

ADMINISTRATIVE RULES SUMMARY

TO: Medical Care Advisory Committee
FROM: Medicaid Policy
DATE: August 29, 2016
RE: He-W 520 General Program Information and Provider Requirements

1. Status: Draft rule emailed to MCAC on August 29, 2016. Rule to be presented to MCAC on September 12, 2016. RSA 161:11 requires the department to present administrative rule changes associated with the Affordable Care Act (ACA) to the joint health care reform oversight committee (JHCROC). This rule will enter into rulemaking after the 9/14/16 JHCROC meeting, and will be submitted as an interim rule to meet time frames for compliance. He-W 520 will subsequently be submitted into regular rulemaking and will include some additional edits, requirements, and clarifications.

2. Target Dates:

- **Rule to MCAC via email:** 8/29/16
- **Rule presented to MCAC:** 9/12/16
- **RNF to be published:** 9/22/16
- **JLCAR:** October 20, 2016

3. Rule Summary:

- **Reason for rulemaking (e.g., expiration, statutory change, policy change).**

The ACA requires, as a component of provider screening, that certain providers and those with a 5% or more direct or indirect ownership interest in them be considered high risk for fraudulent billing activities and accordingly, be required to undergo a national and state criminal background check, including fingerprinting. (42 U.S.C. 1396a(a)(77); 42 U.S.C. 1396a(kk) and 42 CFR Part 455 Subpart E.) The Department submitted a compliance plan to CMS which requires that high risk providers undergo the criminal background checks with results received by the department by 1/1/17. To meet this time frame, the rule will be submitted as interim with an adoption date of 11/1/16 which should allow time for these providers to complete the process.

- **General overview of the rules.**

He-W 520 describes general program information and requirements on providers. Because He-W 520 is being submitted as an interim rule, only the criminal background check components of the rule are being submitted.

- **Description of the specific changes being proposed to the rule.**

Changes proposed to He-W 520 are as follows:

- Definitions have been added 1) to clarify what type of providers and individuals must undergo a state and federal background check including fingerprinting; 2) to define revalidation as a process in which a provider verifies its information with the department; 3) to define termination from the Medicaid program.
- Section 6, "Provider Requirements," has been added to detail the state and federal criminal background checks required by the implementing federal regulations. Federal law requires that certain providers Medicare deem as high risk undergo state and federal criminal background checks including fingerprinting. This section describes the providers and individuals subject to the requirements; the consequences for failing to comply or for being found to have certain offenses; who to appeal to if the individual disputes the results of the records check; and that the individuals may file a state fair hearing appeal if the department denies enrollment in Medicaid or terminates current enrollment as a Medicaid provider.

- **Description of who is affected generally by the rule; and who is impacted by the specific changes (e.g., Medicaid beneficiaries and/or providers).**

As specified in the details of the rule, this rule affects certain individuals who are considered to be high risk and individuals considered high risk due to their ownership interest in a high risk entity. This rule change will

impact durable medical equipment providers, home health agencies and individuals with a more than 5% ownership interest in those entities.

- **Description of any specific eligibility changes.**

No changes to eligibility.

- **Description of any fiscal impact to recipients, providers, or the State of New Hampshire.**

There is no fiscal impact on recipients. Certain providers, provider applicants and those with an ownership interest as defined in the rule will be required to pay to the Department of Safety a cost of approximately \$49.75 for fingerprinting. The Department estimates that this will result in a positive fiscal impact of approximately \$298.50 to the State of New Hampshire.

4. Issues of Concern: None.

5. Department Contacts:

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