

RULEMAKING NOTICE FORM

Notice Number 2016-129

Rule Number He-M 406

1. Agency Name & Address:

**Dept. of Health & Human Services
Division of Behavioral Health
Bureau of Mental Health Services
105 Pleasant Street-Main Building
Concord, NH 03301**

2. RSA Authority: RSA 135-C:61, III

3. Federal Authority: _____

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Housing Bridge Subsidy Program**

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

The Department of Health and Human Services, (Department) proposes to adopt He-M 406 which describes the housing bridge subsidy program. The rule describes program eligibility, the application, services, the wait list and the appeal process in the event of termination or denial. The housing bridge subsidy program combines mental health outreach services with a subsidy to help pay rent for those who are eligible for mental health services and whose household meets the income limitations of the Housing and Urban Development, (HUD) Section 8 Housing Choice Voucher Program.

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

Those affected by the rule include individuals who are eligible for mental health services who are on a wait list or applying for Housing and Urban Development Section 8 Housing Choice Voucher Program.

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

<u>RULE</u>	<u>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</u>
He-M 406	RSA 135-C:5, I

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

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

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 1:30 p.m.**

Place: **DHHS Main Bldg., Chapel, 105 Pleasant St., Concord, NH**

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

FIS # 16:136 , dated 7/19/16

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

Not applicable, these are new rules.

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):

The proposed rule describes the housing bridge subsidy program. The program was funded in the FY 2016/2017 budget (Chapter 275, Laws of 2015), and so any cost is attributable to that law rather than to the rule.

A. To State general or State special funds:

None. As noted above, funding for this program was contained in the FY 2016/2017 budget. The Department states the program budget for FY 2016 was \$3,216,660, while the program budget for FY 2017 is \$4,212,160.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

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

The proposed rule creates a new program or responsibility, and expands and modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-M 406, to read as follows:

PART He-M 406 HOUSING BRIDGE SUBSIDY PROGRAM

Statutory Authority: RSA 135-C:61, III and RSA 135-C:5, I.

He-M 406.01 Purpose. The housing bridge subsidy program provides supported housing to people who have serious mental illness. The purpose of supported housing is to reduce institutionalization by combining mental health outreach services with a subsidy to help pay rent. The rental subsidy terminates when the individual receives a Section 8 Housing Choice Voucher. Accordingly, in order for a person to be eligible for the housing bridge subsidy program, the person must apply for, and ultimately qualify for, the Section 8 Housing Choice Voucher. The purpose of this rule is to describe the eligibility criteria, the application process, the services offered, the wait list and the appeal procedures for the housing bridge subsidy program.

He-M 406.02 Definitions.

(a) “Applicant” means a person or guardian who is applying for acceptance into the housing bridge subsidy program.

(b) “Assertive Community Treatment” (ACT) means a team-based approach to delivering comprehensive and flexible treatment, support, and services.

(c) “Commissioner” means the commissioner of the department of health and human services.

(d) “Community mental health program (CMHP)” means “community mental health program” as defined in RSA 135-C: 2, IV.

(e) “Controlled drug(s)” means controlled drugs as defined in RSA 318-B:1, VI.

(f) “Department” means the New Hampshire department of health and human services.

(g) “Facility” means New Hampshire hospital or a receiving facility designated pursuant to RSA 135-C:26 and He-M 405, Glencliff Home, or an acute psychiatric residential treatment program.

(h) “Individual” means any person who is an applicant for or recipient of services from the housing bridge subsidy program.

(i) “Household” means the people who occupy a housing unit including related family members, and all the unrelated people, if any, such as lodgers, foster children, wards, or employees. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also a household.

(j) “Program” means the housing bridge subsidy program (HBSP) administered by the department either directly or through a contract for the provision of services under this rule.

(k) “Severe mental illness” means a condition of a person who is determined severely mentally disabled in accordance with He-M 401.05 or He-M 401.07.

(l) “Severe and persistent mental illness” means a condition of a person who is determined severely mentally disabled in accordance with He-M 401.06 or He-M 401.07.

(m) “State fiscal year” means the period of time extending from July 1 of one year through June 30 of the following year.

(n) “Transitional housing services program” means the residential program for persons with a severe mental illness or severe and persistent mental illness operated on the grounds of New Hampshire Hospital.

(o) “Violent criminal offense” means any conviction that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage including but not limited to murder, manslaughter, assault, rape, robbery, burglary, arson, and kidnapping. This term does not include simple assault by itself.

(p) “Wait list” means a list of individuals who have been determined eligible for the housing bridge subsidy program but for whom funding is not available.

He-M 406.03 Eligibility Criteria.

(a) In order to be eligible for HBSP a person shall meet the following eligibility criteria:

(1) The person shall have a severe mental illness or a severe and persistent mental illness as defined in He-M 401.05 or He-M 401.06;

(2) The person shall be 18 years or older;

(3) The person shall be eligible for services from a CMHP, facility, or the transitional housing services program;

(4) The person and any member of the person’s household who is 18 years or older, shall have applied for or be listed on the person’s application for the Section 8 Housing Choice Voucher Program; and

(5) The person shall lack safe and permanent housing options in the community, and meet one of the following criteria:

a. Be ready for discharge from a facility;

b. Be ready for discharge from the transitional housing services program or a community residence as defined in He-M 1002;

c. Be on an Assertive Community Treatment Team (ACT);

d. Be incarcerated as a result of mental illness and ready for release;

e. Have a minimum of two admissions to New Hampshire Hospital within the last two years;

f. Have used crisis or emergency services as defined in He-M 426.09 for psychiatric reasons within the last two years; or

g. Be unable to access needed community services within the last two years.

(b) Eligibility for the HBSP shall not be conditioned on an individual participating in treatment or complying with mandatory programmatic criteria.

(c) The following persons shall not be eligible for services under the program:

- (1) Individuals who have been convicted of:
 - a. A violent criminal offence within the past 15 years;
 - b. The illegal manufacture, sale, or distribution of a controlled drug, or the possession of a controlled drug with intent to manufacture, sell, or distribute within the past 7 years;
 - (2) Individuals who are current required to register for any sexual offense as defined in 651-B, “Registration of Criminal Offenders;”
 - (3) Individuals with a household member who meets the criteria in (1) or (2) above; and
 - (4) Individuals with a house hold income in excess of the “Area Income Limits” for the area in which housing is sought, as listed by the New Hampshire Housing Finance Authority, (May 1, 20215), and available on –line under “Publications” at <http://www.nhhfa.org/rental-housing-choice-vouchers.cfm>.
- (d) Individuals meeting the criteria in He-M 406.03(a) and in paragraphs (c) (1), (2), or (3) above, may request an eligibility accommodation whereby the individual demonstrates to the department:
- (1) That there is a link between the mental illness and the violent behavior; and
 - (2) That the behavior is controlled through on-going treatment or the terms of a conditional discharge.
- (e) The department shall grant the eligibility accommodation if it determines, that based on the information provided in (d) above good cause exists to believe that the individual will not otherwise possess a threat to the health, safety or wellbeing of another tenant, so long as the conditions of (d)(2) are followed.

He-M 406.04 Notice and Income Verification.

- (a) An individual shall inform the program within 10 days if:
 - (1) The individual or a household member is convicted of any offense in He-M 406.03(b);
 - (2) The household income changes; or
 - (3) Any other event occurs that causes the individual to become ineligible for services under the program.
- (b) The applicable income level shall be verified by the program every 90 days.

He-M 406.05 Application For Services.

- (a) Applicants shall apply for services under this program by completing the “Housing Bridge Subsidy Program Application,” (October 2015), which shall be:
 - (1) Prepared by the applicant with the assistance of the CMHP, facility, or the transitional housing services program;
 - (2) Signed and dated by the applicant; and
 - (3) Submitted by a CMHP, a facility, or the transitional housing services program.
- (b) In addition to the application in (a) above, applicants shall provide:

(1) A signed and dated authorization for a New Hampshire criminal background check of the applicant as prepared by the NH Department of Safety; and

(2) A signed and dated authorization for a New Hampshire criminal background check of any other member of the household 18 years of age or older;

(3) For applicants or other members of the household 18 years of age or older who have lived outside of New Hampshire within the last 5 years, a signed and dated authorization for a state criminal background check from the appropriate agency in the state(s) where the applicant lived; and

(4) A signed and dated certification stating, "I certify that all of the information in this application is true and complete to the best of my knowledge and belief."

(c) Any applicant shall participate in a face-to face interview with the program, if necessary for the program to clarify any information provided in or with the application.

(d) Individuals may request a reasonable modification pursuant to 28 CFR 35.130(b)(7) at any time, and will be provided with information and assistance by the HBSP about their fair housing rights.

(e) Within 45 days of its receipt of an application, which includes all requirements in (a)-(c) above, the department shall determine whether the applicant is eligible for the program.

(f) An application shall be denied if the individual does not meet the eligibility requirements in He-M 406.03 above.

(g) The department shall notify the applicant, in writing, if the application has been accepted or denied.

(1) If accepted, the notice shall include a statement as to whether the individual has been placed on the wait list in accordance with He-M 406.07.

(2) If denied, the notice shall state the basis for denial and provide notice of appeal rights in accordance with RSA 126-A:5, VIII and He-C 200, along with information on obtaining legal assistance.

(h) Individuals who do not meet (a)(1) above and would like to apply to the HBSP shall submit the "Housing Bridge Subsidy Program Intake Form" (February 2016) directly to the department.

(i) When an individual has been accepted into the HBSP, the program shall make every reasonable effort to obtain housing. However, the HBSP cannot guarantee that housing will be found.

He-M 406.06 Services to be Provided.

(a) The program shall assist the individual in identifying safe and affordable housing in the community chosen by the individual.

(b) The program shall provide case management services if the individual does not otherwise have a case manager.

(c) The program shall provide support services that are flexible and available as needed and desired, and that enable individuals to attain and maintain integrated housing.

(d) The program shall assist the individual with obtaining, but not paying for, the following:

(1) A security deposit;

- (2) Utility services; and
- (3) Furniture.

(e) The program shall provide a monthly subsidy toward rent in an amount to be determined based on the amount of rent, the individual's household income, and cost projections of available program funding.

(f) The individual shall be responsible to pay up to 30% of the household income toward the rent.

He-M 406.07 Wait List.

(a) When annual departmental cost projections reflect that available funds will be over-expended for the current state fiscal year, a wait list shall be established.

(b) The wait list shall include any individual that has applied and been deemed eligible for the HBSP and for whom a subsidy is not available.

(c) The individual shall be determined eligible in accordance with He-M 406.03 above before being placed on the wait list.

(d) The wait list shall be prioritized as follows:

- (1) Individuals ready for discharge from a facility, but who lack safe and permanent housing options in the community will be given the first priority;
- (2) Individuals who are on an ACT team, but who lack safe and permanent options in the community will be given the second priority;
- (3) Individuals ready for discharge from the transitional housing services program, but who lack safe and permanent options in the community will be given third priority; and
- (4) Any other individual who has been found eligible in accordance with He-M 406.03.

(e) Individuals shall be added to the wait list according to the date that eligibility is determined; and

(f) The program shall confirm the individual's continued eligibility as of the date the individual is removed from the wait list to receive the subsidy.

He-M 406.08 Termination from the Program.

(a) An individual shall be terminated from the program if the individual:

- (1) Is convicted of any offense described in section He-M 406.03(c)(1) or (2) above;
- (2) Has a household member who meets the criteria in (c)(1) or (2) above;
- (3) Has an increase in household income above the allowable amount listed in He-M 406.03(c) above; or
- (4) Is no longer eligible on the date his or her name is removed from the wait list to receive the subsidy.

(b) The department shall notify the individual of the termination in writing.

(c) An individual shall not be terminated from the program if he or she is eligible for services under He-M 401, but chooses not to receive mental health or housing support services.

(d) The department shall review the individual's income every 90 days to calculate the individual's portion of the rent and to determine whether the individual remains eligible for services under the program.

He-M 406.09 Appeals.

(a) Persons may request a hearing regarding termination, denial of an eligibility accommodation, or to contest the amount of the subsidy as calculated pursuant to He-M 406.06(e) above.

(b) Appeals shall be submitted, in writing, to the department in care of the office of client and legal services within 30 days following the date of the notification of denial or termination of services, or amount of subsidy as calculated.

(c) The office of client and legal services shall immediately forward the appeal to the department's administrative appeals unit (AAU) which shall assign a presiding officer to conduct a hearing or independent review, as provided in He-C 200.

(d) If a hearing is requested, the following actions shall occur:

- (1) Services and payment shall be continued until the decision is made;
- (2) An expedited hearing shall be scheduled as provided in He-C 200.

He-M 406.10 Waivers.

(a) An applicant, community mental health program, facility, or the transitional housing services program, may request a waiver of specific rules in this part, in writing, from the department.

(b) A request for waiver shall include:

- (1) A specific reference to the section of the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary; and
- (3) A full explanation of alternative provisions or procedures proposed.

(c) No provision or procedure prescribed by statute shall be waived.

(d) A request for waiver shall be granted if the commissioner determines that the alternatives proposed meet the objective or intent of the rule and either:

- (1) Do not negatively impact the health or safety of the individual; or
- (2) Are administrative in nature, and do not affect the quality of individual care.

APPENDIX

RULE	STATUTE IMPLEMENTED
He-M 406	RSA 135-C:5, I

