

Administrative Rule Process

April 10, 2024

Administrative Rulemaking for MTS

- The Division of Medicaid Services has reviewed all of the comments provided by stakeholders regarding the MTS rule.
- The comments and feedback gathered to date have been gathered prior to the beginning of the formal rulemaking process.
- DMS sent the rule to the Administrative Rules Unit (ARU) on 4/2 to begin the formal rulemaking process. The formal rulemaking process involves several steps outlined on the following pages.

Now What?

- The Administrative Rules Unit (ARU) coordinates and oversees all Department rulemaking activities, by acting as a liaison between DHHS, the Office of Legislative Services known as OLS, and the Joint Legislative Committee on Administrative Rules, also known as JLCAR.
- DHHS is filing the MTS rule changes under Regular Rules procedure. (If Rules are filed as interim or emergency rules the procedure is streamlined).
- The procedure for adopting regular rules requires 7 steps.
- There are minimum and maximum time requirements for notice and comments in the rules.

<https://www.dhhs.nh.gov/doing-business-dhhs/legal-services/administrative-rules>

Seven Steps for Adoption of a Rule RSA 541-A:1-14

- I. Filing a notice of the proposed rule under RSA 541-A:6;
- II. Providing notice to occupational licensees or those who have made timely requests for notice as required by RSA 541-A:6, III;
- III. Filing the text of a proposed rule under RSA 541-A:10;
- IV. Holding a public hearing and receiving comments under RSA 541-A:11;
- V. Filing a final proposal under RSA 541-A:12;
- VI. Responding to the committee when required under RSA 541-A:13; and
- VII. Adopting and filing a final rule under RSA 541-A:14.

SUMMARY OF PROCEDURE FOR ADOPTION OF REGULAR RULES
(See RSA 541-A:5 through RSA 541-A:14)

FIRST STAGE:
(RSA 541-A:5 through
RSA 541-A:12)

NOTE: Days are calendar days unless otherwise shown. Also, OLS Director may waive deadlines or extend time periods imposed by RSA 541-A in First and Second Stages pursuant to RSA 541-A:40, IV. See 1.9 in Chapter 3.

*Allow 10 working days
(after receipt by LBA of
agency request) for LBA
to complete the FIS.

20 days
minimum

5 business days minimum if single
rulemaker; same day minimum if group
rulemaker.

21 days minimum;
180 days maximum
See RSA 541-A:12, I, as amended by
2020, 37:74, eff. 9-27-20.

**Allow 5 working days
(after receipt by LBA of
agency request) for LBA to
complete the amended FIS.

60 days max.

*** Final Proposal must be filed at least 21
days before the meeting for placement on the
agenda. Agency has option of filing a
conditional approval request at least 7 days
prior to the meeting. See RSA 541-A:12, I
and RSA 541-A:13, II(b), as amended by
2020, 37:73-74, eff. 9-27-20.

PRE-PROCESS HEARING
(optional)

DRAFTING AND
NUMBERING

PRE-PROCESS HEARING
AND REDRAFT
(optional)

*AGENCY ESTABLISHES INITIAL PROPOSAL AND THEN
OBTAINS FISCAL IMPACT STATEMENT FROM LBA

AGENCY FILES NOTICE AND RULE WITH OLS

NOTICE PUBLISHED BY OLS IN REGISTER AND
AGENCY GIVES OTHER NOTICE AS REQUIRED
BY RSA 541-A:6, III

PUBLIC HEARING
(including postponed or
continued hearings)

DEADLINE FOR COMMENT IN
WRITING OR ELECTRONIC FORMAT

DRAFT OF FINAL PROPOSAL, HEARING, &
COMMENT (optional)

AGENCY ESTABLISHES THE TEXT
OF THE FINAL PROPOSAL (ONCE)

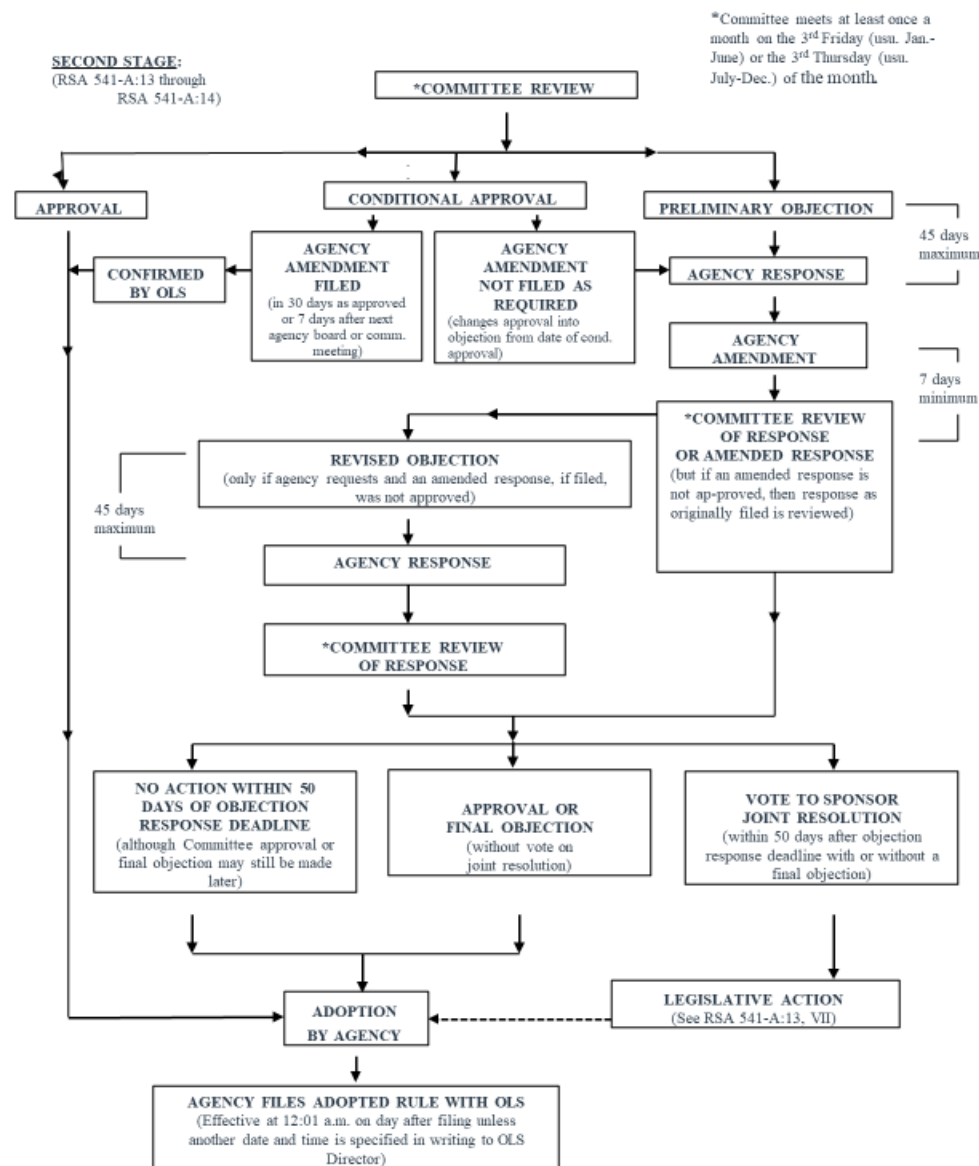
**AGENCY OBTAINS AMENDED FISCAL
IMPACT STATEMENT (ONCE) FROM LBA
IF REQUIRED BY RSA 541-A:5, VI

AGENCY FILES FINAL
PROPOSAL WITH OLS

***COMMITTEE REVIEW
(See next page)

<https://www.gencourt.state.nh.us/rules/process/Rulemaking%20Flow%20Chart%20APPROVED%209-20%20corrected%204-21.pdf>

<https://www.gencourt.state.nh.us/rules/process/Rulemaking%20Flow%20Chart%20APPROVED%20-20%20corrected%204-21.pdf>



Notice of Rulemaking in RuleMaking Register

Notices of rule filings are published in the Rule Making Register every Thursday.

<https://www.gencourt.state.nh.us/rules/register/default.aspx>

Office of Legislative Services

Administrative Rules

AboutRule InformationResourcesRulemaking RegisterJLCARSearchLinks

ISSUES OF THE NEW HAMPSHIRE RULEMAKING REGISTER

The documents are in Portable Document Format (PDF). To view PDF files, you will need the Adobe Acrobat Reader which is available [free from Adobe.com](#)

The issues available on-line are listed below by date of publication. Click on the date to view each issue. The Register is published weekly each Thursday (or earlier if Thursday is a holiday). The Table of Contents on the title page and the List of Notices on page i of each issue will identify the relevant pages and notices which each issue contains.

See [Rulemaking Register Description](#) for an explanation of the Register. To receive a PDF copy of the Register, see [Rulemaking Register Availability](#).

Year

2024

Issues by Date

No 14 April 4 2024

View PDF File

 Institute for Health Policy and Practice

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Notice of Rulemaking in RuleMaking Register

The notice contains information about the rule, including the scheduled date of the public hearing.



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES
ROOM 219, STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312
Tel. (603) 271-3680
Website: www.gencourt.state.nh.us/rules/index.html

TDD Access:
Relay NH 1-800-735-2964

Published every Thursday pursuant to RSA 541-A:9

Number 14, April 4, 2024

Proposed Rules			
Notice Form	Rule Number	Agency	Proposed Rule
2024-50	*Rev 3400	Department of Revenue Administration	Taxation of Wood or Timber Cut
2024-51	*Agr 2800	Department of Agriculture, Markets, and Food	Animal Population Control
2024-52	*Env-Sw 100	Department of Environmental Services Solid Waste Programs	Solid Waste Program Purpose, Applicability, and Definitions
2024-53	Env-Sw 400	Department of Environmental Services Solid Waste Programs	Collection, Storage, and Transfer Facility Requirements
2024-54	Env-Sw 500	Department of Environmental Services Solid Waste Programs	Processing/Treatment Facility Requirements

Notice of Rulemaking in RuleMaking Register

When you click on the highlighted Notice Number, a document will come up that contains the relevant information, including hearing date.

Notice Number	<u>2024-50</u>	Rule Number	<u>Rev 3400</u>
1. Agency Name & Address: Department of Revenue Administration 109 Pleasant Street P.O. Box 457 Concord, NH 03302-0457		2. RSA Authority: <u>RSA 79:30</u> 3. Federal Authority: <u>N/A</u> 4. Type of Action: Adoption <u>X</u> Repeal <u> </u> Readoption <u>X</u> Readoption w/amendment <u>X</u>	
5. Short Title: Taxation of Wood or Timber Cut			
6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:			

Notice of Rulemaking Can Also Be Found On DHHS Webpage

You can also find notice of rulemaking on the DHHS website. There are icons for rules open for public comment and recently adopted rules.

<https://www.dhhs.nh.gov/doing-business-dhhs/legal-services/administrative-rules>

Administrative Rules

The Administrative Rules Unit (ARU) coordinates and oversees all Department rulemaking activities. From development through adoption, the ARU promotes the Department's mission and goals.

The ARU staff act as a liaison between the Department and stakeholders, the Office of Legislative Services (OLS), and the Joint Legislative Committee on Administrative Rules (JLCAR). As a centralized unit within the Department, the ARU ensures that essential regulations do not expire, provides the current text and status of Department rules to external stakeholders, and maintains historical rule promulgations.

Quick Links

[DHHS Administrative Rules](#)

[NH Administrative Rulemaking Register](#)

[NH Administrative Procedures Act \(RSA 541-A\)](#)

[NH State Statutes](#)



What Does JLCAR Do?

- JLCAR makes sure that rule proposals from state agencies follow all applicable laws. They do not, however, determine if the rules are good or bad policy. They leave that up to the department that proposed them.
- JLCAR is made up of 5 State Representatives and 5 State Senators. Meetings are open to the public, and attendees can testify about rules that are on that day's agenda.
- JLCAR can approve, conditionally approve, or object to rules – including all of the elements of the rules. If JLCAR *objects* to any elements of the rule proposal, the state agency or department has one opportunity to address the objection(s). If the problem is not resolved, JLCAR can issue a final objection to proposed rules (although the department may still adopt the rules that have been approved), or send it to lawmakers to determine whether the rule is appropriate.

<https://reachinghighernh.org/2019/07/16/four-things-you-need-to-know-about-jlcar/>

What Does JLCAR Use as Criteria When Considering Rules?

JLCAR is an administrative body and only looks at the technical parts of a proposal. JLCAR makes sure all parts of the rule meet the four criteria before bringing it back to the department for adoption. JLCAR must ensure that the rule:

1. **Is within the authority of the agency**, meaning state laws specify that the department can create the rules and that the rules do not go beyond what the legislature has allowed of the department.
2. **Is within the intent of the legislature**, meaning that the proposed rules do not conflict with any other state or federal law.
3. **Is determined to be in the public interest**, which does *not* mean that it is good or bad policy. Rather, the proposed rules must be clear and understandable, uniformly applied, and the department must have taken into consideration comments by the public during the public hearing at the relevant department (before it went to the committee).
4. **Has an economic impact** that is explained in the fiscal impact statement. Each rule proposal must have a fiscal impact statement, which outlines the cost to all parties impacted by the rules to avoid unfunded mandates.

<https://reachinghighernh.org/2019/07/16/four-things-you-need-to-know-about-jlcar/>

Landscape of School-Based Services for Medicaid

April 10, 2024

WHAT IS MEDICAID: Big Picture

Medicaid is a 59-year old, public, jointly-funded health insurance program for low-income people.

It is elective for a state to have a Medicaid program. Currently every state in the Union has elected to have one.

Participating states must cover select groups of people and cover select groups of services that are known as mandatory.

Participating states can elect coverage for additional services and populations that are known as optional.

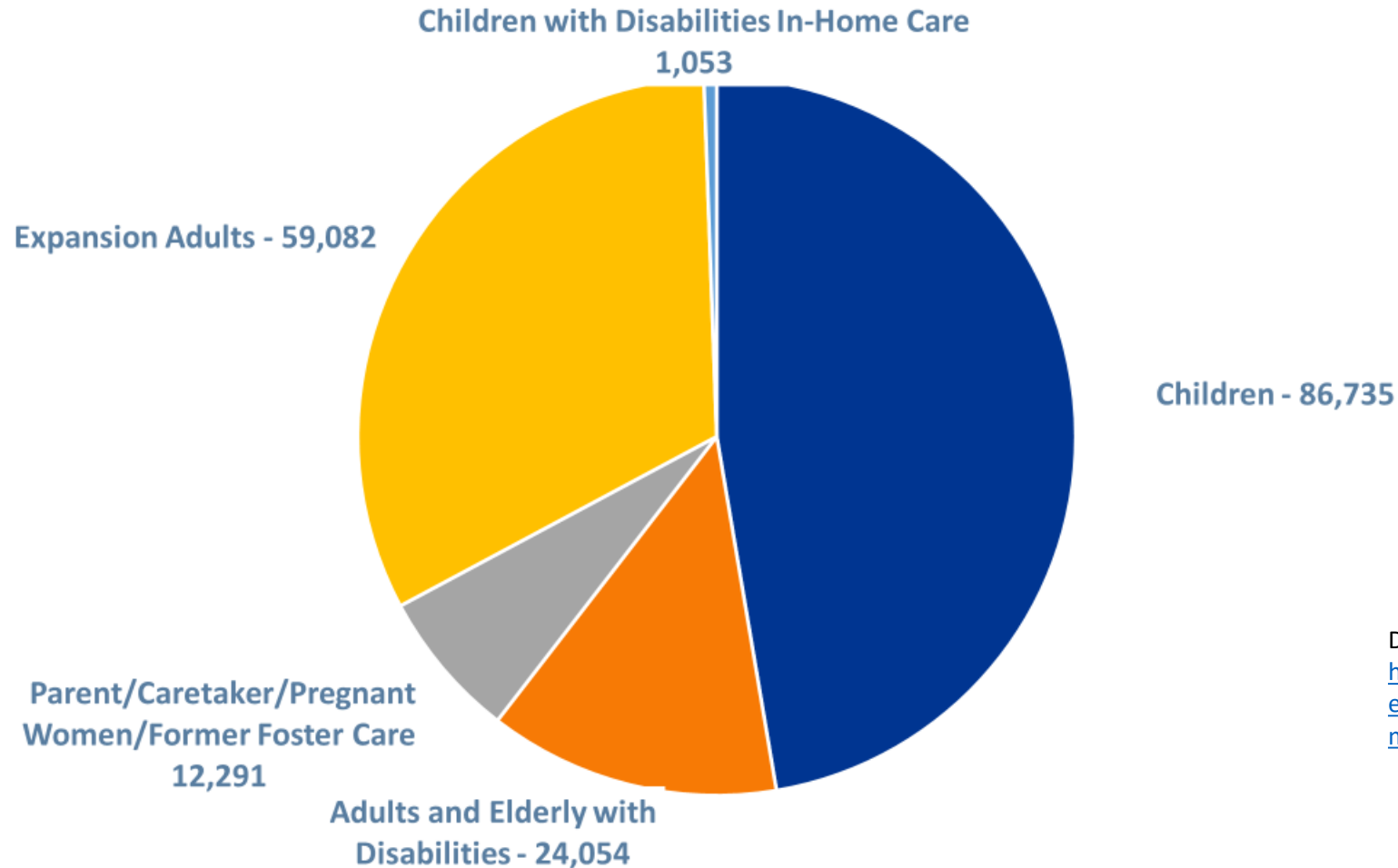
In return for following the federal requirements, the federal government always pays a fixed percentage of the cost.

This is referred to as FMAP (Federal Medical Assistance Percentage) or FFP (Federal Financial Participation).

The FMAP is never less than 50%.

NH's Big Picture:

NH Medicaid covers 25% of all births in the state. It is a significant source of coverage for children under 19. *Children are the single largest eligibility category in New Hampshire.*



Data Source:
<https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/bpq-da-medicaid-enrollment.pdf> January 2024

What is Medicaid to Schools? – at the Federal Level

Before 2014

CMS policy stated that Medicaid could only pay for school health services included in student's Individualized Education Programs (IEP) or Individualized Family Service Plan (IFSP) for Medicaid-enrolled students.

For Medicaid to cover services, the student had to be enrolled in Medicaid, the services had to be medically necessary, the services had to be in the state plan or available under EPSDT and authorized under federal and state policy.

After 2014

CMS clarified in a 2014 letter that Medicaid could pay for health and mental health services delivered in schools to Medicaid-enrolled students *without* an IEP/IFSP.

For Medicaid to cover services, the student has to be enrolled in Medicaid, the services have to be medically necessary, the services have to be in the state plan or available under EPSDT and authorized under federal and state policy.

What Does That Mean?

Before 2014, Medicaid covered services in a student's IEP so long as other conditions were met. These funds offset the cost to the school district of providing services under IEPs/IFSPs.

After 2014, school districts became eligible to receive federal funding to offset some of the cost for in - school services such as providing screenings like vision/hearing screenings, or health services like diabetes and asthma managements, and general health and mental health services. Again, the funding can be available when other conditions are met.

What Do States Decide About Medicaid-to-Schools?

State Medicaid policy defines:

- What services are reimbursable;
- Which providers can be reimbursed;
- Which students a district can bill for;

TWO IMPORTANT NOTES:

- More services may be offered in schools than are reimbursable by the state Medicaid plan.
- More health and mental health providers may be credentialed to practice and deliver services in schools than are reimbursable by the state Medicaid plan.

Source: <https://www.aasa.org/resources/resource/medicaid-101-for-school-superintendents>

How Are Schools Using Medicaid Funding?

According to a study by the School Superintendents Association that surveyed more than 1000 people in 42 states in 2019:

- almost 70% of districts use Medicaid to support the salaries of the health professionals who provide services for students;
- 45% use Medicaid funding to expand health related services; and
- almost 40% use the Medicaid funding to facilitate outreach and coordination for services.

Other ways schools use Medicaid reimbursement include:

- reinvesting funds in equipment and assistive technology;
- to support transporting students with disabilities;
- professional development for special education personnel and ancillary service professionals; and
- to offset the costs of special education programming.

Source: <https://www.aasa.org/resources/resource/medicaid-101-for-school-superintendents>

States With Approved State Plan Amendments For Funding Covered Health Services For All Medicaid-enrolled Students

As of January 1, 2024, states with approved state plan amendments that provide for reimbursement of school-based services to all Medicaid enrolled students:

- Arizona
- California
- Colorado
- Illinois
- Kentucky
- Louisiana
- Massachusetts
- Michigan
- Nevada
- New Mexico
- North Carolina
- Oregon
- Virginia

<https://healthyschoolscampaign.org/resources/single/medicaid-101-for-school-superintendents/>

BUT I SAW 25 STATES ARE DOING SOMETHING ON SCHOOL-BASED MEDICAID SERVICES and NH WAS ONE OF THE STATES!

- State authority is not all that is needed. An approved state plan amendment is needed to safely provide some federal reimbursement for non-IEP/non-IFSP students from Medicaid's federal regulator, CMS.
- NH's legislature provided legal authority to NH Medicaid to allow it to begin the process of expanding MTS beyond those students with IEPs and IFSPs in 2017. Other states may also have taken steps at the state level to respond to the federal change in policy, but do not yet have approved state plan amendments.
- NH Medicaid is in the process of revamping its Medicaid-to - Schools program on two levels:
 - examining which costs can be included for federal match; and
 - Examining which students can be included for federal match.

Stay Tuned.

Thank you!

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Cost-Based Funding Concepts

APRIL 10TH, 2024

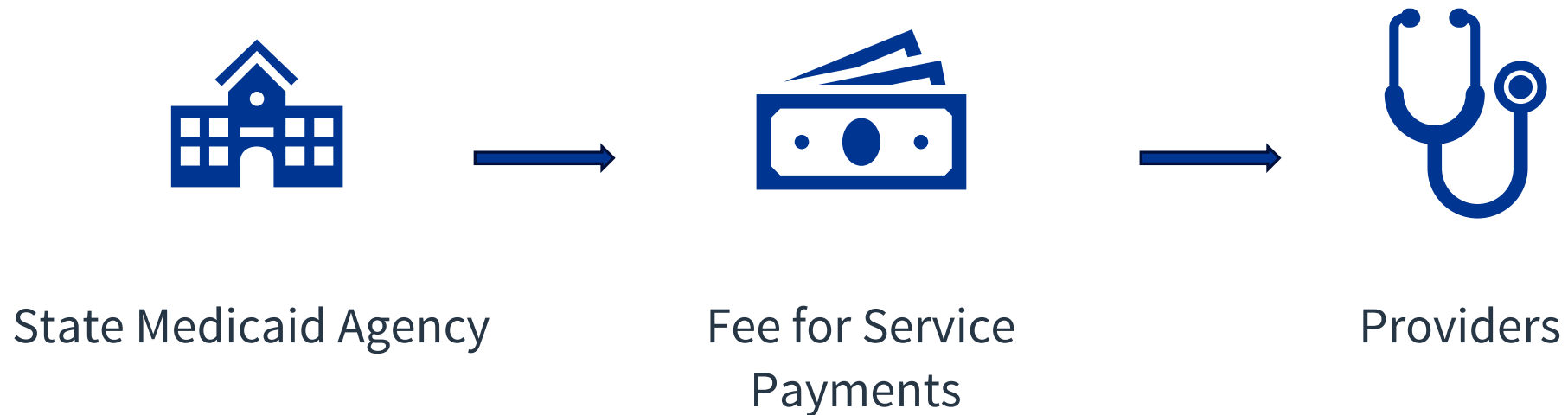
New Hampshire MTS Federal Match: Current and Prospective Approaches

The current way New Hampshire receives Federal Match for MTS is sunsetting in 2026. Our current expenditure model for MTS, in-kind expenditures, will no longer be a viable way to receive federal match for MTS.



The objective of today's presentation is to review popular concepts behind cost-based settlement and reimbursement to begin to illustrate some key elements of this model, which NH will be exploring as an alternative to in-kind expenditures.

New Hampshire's Medicaid Fee for Service Payment Flow



Cost-Based Funding Overview: A Comparison

Fee Schedule Rate (FFS):

- New Hampshire's current reimbursement model
- Medicaid sets a payment rate for each service provided to each child
- Services are documented and a claim is submitted to Medicaid
- School-based services are typically limited to the community rate

Cost-based Funding and Settlement:

- MTS providers receive an interim rate for services throughout the year
- MTS providers subsequently settle at the year's end to actual costs incurred for the delivery of SBS
- Must use a detailed cost allocation and reporting methodology based on federal cost reporting parameters

Cost-Based Funding Overview

What is Cost-Based Funding? (AKA a reconciled cost methodology or Cost Settlement)

- A type of reimbursement method that contains:
 - A cost report that captures the actual costs of providing covered health-related services as reported by providers (in this instance the LEAs,) ;
 - A comparison of the costs to reimbursement received through interim payments for a defined period;
- Ensures providers are compensated for costs of the program while ensuring that the payer is not overpaying for services;
- Currently cost settlement is the most common reimbursement method for School Based Services in Medicaid across the country;
 - <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:7bbffad9-c530-409b-a499-c72c9cde460f>

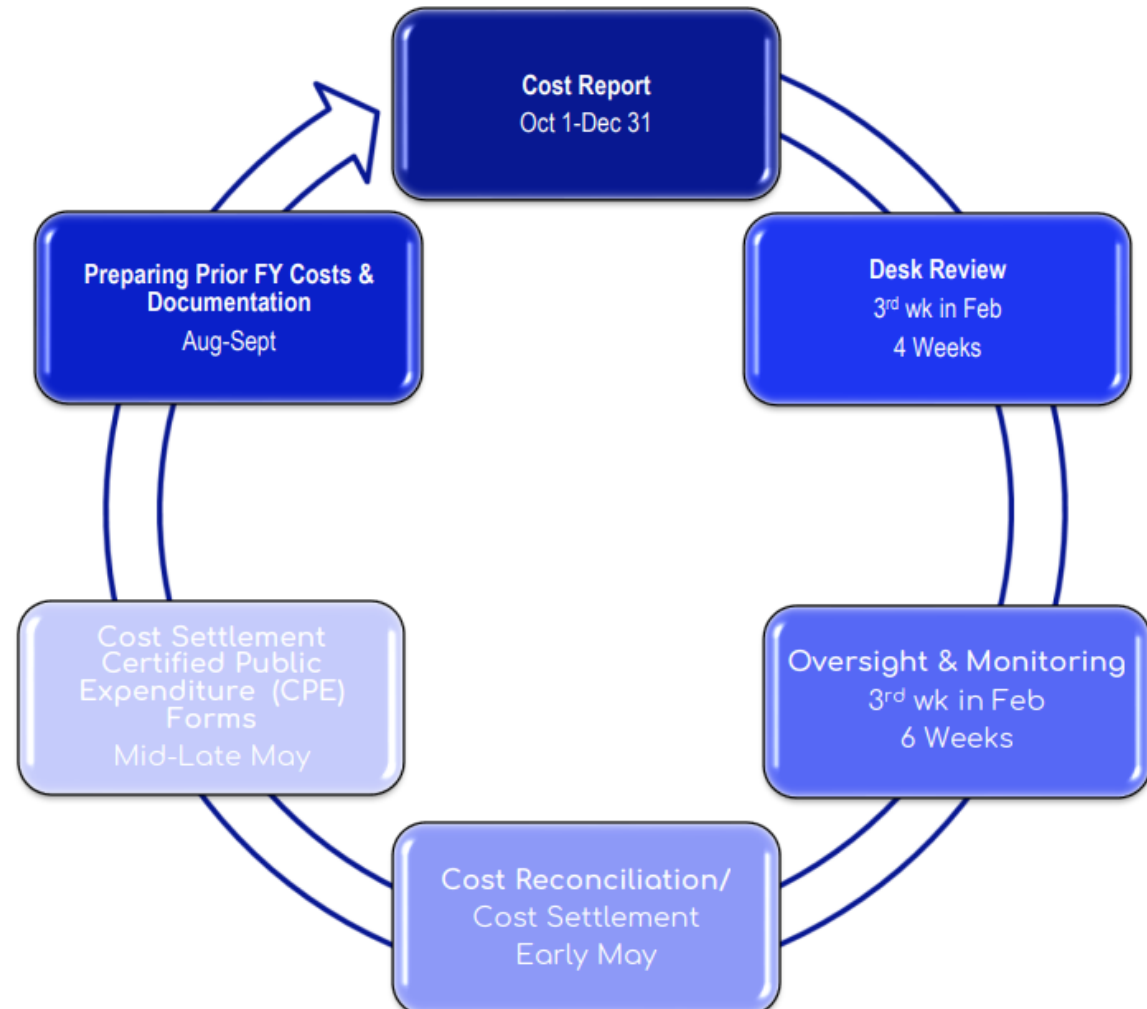
Six Elements for Cost-Based Funding and Settlement

1. Interim Payment Methodology;
2. Cost identification process that identifies direct and indirect costs;
 - Creation of cost pools
 - Medicaid Enrollment Rate (MER)
3. Methodology to allocate costs to Medicaid;
 - Random Moment Time Study (RMTS)
 - Employee Time Sheets
4. Cost certification statement signed by an LEA official;
5. Detailed cost reconciliation and settlement process;
6. Detailed cost report instructions for providers.

Source: CMS Admin Claiming Guide, Pages 62-64

Annual Process

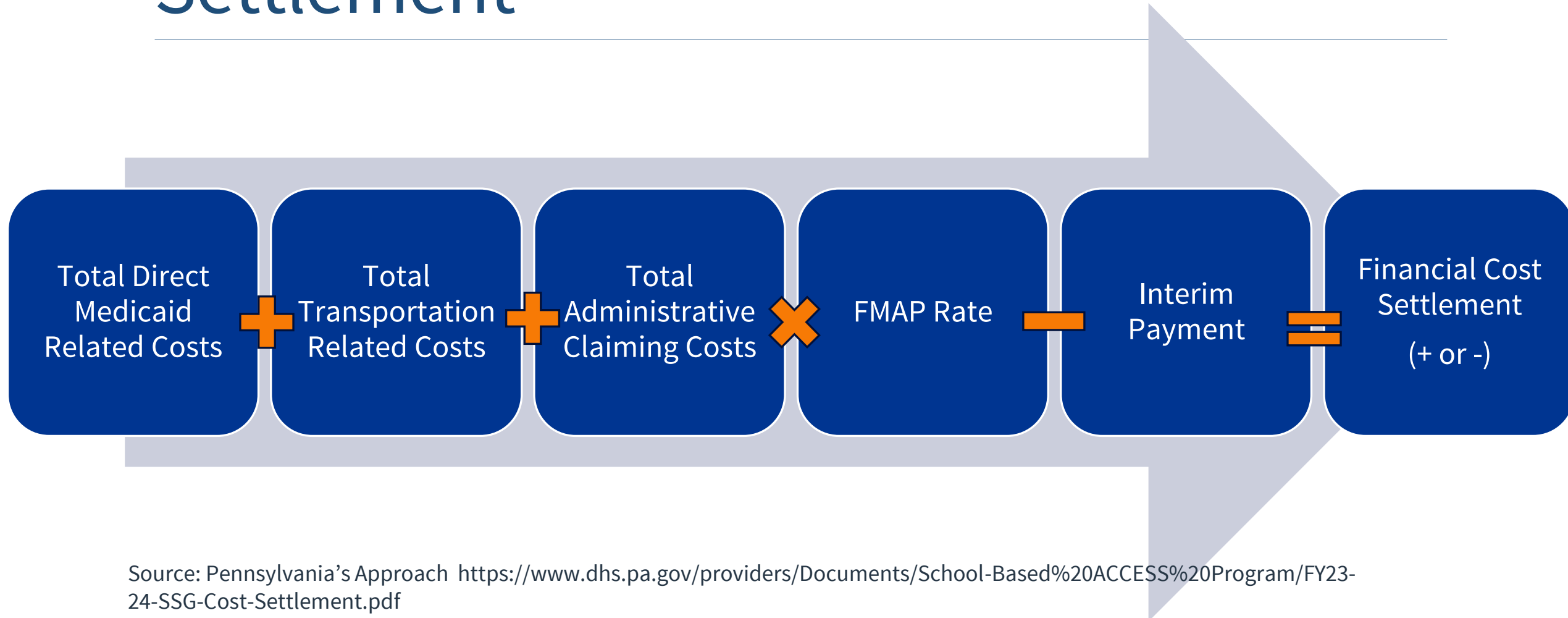
Sample Cost Report Timeline: From Pennsylvania



Source:

<https://www.dhs.pa.gov/providers/Documents/School-Based%20ACCESS%20Program/FY23-24-SSG-Cost-Settlement.pdf>

Example of Calculating the Final Cost Settlement



Thank you!

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