

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2016-2 Rule Number He-M 1301 (various)

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| <p>1. Agency Name & Address:</p> <p>Department of Health & Human Services Bureau of Behavioral Health 105 Pleasant Street Concord, NH 03301</p> <p>5. Filing Date: January 26, 2016</p> | <p>2. RSA Authority: RSA 186-C:25, IV and V</p> <p>3. Federal Authority: 42 USC 1396b and 42 CFR 440.100</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <u> X </u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment _____</p> |
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6. Short Title: **Medical Assistance Services Provided by Education Agencies**

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

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| Name: | Catherine Bernhard | Title: | Rules Coordinator |
| Address: | Dept. of Health & Human Services Administrative Rules Unit 129 Pleasant Street Concord, NH 03301 | Phone #: | 271-9374 |
| | | Fax#: | 271-5590 |
| | | E-mail: | catherine.bernhard@dhhs.state.nh.us |

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. Summary explaining the effect of the rule:

He-M 1301 describes the services provided by school districts and school administrative units that are reimbursable under the medical assistance program. The rule describes available services and allows students to receive necessary services in the least restrictive environment. Participation in the medical assistance program is discretionary on the part of the school districts and school administrative units and this rule does not impose upon school administrative units the responsibility to provide any services that they are not otherwise legally responsible to provide under RSA 186-C or other law. Various paragraphs and subparagraphs in sections He-M 1301.02 Definitions, He-M 1301.04 Covered Services, He-M 1301.05 Enrolled Provider Qualifications, He-M 1301.06 Documentation of Services, and He-M 1301.07 Documentation of Expenditure of Non-Federal Funds expired on November 22, 2015. An interim rule is necessary to amend the rule sections by inserting the expired text unchanged and to minimize the time between expiration and amendment.

9. Listing of people, enterprises, and government agencies affected by the rule:

Those affected by the rule include school administrative units, local education agencies or school districts.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

| RULE | RSA or Federal Regulation Implemented |
|---|--|
| He-M 1301.02 intro., (a) –(g), (i) –(s) | RSA 186-C:25, 42 USC 1396b |
| He-M 1301.04,(a)-(d), (f)-(h), (j), (k), (m), (n), (p), (r), (t), (v), (w), (x), (z)-(ad) and (af) | RSA 186-C:25, 42 USC 1396b |
| He-M 1301.05(b) intro., (b)(1)-(7), and (b)(9)-(14) | 42 USC 440.100 |
| He-M 1301.06 intro., (a)-(d), and (f)-(l) | RSA 186-C:25, 42 USC 1396b |
| He-M 1301.07(a), (b) intro., (b)(1), and (b)(2) | RSA 186-C:25, 42 USC 1396b |

11. Summary of the effect upon the state if the rule were not adopted:

He-M 1301 was recently amended in 2013 and in 2016. Those sections and paragraphs not included in the 2013 and 2016 amendments, expired on November 22, 2015. The interim rule is being proposed to amend the rule by inserting the text of the expired paragraphs and subparagraphs in sections He-M 1301.02, 1301.04, 1301.05 1301.06 and 1301.07 unchanged in accordance with RSA 541-A:19, I(e) in order to minimize the time between the expiration of the rules and their readoption. These sections are necessary to define terms used in the rule, to describe the services provided by school administrative units and school districts that are reimbursable under the medical assistance program, and to describe requirements of documentation for payment.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

February 19, 2016

13. The fiscal impact statement prepared by the Legislative Budget Assistant, if applicable.

Not applicable.

PART He-M 1301 MEDICAL ASSISTANCE SERVICES PROVIDED BY EDUCATION AGENCIES

Statutory Authority: RSA 186-C:27; I-II

Amend He-M 1301.02, previously effective 11/22/07 (Document #9035), as amended in paragraph (h) effective 2/23/13 (Document #10278), and that expired in paragraphs (a)-(g) and (i)-(s) on 11/22/15, by inserting paragraphs (a)-(g) and (i)-(s) so that He-M 1301.02 intro., (a)-(g) and (i)-(s) are cited and read as follows:

He-M 1301.02 Definitions. The words and phrases in this rule shall mean the following:

(a) "Bureau" means the bureau of developmental services of the department of health and human services.

(b) "Community mental health program" means a program which has been approved by the director of the bureau of behavioral health pursuant to He-M 403 and which plans, provides, contracts for and monitors mental health services to the residents of a designated mental health service area.

(c) "Community mental health provider" means a medical assistance provider of community mental health services that has been approved by the director of the bureau of behavioral health to provide specific mental health services pursuant to He-M 426.04.

(d) "Consultation" means the rendering, by a licensed practitioner of the healing arts, of an expert opinion regarding the diagnosis or treatment of a specific child pursuant to He-M 1301.04.

(e) "Covered service" means a service identified pursuant to He-M 1301.04 that is reimbursable under the state medical assistance program and provided to a student.

(f) "Enrolled provider" means a New Hampshire LEA or school administrative unit that has agreed to participate in the medical assistance program pursuant to these rules.

(g) "Federal financial participation (FFP)" means the federal share of costs for services provided pursuant to He-M 1301.

(i) "Individualized education program (IEP)" means "individualized education program" as defined in Ed 1102.27.

(j) "Licensed practitioner of the healing arts" means any person licensed or certified under state law to provide a medical, psychological, or other service the goal of which is improvement or maintenance of a person's physical or emotional functioning.

(k) "Local education agency (LEA)" means a local school district.

(l) "Medical assistance" means the federally financed medical assistance program established pursuant to Title XIX of the Social Security Act.

(m) "Order" means a written authorization or prescription for the provision of services.

(n) “Pre-school services” means services to children age 3 up to the age of entry either into kindergarten or first grade, whichever is applicable.

(o) “Referral” means a written recommendation that services of a specific nature should be provided.

(p) “School administrative unit (SAU)” means a legally organized administrative body responsible for one or more school districts pursuant to RSA 194-C:1.

(q) “Signature” means:

(1) A person’s name handwritten by that person, excluding any photocopy, stamp, or other facsimile of such name; or

(2) An electronic signature that complies with RSA 294-E.

(r) “Student” means a person who is eligible to receive covered services pursuant to He-M 1301.03.

(s) “Under the direction” means that, except as prohibited by state law, the qualified professional, whether or not he or she is physically present at the time that services are provided:

(1) Assumes professional responsibility for the services provided; and

(2) Assures that the services are medically appropriate.

Amend He-M 1301.04, previously effective 11/22/07 (Document #9035), as amended in paragraphs (e), (i), (l), (o), (q), (s), (u), (y), (ae) and (ag) effective 2/23/13 (Document #10278), and that expired on 11/22/15 in paragraphs (a)-(d), (f)-(h), (j), (k), (m), (n), (p), (r), (t), (v), (w), (x), (z)-(ad), and (af), (Document # 9035), by inserting paragraphs (a)-(d), (f)-(h), (j), (k), (m)-(n), (p), (r), (t), (v), (w), (x), (z)-(ad) and (af), so that He-M 1301.04 (a)-(d), (f)-(h), (j), (k), (m), (n), (p), (r), (t), (v), (w), (x), (z)-(ad) and (af) are cited and read as follows:

He-M 1301.04 Covered Services.

(a) Covered services shall be provided through a student's LEA or SAU. Such services shall be designed to meet the health needs of a student by facilitating the reduction of a physical or mental impairment and providing rehabilitation. Covered services shall be included in the student’s IEP.

(b) Covered services shall be provided by programs approved by the department of education in accordance with Ed 1129.02.

(c) Covered services may be provided in a variety of locations and settings as specified in a student’s IEP and may occur outside the hours of the usual school day. Covered services may be provided by staff employed or subcontracted by the enrolled provider.

(d) Covered supplies and equipment described under He-M 1301.04 shall:

(1) Be acquired for the use of a specific student;

(2) When purchased, be considered the property of the student and his or her family; and

(3) When rented or acquired through a used equipment exchange program, be considered the property of the student and his or her family during the period used.

(f) The following medical services shall be billable under the category of medical evaluation:

(1) Examination of a single organ system, including:

a. Documentation of complaint(s);

b. Physical examination and diagnosis of current illness; and

c. Establishment of a plan of management relating to a specific problem; and

(2) In-depth evaluation with development and documentation of medical data, including:

a. Chief complaint;

b. Present illness;

c. Family history;

d. Medical history;

e. Personal history;

f. System review; and

g. Physical examination.

(g) Nursing services necessary to meet the health needs of a student as described under He-M 1301.03 (a) shall be covered services and include:

(1) Any evaluations, treatments or consultations performed by a licensed registered nurse or licensed practical nurse or advanced registered nurse practitioner for a student that are necessary in order for the student to benefit from an educational program; and

(2) Supplies and equipment necessary for the provision of the covered nursing services as determined by the licensed registered nurse or licensed practical nurse or advanced registered nurse practitioner.

(h) Reimbursable nursing services shall include the following:

(1) Administration of medication(s);

(2) Positioning or repositioning;

(3) Assistance with specialized feeding programs;

(4) Management and care of specialized medical equipment such as:

- a. Colostomy bags;
- b. Nasogastric tubes;
- c. Tracheostomy tubes; and
- d. Related devices;

(5) Observation of students with chronic medical illnesses in order to assure that medical needs are being appropriately identified, addressed and monitored; and

(6) Other services determined by a registered nurse, licensed practical nurse, or advanced registered nurse practitioner to be necessary and appropriate.

(j) Occupational therapy services shall be covered services and include any evaluations, treatments, consultations, supplies, or equipment recommended by a certified occupational therapist to be necessary to implement a program of activities in order to develop or maintain adaptive skills necessary to achieve adequate and appropriate physical and mental functioning of a student. Such services shall be provided by or under the direction of an occupational therapist qualified pursuant to He-M 1301.05 (b)(4) and include evaluation and treatment of students whose abilities to carry out age appropriate tasks are threatened or impaired by physical illness or injury, emotional disorder, or congenital or developmental disability. There shall be an order from a physician or other licensed practitioner of the healing arts practicing under his or her scope of practice defined in state law for covered occupational therapy services.

(k) Persons providing occupational therapy services shall use treatment techniques such as:

(1) Task-oriented activities to correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual;

(2) Evaluations of:

- a. Sensorimotor abilities;
- b. Self-care activities;
- c. Capacity for independence;
- d. Physical capacity for prevocational and work tasks; and
- e. Play and leisure performance;

(3) Specific occupational therapy techniques involving:

- a. Improving skills for activities of daily living;
- b. The fabrication and application of splinting devices;
- c. Sensorimotor activities;
- d. The use of specifically designed manual and creative activities;

e. Guidance in the selection and use of adaptive equipment; and

f. Specific exercises to enhance functional performance and physical capabilities needed for work activities; and

(4) Other services determined by an occupational therapist to be necessary and appropriate.

(m) Physical therapy services shall be covered services and include:

(1) Any evaluations to determine a student's level of physical functioning, employing such performance tests as measurements of strengths, balance, endurance, and range of motion;

(2) Any treatment services or consultations which might utilize therapeutic exercises or the modalities of heat, cold, water, and electricity, for the purpose of preventing, restoring, or alleviating a lost or impaired physical function; and

(3) Other services, including supplies and equipment, determined by a physical therapist to be necessary and appropriate for a student's physical therapy.

(n) Physical therapy services shall be provided by or under the direction of a physical therapist qualified pursuant to He-M 1301.05 (b)(5). There shall be an order from a physician or other licensed practitioner of the healing arts practicing within his or her scope of practice as defined in state law for covered physical therapy services.

(p) Psychiatric services shall be covered services and be services recommended by a licensed physician to be necessary for the evaluation, diagnosis, and treatment of psychiatric problems in order for a student to benefit from an educational program. Such services shall be provided by a licensed physician who is qualified pursuant to He-M 1301.05 (b)(6).

(r) Psychological services shall be covered services and be services recommended by a certified psychologist to be necessary for the evaluation, diagnosis, and treatment of emotional or behavioral problems or disturbances in order for a student to benefit from an educational program. Such services shall be provided by a psychologist qualified pursuant to He-M 1301.05 (b)(7).

(t) Speech, language and hearing services shall be covered services and be services, supplies, and equipment recommended by a licensed audiologist or licensed speech pathologist to be necessary for the evaluation, diagnosis and treatment of speech, language, and hearing disorders which result in communication disabilities and shall be provided by or under the direction of a speech pathologist or audiologist qualified pursuant to He-M 1301.05(b)(8) or He-M 1301.05(b)(1). There shall be a referral from a physician or a licensed practitioner of the healing arts practicing within his or her scope of practice as defined in state law for covered speech, language and hearing services.

(v) Rehabilitative assistance shall be a covered service and include assistance with:

(1) Mobility;

(2) Communication;

(3) Behavioral management;

(4) Nutrition;

(5) Medications;

(6) Personal care;

(7) Supported employment for students with vocational IEP goals excluding teaching of job tasks, performing job tasks, or providing academic instruction and including, at a minimum:

a. Enhancing social and personal development; and

b. Consultation services in communication, mobility, physical, psychological or medical well-being in the context of vocational goals and employment settings; and

(8) Any other remedial services, excluding classroom instruction and academic tutoring, that are necessary for the maximum reduction of a student's physical or mental disabilities.

(w) There shall be a physician's referral or a recommendation from a licensed practitioner of the healing arts practicing within his or her scope of practice as defined state law for rehabilitative assistance services.

(x) Provision of rehabilitative assistance services shall be reviewed by a licensed practitioner of the healing arts at least weekly. Such review shall include consultation with the staff person providing the rehabilitative assistance.

(z) Pre-school services shall be covered services and include speech and language services, mobility and orientation, family counseling and information services, and nutrition services. There shall be a physician's referral or recommendation for covered pre-school services from a licensed practitioner of the healing arts practicing under his or her scope of practice defined in state law.

(aa) Pre-school service shall be billed as a single category based on a half-day unit. A half-day unit shall equal at least 2 hours and not more than 4 hours of service or, at the option of the LEA, be billed as discrete services based on the units of covered service actually provided.

(ab) Vision services shall be covered services and be services recommended by a licensed optometrist, ophthalmologist, or other practitioner of the healing arts to be necessary for the prevention or rehabilitation of visual impairment or restoration of a student with a visual impairment to his/her best possible functional level.

(ac) Vision services other than those prescribed or provided by an optometrist and ophthalmologist shall be provided in accordance with a recommendation for covered vision services by a physician or other licensed practitioner of the healing arts, practicing under his or her scope of practice defined in state law.

(ad) Billable categories of vision services shall include:

(1) Aids to vision prescribed by an ophthalmologist or an optometrist;

(2) Mobility and orientation training;

(3) Braille instruction and materials;

(4) Services and supplies related to diagnostic screening and prevention of visual disorders; and

(5) Other services and supplies necessary for the provision of restoration of vision or related functioning to the best possible functional level.

(af) Mental health services shall be covered services and enable the student to benefit from an educational program in the least restrictive setting.

Amend He-M 1301.05, previously effective 11/22/07 (Document #9035), as amended in paragraph (b) intro. and (b)(8) effective 2/23/13 (Document #10278), and that expired in paragraph (a) and subparagraphs (b)(1)-(7) and (9)-(14) on 11/22/15, by inserting the expired paragraph (a) and subparagraphs (b)(1)-(7) and (9)-(14) so that He-M 1301.05(a), (b) intro. and subparagraphs (b)(1)-(7) and (9)-(14) are cited and read as follows

He-M 1301.05 Enrolled Provider Qualifications.

(a) An enrolled provider that offers services under these rules shall:

(1) Be an LEA or SAU; and

(2) Be enrolled as a New Hampshire medical assistance provider.

(b) Professionals who provide covered services shall meet the following qualifications:

(1) An audiologist shall be licensed to practice in New Hampshire or the state in which he or she practices;

(2) A physician shall be licensed to practice in New Hampshire or the state in which he or she practices;

(3) A nurse shall be an advanced registered nurse practitioner, a registered nurse, or a licensed practical nurse licensed to practice in New Hampshire or the state in which he or she practices;

(4) An occupational therapist shall:

a. Be licensed to practice in New Hampshire or the state in which he or she practices; and

b. Be either:

1. Certified by the National Board of Occupational Therapy; or

2. A graduate of a program in occupational therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and engaged in the supplemental clinical experience required before certified by the National Board of Occupational Therapy;

(5) A physical therapist shall be a graduate of a program of physical therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical

Association and the American Physical Therapy Association or its equivalent and licensed to practice in the state of New Hampshire or the state in which he or she practices;

(6) A psychiatrist shall be a physician licensed to practice in New Hampshire or the state in which he or she practices and be either board certified or board eligible according to the most recent regulations of the American Board of Psychiatry and Neurology, Inc. or its successor organization;

(7) A psychologist shall be a school psychologist or associate school psychologist certified by the state board of education in which he or she practices, or a psychologist or associate psychologist certified by the New Hampshire board of examiners of psychologists or certified or licensed in the state in which he or she practices;

(9) Other persons who provide occupational therapy, physical therapy, or speech, hearing, and languages services shall be under the direction of a qualified professional identified pursuant to (4), (5), or (8) above;

(10) Persons who provide rehabilitative assistance shall:

a. Be certified pursuant to Ed 504.05 or Ed 504.06, requirements and certification for paraeducators;

b. Have qualifications equivalent to the requirements for certification under Ed 504.05 or 504.06; or

c. Be licensed practitioners of the healing arts practicing within the scope of his or her practice defined under the law;

(11) Persons providing rehabilitation assistance under Ed 504.05 or Ed 504.06 as paraeducators, or with qualifications equivalent to Ed 504.05 or 504.06, shall provide services in accordance with Ed 1119.07(b);

(12) Persons providing mental health services other than psychiatric services and psychological services described under He-M 1301.04(p) through (s) shall be certified pursuant to Ed 507.06, guidance and counseling director, Ed 507.07, school guidance counselor, or Ed 507.14, social worker, or by a community mental health program in accordance with He-M 426;

(13) Pre-school services shall be provided by programs approved by the department of education in accordance with Ed 1129.02; and

(14) Vision services other than those prescribed or provided by an optometrist or ophthalmologist shall be provided in accordance with a recommendation by a physician or other licensed practitioner of the healing arts practicing within his or her scope of practice as defined in state law where such person practices.

Amend He-M 1301.06, previously effective 11/22/07 (Document #9035), as amended in the intro. and in paragraph (e) effective 2/23/13 (Document #10278), and that expired in paragraphs (a)-(d), and (f)-(l) on 11-22-15, by inserting paragraphs (a)-(d) and (f)-(l) so that He-M 1301.06 intro., paragraphs (a)-(d), and (f)-(l) are cited and read as follows:

He-M 1301.06 Documentation of Services. LEAs and SAUs that provide covered services pursuant to He-M 1301.04 shall document each such service in each student's individual record, with such documentation to include:

- (a) A copy of the IEP and evidence of implementation of the IEP as required by Ed 1109.05;
- (b) The name of the student, the medical assistance ID number, and documentation demonstrating receipt of each unit of the covered service;
- (c) The qualifications of persons delivering each covered service;
- (d) The qualifications and names of persons directing or supervising the covered services if required under He-M 1301.04.
- (f) The type of covered service provided;
- (g) The date of the provision of the covered service;
- (h) The duration of the provision of the covered service;
- (i) In the case of group services, documentation of the number of participants in the group who received the covered service regardless of the participants' eligibility under He-M 1301.03 (c);
- (j) A copy of a physician's or licensed practitioner's referral, order, or recommendation, if required pursuant to He-M 1301.04;
- (k) In the case of services provided by personnel described pursuant to He-M 1301.05 (b)(9), documentation of the qualifications of the professional providing direction; and
- (l) Documentation of the qualifications and the handwritten signature of the individual(s) attesting to the medical non-academic nature of the covered rehabilitative assistance provided pursuant to He-M 1301.04 (v).

Amend He-M 1301.07, previously effective 11-22-07 (Document #9035), as amended in (b) intro., subparagraphs (b)(3), and (b)(4) and paragraph (c) effective 2/23/13 (Document # 10278), and that expired in paragraphs (a) and subparagraphs (b)(1) and (2) on 11-22-15, by inserting paragraphs (a) and subparagraphs (b)(1) and (2) so that He-M 1301.07(a), (b) intro., and (b)(1) and (2) are cited and read as follows:

He-M 1301.07 Documentation of Expenditure of Non-Federal Funds.

(a) The LEA or SAU shall provide documentation annually regarding all services rendered pursuant to these rules.

(b) Such documentation shall:

(1) Demonstrate that:

a. The percentage of federal medical assistance reimbursed, as required by section 1905(b) of the Social Security Act, does not exceed 50% of the actual cost of covered services claimed under the medical assistance program; and

b. In no case are services that are reimbursable under the medical assistance program, but paid by other federal funding, claimed under the medical assistance program;

(2) Be reviewed and signed by the LEA or SAU superintendent; and

APPENDIX

| <u>RULE</u> | <u>RSA or Federal Regulation Implemented</u> |
|---|--|
| He-M 1301.02 intro., (a)-(g), (i)-(s) | RSA 186-C:25, 42 USC 1396b |
| He-M 1301.04(a)-(d), (f)-(h), (j), (k), (m),(n),(p), (r), (t), (v), (w), (x), (z)-(ad) and (af) | RSA 186-C:25, 42 USC 1396b |
| He-M 1301.05(a), (b) intro., (b)(1)-(7) and (b)(9)-(14) | 42 USC 440.100 |
| He-M 1301.06 intro., (a)-(d), and (f)-(l) | RSA 186-C:25, 42 USC 1396b |
| He-M 1301.07(a), (b) intro., (b)(1) and (b)(2), | RSA 186-C:25, 42 USC 1396b |