

**State of New Hampshire
Department of Health and Human Services
Areas of Concern in the DHHS Budget
Summary**

FY 2012

- | | |
|--|-----------------|
| 1) Hospital requests for Medicaid Enhancement Tax (MET) refunds: | \$ (65,000,000) |
| 2) MET Revenue Shortfall: | \$ (41,104,031) |
| 3) Outpatient Hospital Rate Restoration / MET (estimate): | \$ (13,000,000) |
| 4) \$35 million disallowance for 2004 DSH payments (FY 2012 amount): | \$ (9,005,068) |
| 5) SB 198 budget fix TANF / APTD (Estimated cost for 7 months): | \$ (4,848,667) |
| 6) Supreme Court Judgment - Chase Home vs. NH DCYF (General Fund Share): | \$ (2,300,000) |

1) Hospital requests for MET refunds:

FY 2012

Certain hospitals recomputed their MET liability for prior years and are requesting either a refund or a credit against their current year tax liability. The refund requests totaled approximately \$78-\$79 million, however some of the amounts have been determined not eligible for refund due to the statute of limitations. Most of this decrease is based on an interpretation of what services are included in Net Patient Services Revenue.

(See page 3)

\$ (65,000,000)

2) Medicaid Enhancement Tax Shortfall

FY 2012

Budgeted Tax Collections - 5-1/2% of Net Patient Service Revenue - Committee of Conference estimates assumed 6% growth for FY 2012 and 8% growth for FY 2013. \$ 197,514,678

Use of tax revenue is prioritized in Chapter 224:36, L' 2011 (HB2) as follows:

- 1) To support Medical Provider Payments as budgeted in each year of the biennium: \$ (75,896,942)
- 2) To ensure that critical access hospitals receive reimbursement for reported uncompensated care costs: \$ (24,617,736)
- 3) Medicaid Enhancement Tax unrestricted revenue to the state general fund: \$ (97,000,000)
- 4) If authorized, to reimburse non-critical access hospitals as funds made available permit: \$ -

MET tax collected as of January 18, 2011 \$ 156,410,647

Budgeted Tax Collections \$ 197,514,678

Shortfall as of January 18, 2011 \$ **(41,104,031)**

(See page 3)

3) Outpatient Hospital Rates / MET

FY 2012

Based on the hospitals' interpretation of federal regulations, some hospitals excluded certain professional services from their Net Patient Services Revenue (NPSR). The DHHS is working with the Centers for Medicare and Medicaid Services (CMS) to restore reimbursements to hospitals for these services which enables them to be included in the NPSR. As of January 18, 2012, the Department continues to work with CMS on the necessary details. The Department sent a letter to hospitals on January 6, 2012 notifying them they will be receiving the payments to restore reimbursements and asking the hospitals to recalculate their NPSR.

In order to secure most of the MET unrestricted revenue shortfall for FY 2012, the state will restore reimbursement rates for outpatient hospital services in the amount of \$26 million for FY 2012. Of this amount, approximately \$20 million will restore outpatient rates for the period April 2010 through December 2011, and an additional \$6 million will fund the outpatient hospital rates through June 30, 2012. One-half of these amounts will be federal funds and the remaining \$13 million will be general funds. The Department estimates as much as \$40 million of the revenue shortfall and most of the hospital refund requests are attributable to this issue. (See pages 1 and 2) The impact on the FY 2013 budget is uncertain since the managed care savings for this service category is not yet known.

\$ (13,000,000)

4) \$35 million disallowance for 2004 DSH payments

On July 9, 2007, the New Hampshire Department of Health and Human Services (DHHS) received a final report from the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services regarding an audit of the DHHS disproportionate share hospital (DSH) payments during federal fiscal year 2004. These payments are administered by Centers for Medicare and Medicaid Services (CMS). The report found that \$44 million (later reduced to \$35.3 million as a result of the State's initial response) of federal share for federal fiscal year 2004 was unallowable on grounds that the State's cost to charge ratio was inflated and recommended that this amount be refunded to CMS. DHHS responded to CMS regarding the report on August 8, 2007.

In October 2009, the DHHS received a Notice of Disallowance from CMS indicating that it concurred with the OIG report findings. The Notice indicated that CMS was disallowing \$35 million in federal funds for federal fiscal year 2004. The Notice also confirmed that the State may appeal the disallowance to the Federal Departmental Appeals Board (DAB) and elect to retain the funds pending appeal. DHHS filed a formal Notice of Appeal on December 18, 2009 and elected to retain the funds pending outcome of the appeal with the DAB.

On October 14, 2011 the federal Department of Health and Human Services, Departmental Appeals Board issued its ruling upholding the decision of the Centers for Medicare & Medicaid Services disallowing \$35.3 million of federal Medicaid funding claimed for DSH payments made to hospitals for fiscal year 2004.

The state and CMS have agreed on the repayment terms based on an agreement dated December 7, 2011. The state will reimburse CMS via 8 quarterly installments beginning in January 2012. The amounts by state fiscal year are: FY2012 = \$9,005,068, FY2013 = \$17,903,911, FY2014 = \$8,885,621.

5) SB 198 Budget fix TANF / APTD

FY 2012

The Governor's recommended budget included certain reductions to Temporary Assistance to Needy Families (TANF), Aid the Permanently and Totally Disabled (APTD) and Old Age Assistance (OAA) as follows:

General Funds

Counting SSI income in TANF cases:

\$ (4,608,333)

Previously SSI income was not considered in determining TANF eligibility.

Revert to 209(b) methodology for OAA & APTD:

\$ (240,333)

Less earned income is disregarded. Some will lose the cash benefit, some receive smaller amount, and some will not be impacted.

Total

\$ (4,848,667)

The reductions were made to the DHHS budget in HB1 but the necessary law changes were not included in the trailer bill (HB2). SB198 was introduced and passed by the Senate on September 7, 2011 to make the correction. The bill was amended by the House, the Senate concurred, and the Governor signed the bill into law on January 13, 2012. The amounts shown above are the costs for the first seven months of FY 2012 assuming the changes will be implemented on February 1, 2012.

6) Supreme Court Judgment Chase Home vs. NH DCYF

Residential service providers who provide services to children on behalf of the state filed suit against the state for underpayment of rates paid in fiscal years 2004, 2005 and 2006. The state's administrative rules provided for rate increases that were not implemented due to budget constraints. The case went through the administrative appeals process and the superior court. On November 22, 2011 the Supreme Court affirmed the superior court's decision requiring the Department to pay \$3,553,479 to the providers. The General fund share is approximately \$2.3 million. The Department anticipates the Attorney General will present the claim to the general court in accordance with RSA 491:8 (below). The Department is negotiating a settlement for fiscal years 2007 through 2010. The amount of such a settlement is not known at this time.

491:8 Actions Against State. – The superior court shall have jurisdiction to enter judgment against the state of New Hampshire founded upon any express or implied contract with the state. Any action brought under this section shall be instituted by bill of complaint and shall be tried by the court without a jury. The jurisdiction conferred upon the superior court by this section includes any set-off, claim or demand whatever on the part of the state against any plaintiff commencing an action under this section. The attorney general, upon the presentation of a claim founded upon a judgment against the state, shall submit the claim to the department or agency which entered into the contract, and said department or agency shall manifest said claim for payment from the appropriation under which the contract was entered into; provided, that if there is not sufficient balance in said appropriation, the attorney general shall present said claim to the general court for the requisite appropriation.

