

RULEMAKING NOTICE FORM

Notice Number 2016-124

Rule Number He-E 806.31(e)-(f)

<p>1. Agency Name & Address: NH Dept. of Health & Human Services Bureau of Elderly and Adult Services 129 Pleasant Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 161:4-a, X</u> 3. Federal Authority: <u>1902(a)(13) of the Social Security Act</u> 4. Type of Action: Adoption _____ Amendment <u>X</u> Repeal _____ Readoption _____ Readoption w/amendment _____</p>
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5. Short Title: **Nursing Facility Reimbursement – Methodology for Determining the Per Diem Rate**

6. (a) Summary of what the rule says and of any proposed amendments:

He-E 806 describes the methodology for determining the nursing facility reimbursement rates under Medicaid; and He-E 806.31 describes the methodology for determining the per diem rate for nursing facilities.

He-E 806.31(e) describes how resident acuity is calculated. The proposed rule updates to the new versions of both the Resource Utilization Grouper (RUG) IV and the Minimum Data Set (MDS) 3.0 as part of the acuity rate setting functionality in the New Hampshire Health Enterprise System. The new grouper (RUG IV) represents a refinement of the RUG grouping process to be consistent with Medicare, which uses the RUG IV Grouper. Updating the MDS version will eliminate the current manual conversion of MDS 3.0 down to the MDS 2.0.

He-E 806.31(f) describes how the facility all-payor case mix index per facility is calculated. The proposed rule updates the calculation to reflect the increase in RUG IV classifications from 34 to 48.

6. (b) Brief description of the groups affected:

This rule affects New Hampshire nursing facilities that are reimbursed for services by the Medicaid program.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Federal Reg./RSA
He-E 806.31(e)-(f)	RSA 161:4, VI(a), RSA 541-A:7; Section 1902(a)(13) of the SSA

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Michael Holt	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9234
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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, August 25, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, August 18, 2016 at 2:30 PM**

Place: [**DHHS Brown Bldg., Room 232, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 16:129, dated 07/15/16

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules will have an indeterminable fiscal impact on independently-owned businesses to the extent that they are nursing facilities serving Medicaid clients.

2. Cite the Federal mandate. Identify the impact of state funds:

There is no federal mandate, and no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

The proposed rules will change how Medicaid reimbursement rates are calculated for nursing facilities, resulting in minimal but indeterminable impacts on each facilities case mix index (CMI). Some facilities' CMIs will increase, some will decrease, and these changes will impact the rates paid to each facility.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Amend He-E 806.31(e) and (f), effective 12/24/09 (Document #9623), cited and to read as follows:

CHAPTER He-E 800 MEDICAL ASSISTANCE

PART He-E 806 NURSING FACILITY REIMBURSEMENT

He-E 806.31 Methodology for Determining the Per Diem Rate.

(e) Resident acuity shall be classified using the minimum data set (MDS) version ~~23.0~~ and the ~~3448 group of the RUG-IIIIV~~, version 1.03 grouper classification system, ~~when calculated by the bureau of elderly and adult services, or derived from the 34 RUG-III, version 5.20 grouper classification system~~ when calculated by the third party Medicaid vendor, and relative weights assigned as described below:

(1) ~~CMS Staff Time and Resource Intensity Verification (STRIVE) wage weighted staff time nursing minutes National M3PI standardized nursing minutes~~ shall be combined with New Hampshire nursing costs derived from the facilities' base year cost reports to determine facility-specific direct care nursing costs per day for each classification;

(2) The ~~CMS STRIVE raw~~ national nursing minutes per day for each classification shall be "smoothed" by a ratio of ~~smoothed to unsmoothed mean nursing wage weighted staff time~~, then multiplied by the New Hampshire nursing wages per minute to yield the average wages per day for each classification;

(3) Total wages per day for each classification shall then be divided by the sum of the nursing wages per day for all classifications to obtain the relative weight;

(4) The assessment types used shall be CMS required MDS (OBRA and PPS) assessments including admission, annual, significant change, quarterlies and PPS-only assessments according to the following:

a. The applicable date on the MDS used to determine inclusion shall be the last day of the fifth month prior to the Medicaid rate date;

b. These assessments shall be either an admission assessment with a date of entry (AB1) on or before the picture date depending on the adjustment period or the most recent quarterly, annual, or significant change assessment with an assessment reference date no later than 5 days past the picture date;

c. To insure inclusion in the acuity-based rate, a facility shall transmit all applicable assessments on or before the 20th of the month following the picture date, for inclusion in the data collection process; and

d. Each resident shall then be classified into one of ~~34-48~~ resident classifications using the ~~34-48 RUG-IIIIV~~, version 1.03 grouper classification system, ~~when calculated by the bureau of elderly and adult services, or derived from the 34 RUG-III, version 5.20 grouper classification system~~ when calculated by the third party Medicaid vendor, and relative weights assigned as described below;

(5) The ~~34-48 RUG-III-IV~~ classifications shall be described as "State of New Hampshire acuity group classifications;" and

(6) Relative weights for each classification shall then be calculated based on the weighted average relative weight of the ~~34-48~~ RUG-~~III-IV~~ classifications and weighted based on the number of residents in each of the ~~34-48~~ RUG-~~III-IV~~ classifications.

(f) The facility all-payor case mix index for each facility shall be calculated as follows:

(1) By multiplying the number of residents by the relative weight for each of the ~~34-48~~ classifications; and

(2) Dividing the sum of the values across each resident grouping by the total number of residents.

APPENDIX B

RULE	STATUTE/FEDERAL REGULATION
He-E 806.31(e)-(f)	RSA 161:4, VI(a), RSA 541-A:7; Section 1902(a)(13) of the SSA