



STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF COMMUNITY BASED CARE SERVICES

BUREAU OF DEVELOPMENTAL SERVICES

Nicholas A. Toumpas
Commissioner

Nancy L. Rollins
Associate Commissioner

105 PLEASANT STREET, CONCORD, NH 03301
603-271-5034 1-800-852-3345 Ext. 5034
Fax: 603-271-5166 TDD Access: 1-800-735-2964

April 10, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

Requested Action

100% other
(agency investigation
funds)

Authorize the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Developmental Services and the Office of Client and Legal Services to amend an agreement, purchase order number 1029074 with Ellen J. Barry, vendor code 230685, by extending the Completion Date from June 30, 2013, to June 30, 2014, and by increasing the Price Limitation by \$52,500 from \$18,900 to \$71,400, effective July 1, 2013, or the date of Governor and Executive Council approval, whichever is later, through June 30, 2014. Funds are anticipated to be available to support this request in the following accounts:

05-95-93-930010-5947 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS: DEVELOPMENTAL SERV DIV OF, DIV OF DEVELOPMENTAL SVCS, PROGRAM SUPPORT

Table with 6 columns: Fiscal Year, Class/Object, Class Title, Original Amount, Increase / (Decrease), Revised Amount. Rows include SFY 2013, SFY 2014, and Totals.

Explanation

This requested action seeks to approve an amendment to an agreement with an independent contractor working part-time (one to five days a week) as a Complaint Investigator. Complaint Investigators are needed to conduct investigations into allegations of abuse, neglect, exploitations, and rights violations under State of New Hampshire's Administrative Rule He-M 202.

Senate Bill 138, which was passed during the 2007 legislative session, established a committee to review and make recommendations regarding the quality assurance and improvement elements and activities within New Hampshire's community-based developmental services system. One of the Key Findings of this committee was "The current abuse and neglect investigations system which essentially requires the area agencies to investigate themselves has created the appearance of a conflict and undermined the credibility of the area agency reports and responses." The Committee suggested that the Bureau of Developmental Services redirect all applicable funds from the ten area agency contracts to its Bureau budget to hire independent investigators to fulfill the responsibilities associated with complaints. The Committee felt that such a change will not only assign the responsibility for such a critical activity more appropriately but will also inject greater independence, confidence and integrity to the complaint process. Moreover, the modification enables the agencies to better concentrate on responding to the findings of the investigations and making changes, both at the individual and systemic level, to remedy and prevent harmful outcomes for individuals with disabilities.

The State revised its rule and transferred the responsibility of investigating complaints from the area agencies to the Bureau of Developmental Services. Beginning September 1, 2011, the Bureau of Developmental Services contracted with individuals to conduct investigations. From September 1, 2011, through June 30, 2012, 209 formal and 61 informal investigations were completed. Based upon historic complaint data, the Bureau of Developmental Services anticipates conducting approximately 450 investigations in state fiscal year 2014.

A legal notice seeking written proposals seeking independent contractors to work part-time as Complaint Investigators, one to five days a week, was published on the Department of Health and Human Services' website and the New Hampshire Bar Association website and newspaper, beginning on April 3, 2012, and ending on April 20, 2012. As a result, the Department of Health and Human Services received 36 formal proposals. Seventeen of these individuals were interviewed and upon review of their qualifications and pertinent experience it was decided to contract with eleven of these individuals. Six of the individuals are current contracted investigators.

The salary rate is \$35 an hour for state fiscal year 2014. The rate is based on historical schedules pursuant to the Division of Personnel guidelines and prevailing rates for similar well-qualified professionals in the marketplace. This rate is lower than rates of equivalent positions in the private sector and does not exceed public sector salaries and fringe benefits. The complaint investigators contracted rate of compensation ranges from \$35 to \$45 per hour based upon level of responsibilities and experience in the field. The number of hours contracted are based upon anticipated program needs and the availability of the contractor.

As referenced in Exhibit C-1, paragraph 5, the original agreement allowed for the option to exercise a single 1-year extension of the contract upon acceptable performance of the Scope of Services, availability of funding, the agreement of the parties and subsequent approval by the Governor and Executive Council.

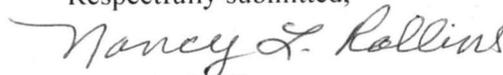
Should the Governor and Executive Council determine not to approve this request the Department of Health and Human Services, Bureau of Developmental Services would be in defiance of the State of New Hampshire's Administrative Rule He-M 202 that stipulates the protection of the rights of persons applying for, eligible for, or receiving services from area agencies or developmental services or acquired brain disorder programs funded through the Bureau of Developmental Services.

Area served: statewide.

Source of funds: 100.00% other funds. The area agencies will be invoiced for any complaint investigator expenses the State incurs. That revenue is what will fund this contract and is considered other funds.

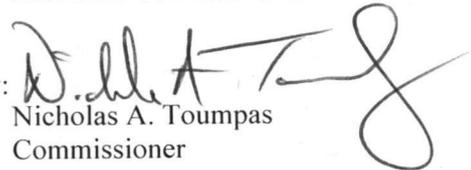
Your approval of this request would be greatly appreciated.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner

SRD  
Zer



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

BUREAU OF DEVELOPMENTAL SERVICES

Nicholas A. Toumpas  
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603-271-5034 1-800-852-3345 Ext. 5034  
Fax: 603-271-5166 TDD Access: 1-800-735-2964

January 29, 2013  
Approved by Gtc  
Date 3-20-2013  
Item # 29

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Requested Action

Contract # 1029074

Authorize the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Developmental Services and the Office of Client and Legal Services to enter into an Agreement with Ellen J. Barry, vendor code 230685, to provide Complaint Investigator services conducting investigations of abuse, neglect, exploitations, and rights violations, in an amount not to exceed \$18,900, effective February 20, 2013, or the date of Governor and Executive Council approval, whichever is later, through June 30, 2013. Funds are available in the following account:

05-95-93-930010-5947 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS,  
HHS:DEVELOPMENTAL SERV- DIV OF, DIV OF DEVELOPMENTAL SVCS, Program Support

<u>Fiscal Year</u>	<u>Class/Object</u>	<u>Class Title</u>	<u>Amount</u>
SFY 2013	102-500731	Contracts for program services	\$18,900

Explanation

This requested action seeks to approve an agreement with an independent contractor to work part-time (one to five days a week) as a Complaint Investigator. Complaint Investigators are needed to conduct investigations into allegations of abuse, neglect, exploitations, and rights violations under State of New Hampshire's Administrative Rule He-M 202.

Senate Bill 138, which was passed during the 2007 legislative session, established a committee to review and make recommendations regarding the quality assurance and improvement elements and activities within New Hampshire's community-based developmental services system. One of the Key Findings of this committee was "The current abuse and neglect investigations system which essentially requires the area agencies to investigate themselves has created the appearance of a conflict and undermined the credibility of the area agency reports and responses." The Committee suggested that the Bureau of Developmental Services redirect all applicable funds from the ten area agency contracts to its Bureau budget to hire independent investigators to fulfill the responsibilities associated with complaints. The Committee felt that such a change will not only assign the responsibility for such a critical activity more appropriately but will also inject greater independence, confidence and integrity to the complaint process. Moreover, the modification enables the agencies to better concentrate on responding to the findings of the investigations and making changes, both at the individual and systemic level, to remedy and prevent harmful outcomes for individuals with disabilities.

The State revised its rule and transferred the responsibility of investigating complaints from the area agencies to the Bureau of Developmental Services. Beginning September 1, 2011, the Bureau of Developmental Services contracted with individuals to conduct investigations. From September 1, 2011, through April 30, 2012, 157

formal and 33 informal investigations were completed. Based upon historic complaint data, the Bureau of Developmental Services anticipates conducting approximately 288 investigations in state fiscal year 2013.

A legal notice seeking written proposals seeking independent contractors to work part-time as Complaint Investigators, one to five days a week, was published on the Department of Health and Human Services' website and the New Hampshire Bar Association website and newspaper, beginning on April 3, 2012, and ending on April 20, 2012. As a result, the Department of Health and Human Services received 36 formal proposals. Seventeen of these individuals were interviewed and upon review of their qualifications and pertinent experience it was decided to contract with eleven of these individuals. Five of the individuals are current contracted investigators:

The salary rate is approximately \$35 an hour for state fiscal year 2013. The rate is based on historical schedules pursuant to the Division of Personnel guidelines and prevailing rates for similar well-qualified professionals in the marketplace. This rate is lower than rates of equivalent positions in the private sector and does not exceed public sector salaries and fringe benefits. The complaint investigators contracted rate of compensation ranges from \$35 to \$45 per hour based upon level of responsibilities and experience in the field. The number of hours contracted are based upon anticipated program needs and the availability of the contractor.

As referenced in Exhibit C-1, paragraph 5, this agreement has the option for a single 1-year extension of the contract upon acceptable performance of the Scope of Services, availability of funding, the agreement of the parties and subsequent approval by the Governor and Executive Council.

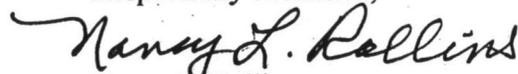
Should the Governor and Executive Council determine not to approve this request the Department of Health and Human Services, Bureau of Developmental Services would be in defiance of the State of New Hampshire's Administrative Rule He-M 202 that stipulates the protection of the rights of persons applying for, eligible for, or receiving services from area agencies or developmental services or acquired brain disorder programs funded through the Bureau of Developmental Services.

Area served: statewide.

Source of funds: 100.00% other funds. The area agencies will be invoiced for any complaint investigator expenses the State incurs. That revenue is what will fund this contract and is considered other funds.

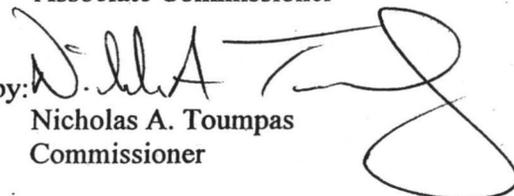
Your approval of this request would be greatly appreciated.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner

## NH Department of Health and Human Services

Exhibit C-1ADDITIONAL SPECIAL PROVISIONS

1. Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is amended as follows:  
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account identified in block 1.6, or any other account, in the event funds are reduced or unavailable.
2. Paragraph 7 of the General Provisions of this agreement is deleted and the following paragraph is added:  
"7.1. The performance of the services shall be carried out by the Contractor."
3. Paragraph 12. of the General Provisions of this agreement is hereby amended to read:  
"12. ASSIGNMENT, DELEGATION AND SUBCONTRACTS. The Contractor shall not assign or otherwise transfer any interest in this agreement. None of the services shall be delegated or subcontracted by the Contractor."
4. Paragraph 14 of the General Provisions of this agreement relating to insurance is hereby amended to read:  
"The Contractor shall, at his or her sole expense, obtain and shall submit evidence of professional liability insurance during the life of this Agreement."
5. Following the approval by the Governor and Executive Council, this contract shall commence February 20, 2013, or the date of Governor and Executive Council approval, whichever is later, and terminate on June 30, 2013, with the option for one 1-year extension of the term of the contract to be exercised by mutual agreement by the parties, upon acceptable performance of the Scope of Services, availability of funding, and subsequent approval by the Governor and Executive Council.
6. Data
  - 1) As used in this Agreement "Data" shall mean all information, whether written, drawn, recorded, or electronically stored, which is developed or obtained or in the performance of this Agreement or acquired or developed because of this Agreement.
  - 2) All data, which is received by the Contractor from any source, shall be property of the Office of Client and Legal Services. Such data or copies thereof shall be promptly returned to the Office of Client and Legal Services upon demand or upon termination the Agreement, whichever shall first occur.
  - 3) All such data, but in particular, data about clients or their families shall be kept confidential by the Contractor. The Contractor shall not disclose such information or data to any individual or organization without prior written approval of the Office of Client and Legal Services and / or the client / guardian, as appropriate, or upon court order. To the extent applicable the Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 rules and regulations and / or New Hampshire confidentiality / privacy rules and regulations.

## AMENDMENT TO AGREEMENT

This Agreement (hereinafter called the "Amendment") dated this 17<sup>th</sup> day of April, 2013, between the State of New Hampshire acting by and through the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Developmental Services and Ellen J. Barry (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an agreement dated the 31st of January 2013, the Contractor has agreed to provide certain services upon the terms and conditions specified in the Agreement, in consideration of payment by the Bureau of Developmental Services of certain sums as specified therein;

WHEREAS, pursuant to the provisions of paragraph 18 of the Agreement, the Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties thereto and only after the approval of such amendment, waiver, or discharge by the Governor and Executive Council of the State of New Hampshire;

WHEREAS, the Bureau of Developmental Services and the Contractor have agreed to amend the Agreement in certain respects; and

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

1. Amendment and Modification of Agreement:

The Agreement is hereby amended as follows:

- A. revise paragraph 1.7 of the General Provisions by extending the Completion Date from June 30, 2013, to June 30, 2014;
- B. revise paragraph 1.8 of the General Provisions by increasing the Price Limitation by \$52,500 from \$18,900 to \$71,400;
- C. revised Exhibit B, Methods and Conditions of Payment by replacing Paragraph 1.3 with the following: "The Contractor shall be available to a maximum of 30 hours per week for 50 weeks per year. There shall be no minimum number of guaranteed hours per week.";
- D. revise all Exhibits by extending the contract Completion Date to June 30, 2014; and
- E. replace the Budget with the attached State Fiscal Year 2014 Budget.

2. Effective Date of Amendment: The effective date of this action is July 1, 2013, or date of Governor and Executive Council approval, whichever is later through June 30, 2014.

3. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first written above.

State of New Hampshire  
Department of Health and Human Services  
Division of Community Based Care Services

by:   
Nancy L. Rollins  
Associate Commissioner

EJP  
5/16/13

Ellen J. Barry

by: Ellen J Barry  
Signature

State of New Hampshire  
County of Merrimack

On this 17<sup>th</sup> day of April, 2013, before the undersigned officer, personally appeared Ellen J. Barry, who acknowledged herself to be authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing her name above.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Jill Desrochers  
Notary Public / Justice of the Peace  
My Commission Expires: 6/8/16

Approved as to form, execution and substance:

OFFICE OF THE ATTORNEY GENERAL

by: Jeanne P. Herick  
Assistant Attorney General

Date: 29 April 2013

I hereby certify that the foregoing contract amendment was approved by the Governor and Executive Council of the State of New Hampshire at their meeting on \_\_\_\_\_, 2013.

OFFICE OF THE SECRETARY OF STATE

by: \_\_\_\_\_

Title: \_\_\_\_\_

## NH Department of Health and Human Services

State Fiscal Year 2014 Budget

Contractor: Ellen J. Barry

	<u>Total Contracted</u>	
	<u>Hours</u>	<u>FY 2014</u>
PERSONNEL		
\$35/hr x 30 hrs/wk x 50 weeks	1,500	\$52,500
<b>TOTAL</b>		<b><u>\$52,500</u></b>

# Certificate of Insurance (Proof of Coverage)

Date Issued: 1/30/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

<b>Insured Name and Mailing Address*</b>	<b>Program Administrator</b>
Ellen Barry  [REDACTED] [REDACTED]	Administered By: CPH and Associates 711 S. Dearborn, Suite 205 Chicago, IL 60605 P. 312-987-9823 F. 312-987-0902 info@cphins.com Underwritten By: Philadelphia Indemnity Insurance Company
*Additional insured locations are often requested by individual business owners who have more than one office. Your coverage is portable, meaning that you are covered at any location for practice under the occupation(s) listed on your policy.	

## Coverage

Policy #: PHCPE132532	Effective Date: 01/28/13	Expiration Date: 01/28/14
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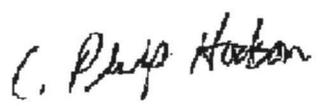
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<b>Limits of Liability</b>		<b>Coverage Part</b>
<b>EACH OCCURRENCE</b> <i>(Per individual claim)</i>	<b>AGGREGATE</b> <i>(Total amount per policy year)</i>	
\$1,000,000	\$3,000,000	Professional Liability
N/A	N/A	Commercial General Liability Includes: General Liability, Fire & Water Legal Liability, and Personal Liability
N/A	N/A	Property Coverage
\$1,000,000	\$3,000,000	Supplemental Liability
Unlimited	Unlimited	Defense Expense Coverage
\$35,000	\$35,000	State Licensing Board Investigation Defense Coverage
\$15,000	\$15,000	Assault Coverage
\$10,000	\$35,000	Deposition Expense Benefit
\$5,000/person	\$50,000	Medical Expense Coverage
\$15,000	\$15,000	First Aid Coverage

Description/Special Provisions:

## Certificate Holder

DHHS, Bureau of Developmental Services 105 Pleasant Street Concord, NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
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Holder has also been added to the policy as an additional insured:** <u>    </u> Yes / <u>X</u> No  **If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).	Authorized Representative    C. Philip Hodson
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**DISCLAIMER:** The Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend, or alter the coverage afforded by the policies listed thereon.