



State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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JEFFREY A. MEYERS
COMMISSIONER

September 12, 2017

Via Email (.pdf) and First Class Mail

Representative Neal M. Kurk, Chairman
Joint Legislative Fiscal Committee
Legislative Office Building
33 North State Street, Room 210
Concord, N.H. 03301

Re: DHHS Plan to Develop Alternative Placement Capacity for DCYF Involved Youth

Dear Representative Kurk:

Thank you for your recent email outlining your concerns with the Department's August 31, 2017 report on the development of alternative placement capacity for DCYF involved youth. As you know, I responded to that email on Sunday, September 10th to address preliminarily the issues you raised. This letter is in further response to your concerns.

1. *"Your language suggests that the appropriation is to be used solely for the facilities required in section 159, while the bill directs that the funds be used for the requirements of section 165, which include broad improvements to the service system, not merely the section 159 facilities, and references both "residential and other treatment settings." and,*

Your language states that the additional bed capacity is to come from the section 159 facilities, while section 165's required capacity increase does not refer to those facilities. Moreover, additional capacity is to be in place by January 1, 2018, while the second facility does not need to be certified fully until July of 2018, which should make it clear that the two requirements are separate and distinct. The legislation anticipated that, with appropriate rate and programmatic improvements as required by section 165, the additional capacity would be attained at least in part from existing facilities."

Response:

The appropriation language in Section 175 (see enclosed) clearly states that the \$8.7 million dollar appropriation is to be used to fund rate increases and additional capacity for out of home placements pursuant to the duties of the commissioner *"in section 165 of the act"*. It further provides that these funds *"may not be used for any other purpose . . ."*

Section 165 (see enclosed), in turn, requires that the department develop alternative placement capacity for "non-serious violent offenders" who prior to the act *would have been placed at the Sununu Youth Services Center*. A broad read of "placement" in this section would limit the use of these funds to the development of alternative placement capacity for youth who prior to the act would have been committed to or detained at the SYSC.

Section 175 is entitled: Funding Alternative Placement Capacity for Youth. This section states that the department is required to spend no less than \$8.7 million on housing and other services for "additional alternative capacity for out of home placements pursuant to the duties of the Commissioner in Section 165 of this act."

While beyond the language on Section 175, neither Section 165 nor Section 159 contain specific guidance concerning the issue of whether the "alternative placement capacity" may or may not come from existing facilities, it is reasonable to conclude based on the language of Section 175 that the intent is to *increase the state's capacity* for placement in Medicaid-eligible settings by no less than 35 beds¹. While I would agree that, as a matter of law, there is nothing in the statute that explicitly prohibits an existing provider from converting existing capacity to meet the needs of this population, doing so could result in the loss of existing (lower rate) beds and in a net *decrease* in the state's placement capacity contrary to the intent of the legislation.

2. *Your language also refers to the appropriation as "up to \$8.7 million," while section 175 directs that "no less than" that amount be used for the purposes outlined in section 165.*

Response:

You are correct. Section 175 provides that "no less than" \$8.7 million of the funds appropriated shall be used for the purposes outlined Section 165. The "up to" language was inadvertently substituted and we will amend the plan to say "no less than".

3. *I am also concerned that your letter may not meet the requirements of section 165:*

"[T]he commissioner shall evaluate the adequacy of the service system and ensure that sufficient alternative placement capacity is in place . . . On or before September 1, 2017, a plan for development of such capacity shall be provided to the fiscal committee . . ."

Your letter indicates that the evaluation has not been conducted and that the time frame for such evaluation "will be determined."

Response:

In the approximately 65 days since this legislation was enacted, the Department (despite the absence of an appropriation of funds for this particular purpose²) has worked diligently to identify qualified individuals and entities who would be willing and able to conduct a high quality, comprehensive assessment of the adequacy of the existing service array. Due to the blended system, this assessment will include not only juvenile justice services but also child protection services. These youth are often in the same in-home services or community placements based on their treatment needs and not on the petition type. We have identified multiple national organizations familiar with these types of endeavors, developed a set of questions to use to assess their qualifications, and begun to conduct teamed interviews. As stated in the department's plan, the department anticipates that it will secure an individual or group to conduct this assessment on or before September 30, 2017.

¹ Section 165 provides in relevant part, "The plan shall provide for an *increase* in the state's capacity for placement in Medicaid-eligible settings of no fewer than 35 minors." Emphasis added.

² NOTE ON APPROPRIATION FOR DCYF SYSTEM EVALUATION: While the requirement to undertake the evaluation of the DCYF system is contained in Section 165 of the law, Section 175 restricts the use of the appropriation to "rates and additional capacity." That same section specifically prohibits the expenditure of any portion of the appropriated funds for any other purpose. The department is unaware of any other appropriation for the adequacy assessment.

The concern expressed regarding the vagueness of the time frame for the evaluation as, "... will be determined" is completely misplaced. We are moving to get a contract to Governor & Council in October so that the evaluation may go forward this Fall.

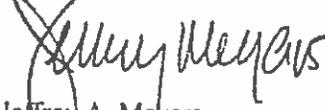
4. *Finally, your letter may have misinterpreted the scope of the additional capacity required by section 165 by limiting it to only committed youth. The section refers to capacity for children "placed" at the Sununu Center, which includes both committed and detained youth*

Response:

I agree that the scope of Section 165 is ambiguous. It does not clearly indicate whether the alternative placement capacity is to be developed for committed youth only or for committed and detained youth. Existing law, RSA 169-B:19, VI, however, addresses minors who are *committed* to SYSC and speaks to notifying the court of any such "placement". The term "placement", however, is not defined in RSA 169-B:2. Reading this section in conjunction with Section 159 which requires that the department certify a Medicaid eligible facility for the transfer of *committed* youth by January 1, 2018 and that it certify a second such facility for *committed* youth by July 1, 2018 supports an interpretation that this alternative placement capacity is to be developed for the *committed* population. Regardless, the department does not believe that 35 alternative placement beds will be sufficient to accommodate both committed and detained youth who would formerly have been placed at the SYSC. If, in fact, the law requires that the alternative placement capacity include both committed and detained youth, then the funds available and the number of alternative beds would have to increase.

In closing, I believe that our plan is entirely consistent with the law as written. I look forward to the meeting tomorrow. I would also strongly urge the Committee to invite DCYF residential providers to appear at a future meeting. These providers are an integral part of the system and the legislature should be aware of their views and perspectives as the law is implemented.

Respectfully submitted,



Jeffrey A. Meyers
Commissioner

Enclosure

cc: Governor Christopher T. Sununu
Senate President Charles Morse
Speaker Shawn Jasper
Rep. Frank Kotowski
Senator Jeb Bradley
Councilor Christopher Pappas
Senator Kevin Cavanaugh
Mayor Theodore Gatsas
Chief Nick Willard
Members, Fiscal Committee of the General Court
Christine Tappan, Senior Division Director, DHHS
Brady Serafin, Director, SYSC

**HB517 relative to state fees, funds, revenues, and expenditures
Chapter Law 156, (2017)**

156:175 Funding of Alternative Placement Capacity for Youth.

Notwithstanding any other provision of law, no less than \$8,714,632 of the funds appropriated in account 05-95-42-421010- 2958, class 535, shall be expended during the biennium ending June 30, 2019, to fund rate increases and additional capacity for out-of-home placements pursuant to the duties of the commissioner of health and human services in section 165 of this act. These funds may not be transferred or utilized for any other purpose, including to satisfy a lapse requirement or appropriation reduction.

156:165 Alternative Placement Capacity for Youth; Reporting Requirement.

I. In furtherance of the duty of the department of health and human services under RSA 170-G:4 to provide services for all children and youth referred to it by the district courts pursuant to RSA 169-B, the commissioner shall evaluate the adequacy of the service system and ensure that sufficient alternative placement capacity is in place for those children who are not serious violent offenders who prior to this act would have been placed at the Sununu youth services center. On or before September 1, 2017, a plan for development of such capacity for minors who are not serious violent offenders shall be provided to the fiscal committee of the general court, and the plan shall be updated on a monthly basis until it is fully implemented. The plan shall provide for an increase in the state's capacity for placement in Medicaid-eligible settings of no fewer than 35 minors. The increase in capacity for minors who are not serious violent offenders shall be implemented no later than January 1, 2018, and include a rate structure which supports the staffing ratios and other resources necessary for the safe and effective treatment of such children in residential and other treatment settings. The rate structure shall be submitted to the fiscal committee of the general court for approval prior to December 1, 2017. If necessary, the plan shall provide for a process for re-establishing cost-based rate-setting rules and procedures which may have expired.

156:159 Dispositional Hearing. Amend RSA 169-B:19, VI to read as follows:

VI. A minor committed to the youth development center for the remainder of minority may be placed at any facility certified by the commissioner of the department of health and human services for the commitment of minors. The commissioner of the department of health and human services shall be responsible for notifying the court, within 5 business days, of any such placement and of any subsequent changes in placement made within 60 days of the original placement. The commissioner shall maintain certification of at least one Medicaid-eligible residential treatment facility for the transfer pursuant to this paragraph of offenders other than serious violent offenders beginning January 1, 2018, and no fewer than 2 such facilities no later than July 1, 2018. For purposes of this section, a "serious violent offender" is a minor subject to a commitment order for a serious violent offense as defined in RSA 169-B:31-c The process for identification and certification of residential treatment facilities under this subparagraph may include consultation with the operators of existing facilities in the state about their physical and programmatic capacity and the identification of any necessary enhancements in programming or rate structure to develop the resources required by this subparagraph.