

RULEMAKING NOTICE FORM

Notice Number 2016-158 Rule Number He-W 506.04(a) intro., (1) intro. & l.

1. Agency Name & Address:
**NH Dept. of Health & Human Services
 Office of Medicaid Business and Policy
 129 Pleasant Street
 Concord, NH 03301**

2. RSA Authority: **RSA 126-A:5, XIX(a) and XXIX;
 RSA 161:4-a, IX**
 3. Federal Authority: **42 U.S.C. 1396d(a), §1932(a) of
 the SSA; 42 CFR 438; §1915(b) of
 SSA; §1903(m) of the SSA**
 4. Type of Action:
 Adoption _____
 Amendment **X**
 Repeal _____
 Readoption _____
 Readoption w/amendment _____

5. Short Title: **Medicaid Care Management – Pharmacy Exclusion**

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

He-W 506 is the rule that implements SB 147 (Chapter 125 of the Laws of 2011), which requires the Department to contract with vendors to provide managed care services to the state’s Medicaid population. He-W 506 contains the requirements of the NH Medicaid Care Management Program as they pertain to Medicaid recipients, including covered services, enrollment in managed care, selection of a managed care organization, and grievance and appeal rights. He-W 506.04(a) addresses covered services and specifies exclusions.

On June 29, 2016 the Governor and Executive Council approved amendment #12 to the managed care contract (late agenda item #A2). In amendment #12, the following drugs were excluded from the contract when billed by a pharmacy and will now be paid for under the state’s Medicaid fee-for-service (FFS) program: drugs for the treatment of Hepatitis C and Hemophilia and the specific drugs Carbaglu and Ravicti.

He-W 506.04(a)(1) is being amended to insert new clause l. to implement this amendment to the contract and to indicate that the drugs are excluded from managed care when they are billed by a pharmacy. When the drugs are delivered as part of a medical claim, they will not be excluded from managed care.

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

The proposed rule affects the Managed Care Organizations under contract with the Department to serve the Medicaid population and NH medicaid pharmacy providers.

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-W 506.04(a)intro, (1)intro, & l.	§1903(m) of the SSA; §1932(a)(3) of the SSA; 42 CFR 438.210; 42 U.S.C. 1396u-2(a)(3)

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** Phone #: **271-9234**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant St. E-mail: michael.holt@dhhs.state.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: **Monday, October 3, 2016**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, September 26, 2016 at 11:00 AM**

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

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

FIS # **16:168**, dated **8/22/16**

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

There is no difference in cost when comparing the proposed rule to the existing rule.

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

No federal mandate, no impact on state funds.

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

He-W 506 is the rule that implements Chapter 125, Laws of 2011, which requires the Department to contract with vendors to provide managed care services to the state's Medicaid population. The current rule includes coverage for several high-cost drugs in the capitation rates paid to managed care organizations (MCO). On June 29, 2016, the governor and Executive Council approved an amendment to the MCO contract which excluded drugs for the treatment of hepatitis C and hemophilia, as well as the specific drugs Carbaglu and Ravicti, from the capitation rates paid to the MCOs. These drugs will now be paid for under the state's fee-for-service program, and accordingly payment for the drugs will be made directly to the state. The proposed rule implements this change. As a result of the change, the capitation rate paid to the MCOs will decrease from what they would have been had the drugs continued to be included in the rate, while the Department will assume direct liability for these costs. The Department's contracted actuary states that while this change adjusts the payment mechanism for these drugs, it does not affect the expected value of the benefit. As a result, the Department expects there to be no impact on state expenditures. The Department does note, however, that under the proposed rule the risk of variance from proposed costs will shift from the MCOs to the Department, and as such the Department will directly benefit or suffer from any such variance. This risk could result in either higher or lower costs for the Department, both with equal likelihood.

A. To State general or State special funds:

None.

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 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.

Amend He-W 506.04(a)(1), effective 7-1-16 (Document #11107), by inserting new clause l. and renumbering existing clause l. as m., so that He-W 506.04(a) intro, (a)(1) intro, and clause l. are cited and read as follows:

PART He-W 506 MEDICAID CARE MANAGEMENT (MCM)

He-W 506.04 Covered Services.

(a) Covered services provided through an MCO shall include:

(1) All covered state plan services except the following:

1. The following drugs when billed by a pharmacy:

1. Drugs used for the treatment of Hepatitis C;

2. Drugs used for the treatment of hemophilia;

3. Carbaglu; and

4. Ravicti; and

APPENDIX B

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-W 506.04(a) intro, (1) intro & l.	§1903(m) of the SSA; §1932(a)(3) of the SSA; 42 CFR 438.210; 42 U.S.C. 1396u-2(a)(3)