

30A  
MAC



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF MEDICAID SERVICES**

Lori A. Shibiante  
Commissioner

Henry D. Lipman  
Director

129 PLEASANT STREET, CONCORD, NH 03301  
603-271-9422 1-800-852-3345 Ext. 9422  
Fax: 603-271-8431 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

June 7, 2021

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Medicaid Services, to enter into a **Retroactive** Intergovernmental Agreement for the transfer of public funds with Hillsborough County (FIPS Code 011) to enable the State of New Hampshire to compliantly draw federal financial participation consistent with federal requirements and RSA 167:18-h, to receive public funds in the amount of \$3,218,214 for ProShare 1 Nursing Facility payments, effective retroactive upon Governor and Council approval to July 1, 2020, through June 1, 2022, with the expectation the parties will renew annually. 100% Other Funds (Revenue)

Funds received to support this request will be deposited into the following account for State Fiscal Year 2021.

**05-95-48-482010-21610000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: ELDERLY & ADULT SVCS, WAIVER AND NURSING FACILITIES, PROSHARE PAYMENTS**

State Fiscal Year	Title	Revenue Code	Revenue Amount
2021	Private Local Funds	403399	\$3,218,214
		<b>Total:</b>	<b>\$3,218,214</b>

**EXPLANATION**

This request is **Retroactive** because the Centers for Medicare and Medicaid Services (CMS) exercised its authority, in 2020, to require ProShare1 counties and the State to document, through a CMS approved agreement federal regulatory and statutory requirements for an Intergovernmental Transfer (IGT). The IGT was the subject of negotiation between the State and CMS and then among CMS, the State and Hillsborough County. Additionally, the Department and Hillsborough County experienced delays in business activities due to our responses to the COVID-19 Pandemic.

The purpose of this agreement is to establish the procedures under which Hillsborough County will transfer funds for use as the non-federal share of ProShare 1 Nursing Facility payments. The procedures set forth in the attached agreement comply with all applicable federal and State laws, rules and regulations.

Funds transferred by Hillsborough County and claimed and received by the Department as the non-federal share of Medicaid expenditures will only be distributed to the eligible nursing facility.

Consistent with the State Plan, the methodology included in the Exhibit A of the attached agreement, and all applicable federal and state laws, rules, and regulations, the Department will use the IGT funds transferred to the Department to support the State's full claim for Federal Financial Participation (FFP) for nursing facility ProShare1 payments.

The parties expect to renew the agreement annually, consistent with Section 4, General provisions.

Area served: Hillsborough County.

Should the Governor and Executive Council not approve this request, the State would be out of compliance with RSA 167:18-h and 45 CFR Part 95, Subpart A, as interpreted by the United States Department of Health and Human Services Department et al Appeals Board and with 42 CFR Part 433. If the Department fails to comply with the requirements set forth in the attached agreement, CMS will disallow the federal matching funds, which could negatively impact nursing facility access for beneficiaries in the State's Medicaid program.

Respectfully Submitted,



Lori A. Shibinette  
Commissioner

**INTERGOVERNMENTAL AGREEMENT REGARDING  
TRANSFER OF PUBLIC FUNDS  
ProShare1 Payments**

This Agreement is entered into between the New Hampshire Department of Health and Human Services (the "Department") and the County of Hillsborough (the "County") with respect to the matters set forth below.

**RECITALS**

- A. This Agreement is made pursuant to the authority of RSA166:1-a (Reimbursement of Funds by the County), RSA 167:18-a (County Reimbursement of Funds), and 167:18-h (County Nursing Homes; Proportionate Share Payments).
- B. The County of Hillsborough is a local governmental authority, located in the State of New Hampshire, with all the powers and duties outlined in RSA Chapter 23.
- C. County governments are responsible for a portion of nursing home expenditures.

THEREFORE, the parties agree as follows:

**1. PURPOSE**

- 1.1. The purpose of this Agreement is to set forth the procedures under which the County will transfer funds for use as the non-federal share of ProShare1 Nursing Facility Payments under this Agreement. It is the intent of the parties that the procedures herein fully comply with all applicable federal and State laws, rules and regulations.

**2. TRANSFER AND ACCEPTANCE OF FUNDING**

- 2.1. Monies transferred by the County and claimed by the Department as the non-federal share of Medicaid expenditures under this Agreement may only be used for permissible nursing facility payments and distributed to eligible nursing facilities.
  - 2.1.1. ProShare1 payments are the difference between the Calculated Medicare Equivalent and the total computable Medicaid payments made to county nursing facilities in Hillsborough County. The State will receive an IGT for the non-federal share of the total computable.
  - 2.1.2. The Department will determine which County nursing facilities are eligible for ProShare1 Payments for services during the Service Year.

- 2.1.3. Eligibility and distribution amount determinations for ProShare1 Payments will be consistent with all applicable federal and State laws, rules, and regulations and the terms of the State Plan.
- 2.2. Consistent with the State Plan, the methodology in Exhibit A, and all applicable federal and State laws, rules, and regulations, the Department will use the IGT funds transferred by the County to the Department to support the State's full claim for Federal Financial Participation (FFP).
- 2.3. The Department shall distribute an amount equal to the sum of the Non-Federal Share transferred by the County under this Agreement and the corresponding FFP to eligible nursing facilities as ProShare1 Payments for nursing facility services provided during the Service Year.
  - 2.3.1. Both the Non-Federal Share and the FFP under this Agreement shall only be used for ProShare1 payments to eligible nursing facilities.
- 2.4. The Department is responsible for satisfying all CMS requirements regarding reporting, adjusting claims for or reimbursing FFP, as necessitated by all applicable federal and State laws, rules, and regulations.
  - 2.4.1. This provision does not relieve the County or an eligible nursing facility from their obligations to comply with all applicable statutory and regulatory requirements.
- 2.5. Eligible nursing facilities will receive and retain one hundred percent (100%) of all Medicaid payments they receive.
- 2.6. No later than June 11, 2021, the County will transfer the amount corresponding to the approved budget and the calculated population within the county, which amount shall be used for ProShare1 payments to eligible nursing facilities as outlined herein.
  - 2.6.1. The County certifies that the funds transferred qualify for federal financial participation pursuant to 42 CFR § 433.51, and are not derived from impermissible sources such as recycled Medicaid payments, federal money excluded from use as State match, impermissible taxes, and non-bona fide provider-related donations.
- 2.7. After receiving the funds transferred by the County under this Agreement, the Department will make ProShare1 Payments to all eligible nursing facilities, without any deductions or set offs.
  - 2.7.1. Payments will not be made after the time limits for the Department to file claims for FFP, as set forth in 45 C.F.R. Part 95, Subpart A, as interpreted by the United States Department of Health and Human Services Departmental Appeals Board.
- 2.8. ProShare1 payments shall be made based on the methodology outlined in Exhibit A.

- 2.9. No later than May 21, 2021 the Department shall notify the County of the amount of funds to be transferred via IGT.
- 2.10. The County shall transfer funds to the Department pursuant to RSA 167:18-a, to be used solely as a portion of the nonfederal share of ProShare1 payments.
- 2.11. For SFY21, the County shall transfer \$3,218,214 to the Department via IGT.
- 2.12. As outlined in this Agreement, the funds shall be transferred to the Department by June 11, 2021.
  - 2.12.1. The Department shall not draw FFP nor disburse any funds to eligible facilities prior to receipt of non-federal share funds.

### 3. COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS FOR STATE FINANCIAL PARTICIPATION

- 3.1. The County certifies that, consistent with 42 C.F.R. Part 433, Subpart B, no portion of the funds transferred to the Department is derived from (1) direct or indirect provider-related donations (in cash or in kind), other than bona fide provider-related donations or (2) health care-related taxes, other than as permitted in Subpart B.
- 3.2. The County further certifies that, consistent with 42 C.F.R. § 433.51(c), the funds transferred to the Department under this Agreement are not federal funds or are federal funds authorized by federal law to be used to match federal funds.
- 3.3. The County agrees to provide the Department with supporting documentation of the sources of the funds transferred pursuant to this Agreement and of the basis for the County's assurance that the funds transferred comply with federal and State laws, rules, and regulations.
- 3.4. If the County fails to provide the supporting documentation required under this Agreement, such that CMS adjusts future grant awards to the Department, or defers, or disallows any expenditures claimed by the Department, then the County agrees to reimburse the Department immediately, upon demand by the Department, in the amount of the adjustment or disallowance that is attributable to sources that do not comply with this agreement.
- 3.5. If any funds transferred by the County are determined to be derived from provider-related donations or health care-related taxes, federal funds, or funds that otherwise do not meet the requirements of 42 C.F.R. Part 433, Subpart B, the County is responsible for making payment to the Department in the amount of the non-eligible funds transferred.
- 3.6. Providers will receive and retain earned payments in full, irrespective of source of funds. In the event county funds do not comply with Sections 3.4 and 3.5, above, the nursing facilities will not be subject to a recovery effort for payments lawfully earned. Providers will receive and retain their earned payments in full.

### 4. General Provisions

- 4.1. **Amendment.** No amendment or modification to this Agreement shall be binding on either party unless made in writing and executed by both parties.
  - 4.1.1. The parties shall negotiate in good faith to amend this Agreement as necessary and appropriate to implement the requirements set forth in this Agreement.
- 4.2. **Entire Agreement.** With regard to the ProShare1 payment, this document, its exhibits and appendices, including any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the Parties, and supersedes all other understandings, oral or written.
- 4.3. **No Third Party Rights.** Nothing in this Agreement is intended to confer any rights or remedies on any third party, including, without limitation, any provider(s) or groups of providers, or any right to medical services for any individual(s) or groups of individuals; accordingly, there shall be no third party beneficiary of this Agreement.
- 4.4. **Time.** Time is of the essence in this Agreement.
- 4.5. **Signatory Authority.** Each party hereby represents that the person(s) executing this Agreement on its behalf is duly authorized to do so.
- 4.6. **State Authority.** Except as expressly provided herein, nothing in this Agreement shall be construed to limit, restrict, or modify the Department's powers, authorities, and duties under federal and State laws, rules, and regulations.
- 4.7. **Approval.** This Agreement is of no force and effect until signed by both parties.
- 4.8. **Contract Term.** This Agreement shall be effective upon execution and shall expire June 1, 2022. The parties expect to renew an IGT Agreement annually hereafter.
- 4.9. **Compliance with Laws, Rules and Regulations.** The parties shall comply with all applicable federal and State laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement.
- 4.10. **Non-Discrimination.** The parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties pursuant to this Agreement.
- 4.11. **ADA.** The parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101336, 42 U.S.C. 1210112213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- 4.12. **Choice of Law.** The laws, rules, and regulations of the State of New Hampshire govern the rights of the Parties, the performance of this Agreement, and any disputes arising from the Agreement.

4.13. Notice. Any notice required by the terms of the Agreement and any questions regarding the duties and obligations of this contract shall be directed to:

4.13.1. For the Department:

Henry D. Lipman, Medicaid Director, Department of Health and Human Services,  
129 Pleasant Street, Concord, NH 03301

4.13.2. For the County:

Chad Monier, County Administrator, Hillsborough County, 329 Mast Road, Suite  
114, Goffstown, NH 03045

4.14. Records. The County agrees to retain all financial books, records, and other documents relating to the acquisition and performance of the Agreement for a period of seven (7) years after the completion of the Agreement. All records are subject to inspection and audit by the Department at reasonable times. Upon request, the County will produce a legible copy of any or all such records.

4.15. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held by a court to be invalid or unenforceable, the remaining provisions continue to be valid and enforceable to the full extent permitted by law.

#### SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date of the last signature below.

New Hampshire Department of  
Health and Human Services

County of Hillsborough

Signature: 

Signature: 

Print Name: Henry D. Lipman

Print Name: Chad Monier

Title: Medicaid Director

Title: County Administrator

Date: 06/04/2021

Date: 06-02-2021

## EXHIBIT A

### ProShare1 Methodology

ProShare1 payments are the difference between the Calculated Medicare Equivalent and the total Medicaid Nursing Facility (NF) payments made to the county nursing facilities.

The following steps are used to calculate ProShare1 distributions.

1. The Medicare equivalent RUG based rate is calculated using the Total Rate from the federal register by RUG score. This Medicare Total Rate for each RUG score is multiplied by the count of corresponding count of Medicaid residents with the same RUG score.
2. The sum total of the Medicare Total rates per Medicaid census count is then divided by the total Medicaid population count from the census to arrive at an average Medicare Per Diem rate.
3. The average Medicare Per Diem rate is calculated for both census dates in the given year and the average of these two rates is used as the Average Medicare Per Diem Rate.
4. The Department takes the sum of the total actual Medicaid paid claims for 9 months and estimated paid claims for 3 months and multiplies this by the Average Medicare Per Diem Rate to arrive at a Calculated Medicare Equivalent.
5. The total of the Medicaid Payments made to the County Nursing Facility are calculated for the State Fiscal Year.
  - a. The total of the Medicaid Payments are the sum of:
    - i. The estimated Medicaid NF Per Diem Expenditures for the State Fiscal Year;
    - ii. Any class line 504 budget appropriations paid; and
    - iii. The total of the Medicaid Quality Incentive Program payments.
6. The difference of the Calculated Medicare equivalent and the total Medicaid payments becomes the total ProShare1 expenditure to the County Nursing Facility.
7. The Department then collects the IGT provided from county funds prior to June 24.
8. The Department makes the payment to the county nursing facility (Hillsborough County Nursing Facility- SFY 21 = \$7,347,520) after receipt of the IGT, on or before June 30 (scheduled for the week of June 14, 2021), so long as the Department is in receipt of the IGT.
9. The Department then claims the federal match.