services.

I. Recreational activities typically provide an opportunity for individuals with developmental disabilities to participate in their community in preferred settings, where individuals are able to work on skill development to aid health, wellness, socialization, and safety goals. However, the department of health and human services has received clarification from the Centers for Medicare and Medicaid Services that supports and services that are recreational in nature are not reimbursable services under the Medicaid program.

II. In order to ensure that costs to access recreational services are covered, and that individuals with developmental disabilities are able to participate in recreational activities within their communities, the sum of \$500,000 is appropriated to the department of health and human services for the biennium ending June 30, 2025. This appropriation is in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated. Any unexpended funds shall lapse to the general fund on June 30, 2025.

III. In order to be eligible to receive funds for recreational services under this section, an individual shall have graduated or exited the school system and be receiving services under the 1915(c) developmental disabilities or acquired brain disorder waiver and shall be requesting payment for an activity or service that cannot be covered by the New Hampshire Medicaid State Plan or a 1915(c) Home and Community Based Waiver.

IV. The department of health and human services shall contract with one or more organizations, such as an area agency as defined in RSA 171-A, to assist in administering these funds. With the approval of the governor, the department may utilize a sole source procurement method to implement recreational services as quickly as possible.

V. Payment for recreational services shall be limited to \$600 per individual.

VI. The department of health and human services shall include language in the contracts designated in subparagraph IV to prioritize services previously included in individualized budgets.

VII. The department shall issue an interim report to the fiscal committee on or before April 1, 2025. The report shall include data on utilization, including the number of individuals seeking services in accordance with paragraphs I, II and III, the number of individuals provided services, the types of specific services provided, the total cost of the services provided, and other relevant information necessary to enable the legislature to assess the program.

VIII. The department shall issue a final report to the fiscal committee on or before September 30, 2025. The final report shall include all the information listed in paragraph VII.

2 Uncompensated Care and Medicaid Fund; Definition of Hospital. RSA 167:63, IV is repealed and reenacted to read as follows:

IV. "Hospitals" mean general acute care hospitals licensed under RSA 151 that provide inpatient and outpatient hospital services, but shall not include government facilities or special hospitals for rehabilitation.

3 Hospital Medicaid Payments and Medicaid Payment Fund. RSA 167:64 is repealed and reenacted to read as follows:

167:64 Hospital Medicaid Payments and Medicaid Payment Fund; Disproportionate Share Hospital Fund.

I. There is hereby established in the state treasury a Medicaid payment fund, which shall consist of the moneys collected pursuant to RSA 84-A. Moneys paid into the fund shall be exempt from any state budget reductions, and the commissioner of the department of health and human services is authorized to expend these funds, together with matching federal funds, as authorized by this section. Investment earnings of the fund shall be credited to the fund. The moneys in the fund shall be nonlapsing and continually appropriated to the department of health and human services for the purpose of making hospital payments and provider payments and to support Medicaid services and Medicaid programs administered by the department of health and human services in accordance with this section.

II. Beginning in state fiscal year 2025 and continuing every state fiscal year thereafter, the commissioner of the department of health and human services shall provide Medicaid payments, subject to the payment conditions set forth in paragraph V, to the hospitals in an

amount equal to 93 percent of the money collected pursuant to RSA 84-A in the prior state fiscal year. Payments to the hospitals shall be made in accordance with this section.

III. The commissioner of the department of health and human services shall determine which payment method or methods are used to make the Medicaid payments subject to this section through Medicaid reimbursement for inpatient or outpatient hospital services, Medicaid supplemental payments, managed care directed payments, disproportionate share hospital payment adjustments, or any other Medicaid payment method allowed by the Centers for Medicare and Medicaid Services (CMS). In determining which Medicaid method or methods to utilize and at what percentage for each method, the commissioner shall seek to prevent to the greatest extent possible year over year hospital reimbursement reductions in the aggregate while at the same time achieving the highest available federal match. The commissioner shall work in collaboration with the hospitals in developing those determinations.

IV. All payments made pursuant to this section shall be subject to approval by CMS, and the department shall secure all necessary waivers or approvals to state plan amendments from CMS.

V. Any payments made under this section through directed payments shall comply with 42 CFR 438.6 or any other applicable federal regulation or guidance. The commissioner shall consult with and consider feedback from the hospitals prior to submission of a payment plan to CMS for approval. If CMS does not approve the hospital directed payment plan, the commissioner shall seek to provide payments through increased hospital rates, disproportionate share hospital payments, supplemental Medicaid payments, or any other allowable Medicaid payment method that provides for federal fund matching. For purposes of determining the portion of the payments to the hospitals that are attributable to CMS approved directed payments, the amount shall be the total amount available for the hospitals to earn under any directed payment, including, but not limited to, any amount of a directed payment that is at risk, value-based, or subject to performance conditions. In no event shall the state be liable for any payments the hospitals fail to earn under any CMS approved directed payments.

VI. In the event the commissioner of the department of health and human services determines there has been a change in federal law, regulations, or CMS guidance that materially impacts payments to the hospitals in accordance with this section or a material change in the amount of money collected pursuant to RSA 84-A, the hospitals and commissioner of the department of health and human services shall collaborate on adjustments, and subject to the commissioner's determination, to the payment method or methods that are used to make the hospital payments subject to this section. In determining which Medicaid method or methods to utilize and at what percentage for each method, the commissioner shall seek to prevent to the greatest extent possible year over year hospital reimbursement reductions in the aggregate, while at the same time achieving the highest available federal match.

VII.(a) Disproportionate share hospital payments shall only be made to a hospital that is:

(1) A "deemed disproportionate share hospital" as defined by criteria set forth under 42 U.S.C. section 1396r-4 and is not otherwise receiving a disproportionate share hospital payment; or

(2) Meets the minimum criteria for disproportionate share eligibility under relevant federal statutory changes at 42 U.S.C. 1396r-4(d).

(b) For purposes of this paragraph, a hospital's uncompensated care costs, for purposes of calculating a disproportionate share hospital payment, shall include any charity care cost, and any portion of Medicaid-covered patient care costs unreimbursed by Medicaid payments, that the commissioner determines would meet the criteria under 42 U.S.C. section 1396r-4(g) governing hospital-specific limits on disproportionate share hospital payments under Title XIX of the Social Security Act and the provisions of all federal regulations promulgated thereunder.

VIII. Payment of the federal share of any amount payable under this section to the hospitals is contingent upon New Hampshire receiving those federal funds and any necessary CMS approvals that the department is required to secure pursuant to paragraph IV. In no event shall the state be liable for any payments in excess of such available federal appropriated funds. In the event of a reduction or termination of appropriated federal funds by any federal legislative or executive action that reduces, eliminates, or otherwise modifies

the federal appropriation or availability of funding for the federal share, in whole or in part, the commissioner and the hospitals shall collaborate on adjustments, and subject to the commissioner's determination, to the payment method or methods that are used to make the hospitals payments subject to this section. In determining which Medicaid method or methods to utilize and at what percentage for each method, the commissioner shall seek to prevent to the greatest extent possible year over year hospital reimbursement reductions in the aggregate, while at the same time achieving the highest available federal match. The state shall not be required to transfer funds from any other account or source in the event federal funds are reduced or unavailable.

IX. The remaining funds available under this section shall be used to make provider payments and to support Medicaid services and Medicaid programs administered by the department in amounts directed by the budget in each year of the biennium, and from this an amount of at least 7 percent of the money collected pursuant to RSA 84-A in the prior state fiscal year shall be used to support Medicaid services and Medicaid programs administered by the department of health and human services with first priority to funding Medicaid service provider payments to community mental health centers, federally qualified health centers, substance use disorder providers, and other Medicaid service providers as determined by the commissioner of the department of health and human services.

X. One percent of the funds made available for hospital Medicaid payments shall be placed in a separate class line for purposes of the department administering this section.

XI. No hospital shall be entitled to receive any reimbursement under this section unless it meets the definition of a hospital, as defined in RSA 167:63, IV.

XII. For the purpose of making disproportionate share hospital payments only, there is hereby established in the state treasury the disproportionate share hospital fund, which shall be kept separate and distinct from all other funds. All disproportionate share hospital revenue received by the department of health and human services shall be credited to the fund. The moneys in the fund shall be nonlapsing and continually appropriated to the department of health and human services for the purpose of redistributing disproportionate share hospital funds between and among hospitals for compliance with the federally required disproportionate share hospital examinations.

XIII. Prior to implementing any change in the Medicaid payment methodology under paragraph III, VI, or VIII, the commissioner shall submit a document detailing such changes to the fiscal committee of the general court. The document shall be for informational purposes only and fiscal committee approval shall not be required for the department to proceed with implementation.

4 Dedicated Funds; Reference Changed. Amend RSA 6:12, I(b)(338) to read as follows:

(338) Moneys deposited in the ~~[uncompensated care and]~~ Medicaid **payment fund and the disproportionate share hospital fund** established in RSA 167:64.

5 Medicaid Enhancement Tax; Definitions; Reference Change. Amend RSA 84-A:1, VI to read as follows:

VI. "~~[Uncompensated care and]~~ Medicaid **payment fund**" ~~[means the fund]~~ and "**disproportionate share hospital fund**" **mean the funds** established in RSA 167:64 to reimburse hospitals for costs associated with uncompensated care and shortfalls in publicly funded programs.

6 Medicaid Enhancement Tax; Method of Payment and Deposit of Tax. Amend RSA 84-A:5, I to read as follows:

I. The payments required by RSA 84-A:3 shall be made by electronic transfer of moneys to the state treasurer and deposited to the ~~[uncompensated care and Medicaid fund]~~ **Medicaid payment fund and disproportionate share hospital fund** established by RSA 167:64.

7 Uncompensated Care and Medicaid Fund; Effective June 30, 2028. RSA 167:64 is repealed and reenacted to read as follows:
167:64 Uncompensated Care and Medicaid Fund.

I. There is hereby established in the state treasury an uncompensated care and Medicaid fund which shall consist of the moneys collected pursuant to RSA 84-A. Investment earnings of the fund shall be credited to the fund. Moneys paid into the fund shall be

exempt from any state budget reductions, and the commissioner is authorized to expend these funds, together with matching federal funds, as follows:

(a) The commissioner shall provide reimbursement for uncompensated care costs from the uncompensated care and Medicaid fund through either Medicaid rate adjustments, Medicaid supplemental payments, MCO directed payments to hospitals, disproportionate share hospital payment adjustments, or any other allowable Medicaid payment, including a combination thereof, provided however that no hospital shall receive any such reimbursement for uncompensated care costs unless it is a qualified hospital under subparagraph (b).

Funds available under this section shall also be used to make provider payments and to support Medicaid services and Medicaid programs administered by the department in amounts directed by the budget in each year of the biennium.

(b) Disproportionate share hospital payments shall only be made to a hospital that is:

(1) A "deemed disproportionate share hospital" as defined by criteria set forth under 42 U.S.C. section 1396r-4 and is not otherwise receiving a disproportionate share hospital payment; or

(2) Meets the minimum criteria for disproportionate share eligibility under relevant federal statutory changes at 42 U.S.C. 1396r-4(d).

(c) For purposes of this paragraph, a hospital's uncompensated care costs, for purposes of calculating a disproportionate share hospital payment, shall include any charity care cost, and any portion of Medicaid-covered patient care costs unreimbursed by Medicaid payments, that the commissioner determines would meet the criteria under 42 U.S.C. section 1396r-4(g) governing hospital-specific limits on disproportionate share hospital payments under Title XIX of the Social Security Act and the provisions of all federal regulations promulgated thereunder.

II. For the purpose of making disproportionate share hospital payments only, there is hereby established in the state treasury the disproportionate share hospital fund, which shall be kept separate and distinct from all other funds. All disproportionate share hospital revenue received by the department of health and human services shall be credited to the fund. The moneys in the fund shall be nonlapsing and continually appropriated to the department of health and human services for the purpose of redistributing disproportionate share hospital funds between and among hospitals for compliance with the federally required disproportionate share hospital examinations.

III. One percent of the funds made available for hospital Medicaid payments shall be placed in a separate class line for purposes of the department administering this section.

IV. Moneys in the uncompensated care and Medicaid fund shall be continually appropriated to the department for the purposes of this section.

8 Dedicated Funds; Reference Changed; Effective June 30, 2028. Amend RSA 6:12, I(b)(338) to read as follows:

(338) Moneys deposited in the ~~[Medicaid payment fund]~~ **uncompensated care and Medicaid fund** and the disproportionate share hospital fund established in RSA 167:64.

9 Medicaid Enhancement Tax; Definitions; Reference Change; Effective June 30, 2028. Amend RSA 84-A:1, VI to read as follows:

VI. ~~["Medicaid payment fund"]~~ **"Uncompensated care and Medicaid fund"** and "disproportionate share hospital fund" mean the funds established in RSA 167:64 to reimburse hospitals for costs associated with uncompensated care and shortfalls in publicly funded programs.

10 Medicaid Enhancement Tax; Method of Payment and Deposit of Tax; Effective June 30, 2028. Amend RSA 84-A:5, I to read as follows:

I. The payments required by RSA 84-A:3 shall be made by electronic transfer of moneys to the state treasurer and deposited to the ~~[Medicaid payment fund]~~ **uncompensated care and Medicaid fund** and disproportionate share hospital fund established by RSA 167:64.

11 Effective Date.

- I. Sections 2-6 of this act shall take effect July 1, 2024.
- II. Sections 7-10 of this act shall take effect June 30, 2028.
- III. The remainder of this act shall take effect upon its passage.

LBA
24-2282
Amended 4/30/24

HB 1593-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2024-1161h)

AN ACT making an appropriation to the department of health and human services to support recreational activities for individuals with developmental disabilities.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
Revenue Fund(s)	None			
Expenditures	\$500,000		\$0	\$0
Funding Source(s)	General Fund			
Appropriations	\$500,000		\$0	\$0
Funding Source(s)	General Fund			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ Yes
- Does this bill authorize new positions to implement this bill? ☒ No

METHODOLOGY:

This bill makes an appropriation to the Department of Health and Human Services for the purpose of funding recreational activities for adults with developmental disabilities. Previously funded as part of the state's Medicaid program, the federal Centers for Medicare and Medicaid Services (CMS) has clarified that recreational activities are not eligible for federal reimbursement. This bill contains a \$500,000 general fund appropriation in FY24 for the purpose of providing such services, which shall not lapse until July 1, 2025. The bill requires the Department to contract with one or more organizations, such as an area agency, to administer the funds.

AGENCIES CONTACTED:

Department of Health and Human Services