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Adam Greshin, Commissioner

TO: Senator Jane Kitchel, Chair, Senate Committee on Appropriations

FROM: Adam Greshin, Commissioner, Department of Finance and Management

DATE: January 25, 2022

Adam Greshin Digitally signed by Adam Greshin Date: 2022.01.25 17:11:03 -05'00'

RE: **Clarifications and Technical Edits to H.679, *An act relating to fiscal year 2022 budget adjustments*, as passed by the House.**

I write to suggest the following clarifications and technical edits to H.679, *An act relating to fiscal year 2022 budget adjustments*, as passed by the House.

- **Sec. 1 – Sec. 45:** In the text of each section title, the citations should be corrected as follows: "2021 Acts and Resolves No. ~~54~~ 74, Sec. B.XX is amended to read:"

- **Sec. 33:** This section, amending 2021 Act 74, Sec. B.516, does not appear to make any adjustment to the section in question.

- **Sec. 46: General Fund One-Time Appropriations**

  (a)(21)(A) $5.28 million carve-out from $25 million response to the COVID-19 pandemic
  This allocation is intended (with matching Global Commitment funds) for the reimbursement of nursing homes through Medicaid rates for the actual costs incurred in using traveling nurses. This proposal poses the following technical issues:

  1. Temporary, or one-time, rates cannot be operationalized in this manner:
     a. Rate-setting rules changes would be required to implement this action.
     b. Parsing incremental traveler costs from overall nursing costs would be burdensome for both the rate setting process and providers.
     c. Determining applicable Medicaid days versus all-payer days in allocating costs applicable to a one-time traveler expense rate would introduce additional administrative challenges for both the state and providers.
  2. A portion of traveling nurse costs are already being reimbursed in rates.
     a. Once current traveler costs are included in the historical dataset for rate rebasing, nursing homes will experience additional rate modification.
  3. Providers currently can recover costs through available processes. Therefore, the proposed language runs counter to the Emergency Financial Relief measures available to applicable providers.

4. This funding allocation is duplicative with the funds benefitting nursing homes in Sec. 72(b)(2) of H.679.

(a)(27) $166,667 for syringe services program – This appropriation should reference Department of Health, Public Health, rather than Alcohol and Drug Abuse Programs. The statewide syringe services programs are funded through the VDH-Public Health appropriation.

- **Sec. 62 – Justice reinvestment:** The following language change is proposed to allow for the Joint Legislative Oversight Committee to also consider the use of funds for data system improvements, facility programs targeting those preparing to reenter society, and similar initiatives that benefit justice reinvestment in a broader scope:

  Sec. 62. 2021 Acts and Resolves No. 74, Sec. E.335 is amended to read:

  Sec. E.335 CORRECTIONS APPROPRIATIONS; UNEXPENDED FUNDS TRANSFER; JUSTICE REINVESTMENT; REPORT

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  (b) In fiscal year 2022, any unexpended funds for correctional services out of-state beds shall be carried forward to fiscal year 2023, and the amount reported to the Joint Legislative Justice Oversight Committee in September 2022, to provide additional funding to community-based service programs in support of Justice Reinvestment II initiatives. Funds may only be expended ~~on community-based service programs~~ upon approval of the Joint Legislative Justice Oversight Committee. Prior to approval, the House Committees on Appropriations and on Corrections and Institutions and the Senate Committees on Appropriations and on Judiciary shall be notified of any proposed expenditures on community-based service programs.

- **Sec. 63 – ESSER funds:** This section, amending 2021 Act 74, Sec. E.501.1(a), adds an appropriation of "$1,000,000 for emerging State-level needs" in subsection (3), but it does not change any other appropriation amounts in the section. To keep the total appropriation equal to the original amount and prevent over-appropriation of ESSER funds, the amount in subsection (2) should also be amended as follows (as requested in the FY 2023 Governor's Recommended Budget Language):

  (2) $~~2,006,074~~ 1,006,074 for learning management assistance, including remote learning supports and materials; and

- **Sec. 68 – ARPA One-Time Appropriations**:
  The amount in subsection (a)(28) of 2021 Act 74, Sec. G.300 appears to be missing a digit due to a typographical error. To equal the amount requested in the Governor's Recommended Budget Adjustment Act, the following correction should be made:

  (28) $12,803,996 to the Department of Labor to cover pandemic related operating costs in the Unemployment system and other programs.

- **Sec. 68 and Sec. 72 - ARPA One-Time Appropriations, Workforce Retention Funding for health care employees:**

From a technical perspective, the treatment of multiple funding sources braided as a $60M pool of funds may not be feasible to administer (Medicaid FMAP, HCBS, ARPA SFR and GF are implicated). While ARPA SFR funds are not intended to be matched (as we understand the language as currently presented), the aggregated appropriation in effect presumes a matching arrangement. ARPA SFR funds are explicitly disallowed for Medicaid matching purposes. This will open the state to audit and disallowance risks for both ARPA SFRF and the Medicaid program. The complexities of administering pooled funds in this manner would require further analysis, and if the costs associated with that administration are significant, this approach would require further consideration.

CC: Representative Mary Hooper, Chair, House Committee on Appropriations
Catherine Benham, Chief Fiscal Officer, Joint Fiscal Office
Stephanie Barrett, Associate Fiscal Officer, Joint Fiscal Office