

Meyers, Jeffrey

From: Meyers, Jeffrey
Sent: Sunday, September 10, 2017 10:21 AM
To: 'Weare Representative'
Cc: FiscalCommittee@leg.state.nh.us; Hensley, Rhonda; Millerick, Jayne; Serafin, Brady; Tappan, Christine; Shawn.Jasper@leg.state.nh.us; frkotowski@comcast.net; Pappas, Christopher; Kevin.Cavanaugh@leg.state.nh.us; tgatsas@manchesternh.gov; spiatt@manchesternh.gov; ewillard@manchesternh.gov; Kristy.Merrill@leg.state.nh.us; Michael.Kane@leg.state.nh.us; christopher.shea@leg.state.nh.us; Pamela.Ellis@leg.state.nh.us; Jeb.Bradley@leg.state.nh.us; Cecelia.Trask@leg.state.nh.us; Janet.Clayman@leg.state.nh.us; Kyle.Baker@leg.state.nh.us; michael.hoffman@leg.state.nh.us; 'MikeS@drcnh.org'; Bettencourt, David; Formella, John; 'MacDonald, Gordon'; KENNEDY, BYRY
Subject: RE: Your August 31st Letter -- DHHS Response to Rep. Kurk

Dear Representative Kurk:

Thank you for your email. I believe that you may misunderstand portions of my letter of August 31st, and I believe that the Department can easily clarify and address the issues you have raised. At the outset, I can reaffirm that the Department has every intention of complying with the law. We are working diligently to meet every deadline and fulfill every requirement. And in that regard, we are actively meeting and working with the DCYF residential provider network to ensure that they understand these requirements so that they will respond positively to the forthcoming procurements.

While we will be responding to your email by letter on Tuesday, I would offer the following responses to your specific concerns at this time.

1. As to the requirement upon the Department to expend at least \$8.7 million that is contained in Section 175 of HB 517 (2017 Laws Chapter 156:175), the Department understands that amount is the minimum threshold that must be spent. The reference in my letter to "up to \$8.7 million" is a typo that I failed to correct when I finalized the letter. There is no misunderstanding as to the expenditure requirement.
2. As to the issue of how that appropriation is to be spent, the law is very clear. The plain language of Section 175 states that "[n]otwithstanding 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. Contrary to the suggestion in your email, the Department is very clear that it must spend these funds on the housing and other services required in Section 165 of the law – those housing and other services being the "alternative capacity" for placement of no fewer than 35 youth in Medicaid-eligible settings. At the same time, Section 175 would prohibit the expenditure of the \$8.7 for other out of home placements.
3. Neither Sections 165 or 159 contain specific guidance concerning the issue of whether the "alternative placement capacity" may or may not come from existing facilities. The Department had understood that the legislature intended that the "alternative placement capacity" not displace existing bed capacity, but that these new 35 beds be in addition to existing provider capacity. My letter references both Sections 159 and 165 in the context of the overall plan. While I agree that, as a matter of law, there is nothing in the statute that prohibits

an existing provider from converting existing capacity to fulfill the new 35 bed requirement, our conversations to date with providers suggests that this interpretation of the law could result in a loss of existing (lower rate) beds.

4. As to the scope of the alternative placement capacity, the statute, again, lacks some clarity. I agree that Section 165 refers to youth who are "placed" at SYSC. Existing law, RSA 169-B:19,VI, addresses minors who are committed to SYSC and speaks to notifying the court of any such "placement." The term "placement" is not defined in RSA 169-B:2. Regardless, we do not believe that 35 alternative placement beds are sufficient to accommodate those youth who are diverted from both commitment and detention at SYSC. If, in fact, the law requires that the alternative placement capacity includes both committed and detained youth, then the number of alternative beds would have to increase.

Finally, your concern that the Department is not complying with the law is completely misplaced and contrary to all the actions and work we have been undertaking. As to the evaluation of the adequacy of the DCYF residential treatment service system, despite the absence of any appropriation of funds for this specific purpose (See note below), the Department is proceeding to select a qualified contractor by the end of September. Our staff have proceeded with a sense of urgency and commitment, notwithstanding the significant reduction of DHHS staff resources in the current budget.

Please know that I will arrive at Special Fiscal Committee meeting as soon as I am able following the Governor and Council Meeting, which is being held in Manchester. Christine Tappan, Brady Serafin and others from the Department will be there at 1:00 p.m.

Respectfully,

Jeff Meyers

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. I am unaware of any other appropriation for the evaluation.

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From: Weare Representative [mailto:rep03281@aol.com]

Sent: Saturday, September 9, 2017 1:23 PM

To: Meyers, Jeffrey

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