

**RULEMAKING NOTICE FORM**

Notice Number	<b>2015-200</b>	Rule Number	<b>He-W 603, He-W 606.18, He-W 624.01, He-W 654.16, He-W 654.20, He-W 803, He-W 806.18, He-W 824, He-W 854.16, He-W 854.17 &amp; He-W 854.20</b>
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<p>1. Agency Name &amp; Address:</p> <p style="text-align: center;"><b>Dept. Health &amp; Human Services Division of Family Assistance 129 Pleasant Street, Brown Bldg., Concord, NH 03301</b></p>	<p>2. RSA Authority: <u style="float: right;"><b>RSA 167:3-c,I</b></u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption <u style="float: right;"><b>X</b></u></p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal _____</p> <p style="padding-left: 20px;">Readoption _____</p> <p style="padding-left: 20px;">Readoption w/amendment <u style="float: right;"><b>X</b></u></p>
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5. Short Title: **Expiring Rules Related to Individual Rights and Responsibilities for Financial and Medical Assistance, Institutional Residency, the Adult Standard Disregard, the Cost of Nursing Facility Care, and Allowable Deductions**

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6. (a) Summary of what the rule says and of any proposed amendments:
- The New Hampshire Department of Health and Human Services, (Department) is intending to:**
- **Readopt with amendment He-W 603 and adopt He-W 803:**
    - He-W 603.01 and He-W 803.01 describe the appointment of authorized representatives, the requirements to become an authorized representative, the responsibilities of authorized representatives, and individual responsibilities. Attending administrative appeals was added to the list of authorized representative responsibilities to clarify that authorized representatives may attend appeals on behalf of individuals, pursuant to He-C 203.05. He-W 603.01(c)(5) is being deleted, but the possible responsibility of an authorized representative receiving a medical assistance card has been moved to He-W 803.01, as this authorized representative responsibility is for medical assistance only;
    - He-W 603.02 and He-W 803.02 describe an individual’s responsibility to supply accurate information;
    - He-W 603.03 and He-W 803.03 describe an individual’s responsibility to report changes;
    - He-W 603 is scheduled to expire 1-5-16, but is subject to extension pursuant to RSA 541-A:14-a;
  - **Readopt with amendment He-W 606.18 and adopt He-W 806.18, which describe the verification of institutional residency status and whether personal interviews are required of institutional residents;**
    - He-W 606.18 is scheduled to expire 1-30-16 but is subject to extension pursuant to RSA 541-A:14-a;

- **Readopt with amendment He-W 624.01 and adopt He-W 824, which describe persons who are not considered institutional residents;**
  - **He-W 624.01 is scheduled to expire 1-30-16 but is subject to extension pursuant to RSA 541-A:14-a;**
- **Readopt with amendment He-W 654.16 and adopt He-W 854.16, which describe an amount of income that is disregarded in determinations of eligibility for adult financial and medical assistance;**
- **Readopt the substance and wording of He-W 654.17 renumbered as He-W 854.17 with amendment in He-W 800, where all rules associated with eligibility for medical assistance will now be located. He-W 654.17 will be held in reserve; and**
- **Readopt with amendment He-W 654.20 and adopt He-W 854.20, which describes allowable deductions for financial and medical assistance. Allowances in He-W 654.20 relative to deductions in nursing facility cases are being deleted and have been moved to He-W 854.20, as nursing facility cases apply to medical assistance only;**

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

<b><u>Rule</u></b>	<b><u>RSA/ Federal Citation</u></b>
He-W 603.01	45 CFR 206.10(a)(1)(iii)
He-W 603.02	RSA 167:17-b, RSA 167:83, II(c), RSA 641:3, 45 CFR 206.10(a)(2)(ii)
He-W 603.03	RSA 167:17, 45 CFR 206.10(a)(2)(ii)
He-W 606.18	RSA 167:79, IV(b)
He-W 624.01	RSA 167:79, IV(b)
He-W 654.16	RSA 167:4, I(a)
He-W 654.20	RSA 167:4, I(a)
He-W 803.01	42 CFR 435.908(b), 42 CFR 435.923
He-W 803.02	RSA 167:17-b, RSA 641:3
He-W 803.03	RSA 167:17, 42 CFR 435.916(c)
He-W 806.18	42 CFR 435.1009, 42 CFR 435.1010
He-W 824.01	42 CFR 435.1009, 42 CFR 435.1010
He-W 854.16	RSA 167:4, I(a)
He-W 854.17 (Formerly He-W 654.17)	RSA 167:27-a,, 42 CFR 435.733, 42 CFR 435.832, 38 USC 5503, Section 1924(d) of the SSA [42 USC 1396r-5(d)]
He-W 854.20	RSA 167:4, I(a)

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

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

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, January 21, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, January 14, 2016 at 2:30 PM**

Place:

[DHHS, Brown Bldg., Room 232, 129 Pleasant St., Concord, NH 03303](#)

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

FIS # **15:217**

, dated **12/11/15**

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

There is no difference in cost when comparing He-W 603, 606.18, 624.01, 654.16, and 654.20 to the existing rules. He-W 803.01-.03, 806.18, 824.01, 854.16-.17, and 854.20 are new rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

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

There is no difference in cost associated with the proposed He-W 600 rules. With respect to the proposed He-W 800 rules, the proposed adoption of He-W 803.01-.03, 806.18, 824.01, 854.16, and 854.20 are due to a reorganization of rules regarding medical assistance eligibility from He-W 600 to He-W 800, and have neither a cost nor a benefit when compared with the previous He-W 600 rules. The proposed changes to He-W 654.17 (renumbered as He-W 854.17) are meant to clarify that 854.17 applies to individuals who have already been determined to be eligible for assistance. This clarification does not add a cost when compared to the existing rule.

**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 does not create a new program or responsibility, expand or modify an existing program or responsibility, or 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.**

**Readopt with amendment He-W 603, effective 1-5-08 (Document #9063), to read as follows:**PART He-W 603 ~~CLIENT~~INDIVIDUAL RIGHTS AND RESPONSIBILITIESHe-W 603.01 Authorized Representative.

(a) An ~~client~~individual who chooses an authorized representative (AR) to help with some or all the responsibilities of applying for or receiving ~~NHEP/UP/FAP/FANF~~ or adult category financial ~~or medical~~ assistance shall ~~complete specify in writing, on a form document~~ provided by the department of health and human services (DHHS) which includes all of the following:

- (1) The name, address, and telephone number of the ~~authorized representative~~ AR;
- (2) The duties that the ~~authorized representative~~AR will carry out;
- (3) The ~~client~~individual's relationship to the ~~authorized representative~~AR;
- (4) A statement signed and dated ~~statement from by~~ the ~~client~~individual acknowledging ~~their~~ responsibility for any errors, omissions, ~~failures to report information to DHHS~~, or inaccurate information reported to ~~the department of health and human services~~DHHS by the ~~authorized representative~~AR; and
- (5) A statement signed and dated ~~statement from by~~ the ~~authorized representative~~AR agreeing to accept the responsibilities designated by the ~~client~~individual.

(b) To qualify as an ~~authorized representative~~AR, an individual shall be an adult who has:

- (1) Expressed concern for the ~~client~~individual's well-being;
- (2) Sufficient knowledge about the ~~client~~individual's circumstances to assist the ~~client~~individual in applying for or receiving assistance; and
- (3) The capability to obtain information about the ~~client~~individual's circumstances.

(c) The ~~client~~individual may authorize an ~~representative~~AR to carry out one or more of the following responsibilities:

- (1) Obtaining ~~department of health and human services~~DHHS applications and other forms, and completing these forms for the ~~client~~individual;
- (2) Attending eligibility interviews for the ~~client~~individual;
- (3) Providing ~~the department of health and human services~~DHHS with verification of the ~~client~~individual's income, resources and other case circumstances;
- (4) Reporting and verifying changes in the ~~client~~individual's case circumstances to ~~the department of health and human services~~DHHS; ~~and~~
- (5) Receiving the ~~client~~individual's assistance payment, ~~medical assistance identification card~~, electronic benefits transfer card, and other ~~department of health and human services~~DHHS mail; ~~and~~

(6) Attending administrative appeals for the individual.

(d) If designated pursuant to (a)(2) above, AR~~authorized representatives~~ shall:

(1) Sign ~~department of health and human services~~DHHS forms completed on behalf of the ~~client~~individuals; and

(2) Co-sign ~~department of health and human services~~DHHS forms they assist ~~client~~the individuals to in completing.

He-W 603.02 Client/Individual Responsibility to Supply Accurate Information. Client/Individuals shall supply complete and truthful answers to all written and verbal questions ~~in order~~ to establish eligibility or fulfill an eligibility requirement, pursuant to RSA 167:17-b.

He-W 603.03 Client/Individual Responsibility to Report Changes. ~~For financial assistance,~~ ~~Failure~~ to report changes no later than 10 calendar days after the change takes place, pursuant to RSA 167:17, shall result in the recoupment of any resultant overpayments or a corrective payment for any resultant underpayments.

**Readopt with amendment He-W 606.18, effective 1-30-08 (Document #9083), to read as follows:**

He-W 606.18 Institutional Residence.

(a) The ~~district office~~ department of health and human services (DHHS) shall verify institutional residence and the individual's status within the institution by written or verbal contact with the institution.

(b) Individuals who received financial ~~or medical~~ assistance but whose assistance was terminated at the time of admission to New Hampshire Hospital shall have financial ~~and medical~~ assistance redetermined pursuant to He-W 684.01 without a personal interview, as defined in He-W 601.06(1), if the individual meets the criteria in (c) below.

(c) A personal interview shall not be required of individuals described in (b) above when the ~~client~~individual:

(1) Is discharged within 60 days from the date of admission; and

(2) ~~Provides~~Completes:

a. A ~~signed and completed form~~document provided by ~~DHHS~~the department which includes the individual's:

1. Date of discharge from New Hampshire Hospital;

2. Shelter costs for the non-adult categories of financial ~~and medical~~ assistance;

3. Assistance group composition;

4. ~~Individual's e~~Current income;

5. ~~Individual's e~~Current resources pursuant to He-W 601.07(f); ~~and~~

6. Amount and type of any third-party medical coverage; and

7. Individual's or representative's dated signature; and

b. Documentation of changes in address, shelter costs for the non-adult categories of financial ~~and medical~~ assistance, assistance group composition, income, resources, and medical coverage ~~which that~~ have occurred since the last eligibility determination.

(d) A personal interview shall be required to redetermine financial ~~and medical~~ assistance for individuals released from an institution when:

(1) An eligibility redetermination was due or overdue when the individual was admitted to New Hampshire Hospital;

(2) An eligibility redetermination is due during the month the individual is discharged from New Hampshire Hospital;

(3) ~~The department~~ DHHS determines that the individual failed or refused to cooperate without good cause pursuant to He-W 601.04(i) with the medical review process pursuant to He-W 685.01; or

(4) The individual does not meet the criteria described in (c) above.

**Readopt with amendment He-W 624.01, effective 1-30-08 (Document #9083), to read as follows:**

He-W 624.01 Institutional Residence.

(a) The following individuals shall not be considered inmates of public institutions or private institutions primarily engaged in treating mental or emotional disorders or tuberculosis:

(1) Individuals who are admitted to the New Hampshire Hospital, ~~including the Anna Philbrook Center~~, for purposes of evaluation only, for a period not to exceed 3 months;

(2) Individuals who, while remaining under the general supervision of a public institution as an official inmate of that institution, physically reside outside the institution;

(3) Individuals under age 22 or age 65 or older who are certified for care at a designated receiving facility as defined in He-M 405.02(~~f~~);

(4) Patients at the psychiatric unit of the Dartmouth - Hitchcock Medical Center;

(5) Children in placement in foster homes or other approved child caring institutions;

(6) Children who participate in the special education program at the ~~Tobey School~~ Sununu Youth Services Center;

(7) Adults in residential care facilities and community living residences; and

(8) Inmates committed by a court order to a NH correctional facility, who require inpatient care at a medical institution as defined in 42 CFR 435.1010.

(b) Individuals who are patients at the Glencliff nursing facility unit of the New Hampshire Hospital shall be considered as residing in a nursing facility.

**Readopt with amendment He-W 654.16, effective 10-1-08 (Document #9276), to read as follows:**

He-W 654.16 Adult Standard Disregard.

(a) For adult category financial ~~or medical~~-assistance applicants or recipients ~~who do not reside in nursing facilities,~~ a standard disregard shall be subtracted from income as described in He-W 654.02 (c)(5).

(b) The amount of the disregard shall depend on the number of individuals whose needs are considered when determining eligibility, as follows:

(1) The standard disregard for one individual shall be \$13.00;

(2) The standard disregard shall be \$20.00 for an elientindividual and applicant or nonapplicant spouse, ~~as well as~~ an elientindividual and a needy essential person; and

(3) The standard disregard shall be \$25.00 for an elientindividual and applicant or nonapplicant spouse and a needy essential person.

**Readopt with amendment He-W 654.20, effective 10-1-08 (Document #9276), to read as follows:**

He-W 654.20 Allowable Deductions.

(a) When determining eligibility and the amount of assistance for all categories of financial ~~and medical~~-assistance, an allowable deduction from the income available to the assistance group shall be made, in an amount which has been or must be paid by an individual for non-employment-related types of expenses, including the following:

(1) Training expenses as described in (e) below;

(2) Garnishments from an individual's earnings to repay a legal debt;

(3) Allocated income, as specified in He-W 654.21; and

(4) Any court-ordered payments, as described in (f) below, including but not limited to child support, alimony, and guardianship fees.

(b) The deduction described in (a) above shall be allowed for:

(1) Any individual whose needs are included in the assistance group; and

(2) Any individual whose income is counted even if the individual's his/her needs are not included in the assistance group.

(c) The amount of the deduction shall be the amount of the verified expense.

(d) Allowable deductions shall be applied as follows:

(1) For FANF, and for ~~OAA, APTD, ANB~~ adult category financial ~~and medical~~ assistance ~~non-nursing facility~~ cases in which there is a nonapplicant spouse, the allowable deductions shall be subtracted from the amount which represents the monthly combined earned income, less all applicable disregards to earned income as described in He-W 654.14 and He-W 654.15, plus all unearned income; and

(2) For adult category financial assistance ~~non-nursing facility~~ cases in which there is an applicant spouse, the allowable deductions shall be subtracted from the amounts which represent the individual monthly net incomes of the applicant and the applicant spouse; ~~and~~

~~(3) For nursing facility cases, allowable deductions shall not be subtracted for the categorically needy eligibility determination as described in He-W 654.02, but shall be the first subtraction from the net income amount for the medically needy eligibility determination as described in He-W 654.02.~~

(e) Training expenses shall be an allowable deduction when all the following circumstances are met:

(1) The individual is enrolled in; ~~physically~~ and regularly attending at least on a half-time basis, a program having an organized curriculum with the specific objective of training individuals for gainful employment;

(2) The training program is sponsored by public education or the federal government, or is offered by private schools for a particular trade;

(3) The individual has not received reimbursement for the training expense from any other source, or if partial reimbursement is made, the remaining expense shall be an allowable deduction;

(4) The training expense is not part of an employment expense disregard, because the individual has no earned income, or the training is totally unrelated to the individual's employment; and

(5) The expense occurs on at least a monthly basis.

(f) Any court-ordered payment which must be paid by an individual shall be an allowable deduction, regardless of whether the individual actually makes the payment.

**Adopt He-W 803 to read as follows:**

**PART He-W 803 INDIVIDUAL RIGHTS AND RESPONSIBILITIES**

He-W 803.01 Authorized Representative.

(a) A individual who chooses an authorized representative (AR) to help with some or all the responsibilities of applying for or receiving medical assistance shall complete a document provided by the department of health and human services (DHHS) which includes all of the following:

- (1) The name, address, and telephone number of the AR;
- (2) The duties that the AR will carry out;
- (3) The individual's relationship to the AR;
- (4) A statement signed and dated by the individual acknowledging his or her responsibility for any errors, omissions, failures to report information to DHHS, or inaccurate information reported to DHHS by the AR; and
- (5) A statement signed and dated by the AR agreeing to accept the responsibilities designated by the individual.

(b) To qualify as an AR, an individual shall be an adult who has:

- (1) Expressed concern for the individual's wellbeing;
- (2) Sufficient knowledge about the individual's circumstances to assist the individual in applying for or receiving assistance; and
- (3) The capability to obtain information about the individual's circumstances.

(c) The individual may authorize an AR to carry out one or more of the following responsibilities:

- (1) Obtaining DHHS applications and other forms, and completing these forms for the individual;
- (2) Attending eligibility interviews for the individual;
- (3) Providing DHHS with verification of the individual's income, resources and other case circumstances;
- (4) Reporting and verifying changes in the individual's case circumstances to DHHS;
- (5) Receiving the individual's medical assistance identification card and other DHHS mail;
- (6) Attending administrative appeals for the individual; and
- (7) Communicating with the individual's managed care organization or qualified health plan.

(d) If designated pursuant to (a)(2) above, ARs shall:

- (1) Sign DHHS forms completed on behalf of the individual; and
- (2) Co-sign DHHS forms they assist the individual in completing.

He-W 803.02 Individual Responsibility to Supply Accurate Information. Individuals shall supply complete and truthful answers to all written and verbal questions to establish eligibility or fulfill an eligibility requirement, pursuant to RSA 167:17-b.

He-W 803.03 Individual Responsibility to Report Changes. Failure to report changes no later than 10 calendar days after the change takes place, pursuant to RSA 167:17, shall result in the recoupment of any resultant overpayments or a corrective payment for any resultant underpayments.

**Adopt He-W 806.18, to read as follows:**

He-W 806.18 Institutional Residence.

(a) The department of health and human services (DHHS) shall verify institutional residence and the individual's status within the institution by written or verbal contact with the institution.

(b) Individuals who received medical assistance but whose assistance was terminated at the time of admission to New Hampshire Hospital shall have medical assistance redetermined pursuant to He-W 684.01 without a personal interview, as defined in He-W 601.06(l), if the individual meets the criteria in (c) below.

(c) A personal interview shall not be required of individuals described in (b) above when the individual:

- (1) Is discharged within 60 days from the date of admission; and
- (2) Completes:
  - a. A document provided by the department which includes the individual's:
    1. Date of discharge from New Hampshire Hospital;
    2. Shelter costs for the non-adult categories of financial and medical assistance;
    3. Assistance group composition;
    4. Current income;
    5. Current resources pursuant to He-W 601.07(f);
    6. Amount and type of any third-party medical coverage; and
    7. Or representative's dated signature; and

b. Documentation of changes in address, shelter costs for the non-adult categories of medical assistance, assistance group composition, income, resources, and medical coverage that have occurred since the last eligibility determination.

(d) A personal interview shall be required to redetermine medical assistance for individuals released from an institution when:

- (1) An eligibility redetermination was due or overdue when the individual was admitted to New Hampshire Hospital;
- (2) An eligibility redetermination is due during the month the individual is discharged from New Hampshire Hospital;
- (3) DHHS determines that the individual failed or refused to cooperate without good cause pursuant to He-W 601.04(i) with the medical review process pursuant to He-W 685.01; or
- (4) The individual does not meet the criteria described in (c) above.

**Adopt He-W 824, to read as follows:**

**PART He-W 824 INSTITUTIONAL RESIDENCE**

He-W 824.01 Institutional Residence.

(a) The following individuals shall not be considered inmates of public institutions or private institutions primarily engaged in treating mental or emotional disorders or tuberculosis:

- (1) Individuals who are admitted to the New Hampshire Hospital for purposes of evaluation only, for a period not to exceed 3 months;
- (2) Individuals who, while remaining under the general supervision of a public institution as an official inmate of that institution, physically reside outside the institution;
- (3) Individuals under age 22 or age 65 or older who are certified for care at a designated receiving facility as defined in He-M 405.02(f);
- (4) Patients at the psychiatric unit of the Dartmouth - Hitchcock Medical Center;
- (5) Children in placement in foster homes or other approved child caring institutions;
- (6) Children who participate in the special education program at the Sununu Youth Services Center;
- (7) Adults in residential care facilities and community living residences; and
- (8) Inmates committed by a court order to a NH correctional facility, who require inpatient care at a medical institution as defined in 42 CFR 435.1010.

(b) Individuals who are patients at the Glencliff nursing facility unit of the New Hampshire Hospital shall be considered as residing in a nursing facility.

**Adopt He-W 854.16, to read as follows:**

He-W 854.16 Adult Standard Disregard.

(a) For medical assistance applicants or recipients a standard disregard shall be subtracted from income as described in He-W 654.02(c)(5).

(b) The amount of the disregard shall depend on the number of individuals whose needs are considered when determining eligibility, as follows:

- (1) The standard disregard for one individual shall be \$13.00;
- (2) The standard disregard shall be \$20.00 for an individual and applicant or nonapplicant spouse, an individual and a needy essential person; and
- (3) The standard disregard shall be \$25.00 for an individual and applicant or nonapplicant spouse and a needy essential person.

**Readopt with amendment and renumber He-W 654.17, effective 10-1-08 (Document #9276), as amended effective 10-1-10 (Document #9789), as He-W 854.17, and hold He-W 654.17 in reserve, so that He-W 854.17 reads as follows:**

He-W ~~6~~54.17 Post-Eligibility Computation of Cost of Care for Nursing Facility Care.

(a) The amount of income that an eligible individual residing in a nursing facility is liable to contribute toward the cost of his or her nursing facility care shall be computed as follows:

- (1) The amount of the applicant or recipient's gross earned income as defined in He-W 601.04(m) shall be determined;
- (2) The employment expense disregard, as specified in He-W 654.18, shall be subtracted from the individual's gross earned income to obtain the individual's net earned income;
- (3) The total amount of the individual's unearned income, as defined in He-W 601.08(k), shall be added to the net earned income to determine the individual's net income;
- (4) The allowable deductions, as defined in He-W ~~6~~54.20 and He-W 654.21, shall be subtracted from the individual's net income;
- (5) The veterans affairs nursing facility pension, as defined in 38 U.S.C. 5503, if received, or the personal needs allowance, as defined in (b) below, shall be subtracted from the amount in (4) above;
- (6) The amount of income to be allocated to a spouse or dependents, as defined in He-W 654.21, shall be subtracted from the amount in (5) above;
- (7) The cost of the following medical expenses incurred by the recipient shall be subtracted from the amount in (6) above:

- a. Health insurance premiums, including Medicare Part B, coinsurance payments, and deductibles;
- b. Necessary and remedial care that would be covered by medical assistance except that allowable payment limits have been exceeded;
- c. Necessary and remedial care that is recognized by state law, but not covered by medical assistance; and
- d. Currently obligated, unpaid prior medical debt;

(8) The amount of any continuing SSI benefits, under 42 USC 1382(e), shall be subtracted from the amount in (7) above;

(9) If a physician has verified the stay in the nursing facility is to be 3 months or less and the individual is expected to return home, an amount equal to the FANF shelter payment allowance, as defined in He-W 658.02, shall be subtracted from the amount in (8) above;

(10) The veterans affairs aid and attendance allowance shall be added to the amount in (8) or (9) above as required by 42 CFR 435.733(c); and

(11) The result in (10) above shall be the amount of income for which the individual is liable to remit to the nursing facility as payment toward the cost of his or her nursing facility care.

(b) The personal needs allowance (PNA) shall be equal to the minimum amount mandated by RSA 167:27-a,I and, pursuant to RSA 167:27-a,II, updated every 5 years by:

(1) Multiplying the current year's PNA by the sum of the previous 5 years' cost of living adjustments as described in 20 CFR 416.405;

(2) Rounding up the product derived in (b)(1) above to the next whole dollar; and

(3) Adding the rounded up product in (b)(2) above to the current year's PNA.

(c) For all individuals applying for nursing facility care:

(1) Only the following currently obligated, unpaid prior medical debts shall be allowed:

a. Non-nursing facility-related medical expenses; and

b. Nursing facility expenses at the Medicaid provider payment rate for the facility.

(2) Nursing facility expenses incurred during any penalty period pursuant to He-W 601.06(h), or period of ineligibility pursuant to He-W 601.06(i), except as noted in (c)(3) below, shall not be considered an allowable medical debt pursuant to (a)(7)(d) above; and

(3) Nursing facility expenses incurred during a period of ineligibility due to excess resources or receipt of a lump sum shall be considered an allowable medical expense pursuant to (a)(7)d. above, and in accordance with (c)(1)b. above.

**Adopt He-W 854.20, to read as follows:**

He-W 854.20 Allowable Deductions.

(a) When determining eligibility and the amount of assistance for all categories of medical assistance, an allowable deduction from the income available to the assistance group shall be made, in an amount which has been or must be paid by an individual for non-employment-related types of expenses, including the following:

- (1) Training expenses as described in (e) below;
- (2) Garnishments from an individual's earnings to repay a legal debt;
- (3) Allocated income, as specified in He-W 654.21; and
- (4) Any court-ordered payments, as described in (f) below, including but not limited to child support, alimony, and guardianship fees.

(b) The deduction described in (a) above shall be allowed for:

- (1) Any individual whose needs are included in the assistance group; and
- (2) Any individual whose income is counted even if his/her needs are not included in the assistance group.

(c) The amount of the deduction shall be the amount of the verified expense.

(d) Allowable deductions shall be applied as follows:

- (1) For medical assistance non-nursing facility cases in which there is a nonapplicant spouse, the allowable deductions shall be subtracted from the amount which represents the monthly combined earned income, less all applicable disregards to earned income as described in He-W 654.14 and He-W 654.15, plus all unearned income;
- (2) For adult category non-nursing facility cases in which there is an applicant spouse, the allowable deductions shall be subtracted from the amounts which represent the individual monthly net incomes of the applicant and the applicant spouse; and
- (3) For nursing facility cases, allowable deductions shall not be subtracted for the categorically needy eligibility determination as described in He-W 654.02, but shall be the first subtraction from the net income amount for the medically needy eligibility determination as described in He-W 654.02.

(e) Training expenses shall be an allowable deduction when all the following circumstances are met:

- (1) The individual is enrolled in and regularly attending at least on a half-time basis, a program having an organized curriculum with the specific objective of training individuals for gainful employment;

(2) The training program is sponsored by public education or the federal government, or is offered by private schools for a particular trade;

(3) The individual has not received reimbursement for the training expense from any other source, or if partial reimbursement is made, the remaining expense shall be an allowable deduction;

(4) The training expense is not part of an employment expense disregard, because the individual has no earned income, or the training is totally unrelated to the individual's employment; and

(5) The expense occurs on at least a monthly basis.

(f) Any court-ordered payment which must be paid by an individual shall be an allowable deduction, regardless of whether the individual actually makes the payment.

#### APPENDIX

<b>Rule</b>	<b><u>RSA/ Federal Citation</u></b>
He-W 603.01	45 CFR 206.10(a)(1)(iii)
He-W 603.02	RSA 167:17-b, RSA 167:83, II(c), RSA 641:3, 45 CFR 206.10(a)(2)(ii)
He-W 603.03	RSA 167:17, 45 CFR 206.10(a)(2)(ii)
He-W 606.18	RSA 167:79, IV(b)
He-W 624.01	RSA 167:79, IV(b)
He-W 654.16	RSA 167:4, I(a)
He-W 654.20	RSA 167:4, I(a)
He-W 803.01	42 CFR 435.908(b), 42 CFR 435.923
He-W 803.02	RSA 167:17-b, RSA 641:3
He-W 803.03	RSA 167:17, 42 CFR 435.916(c)
He-W 806.18	42 CFR 435.1009, 42 CFR 435.1010
He-W 824.01	42 CFR 435.1009, 42 CFR 435.1010
He-W 854.16	RSA 167:4, I(a)
He-W 854.17 (Formerly He-W 654.17)	RSA 167:27-a., 42 CFR 435.733, 42 CFR 435.832, 38 USC 5503, Section 1924(d) of the SSA [42 USC 1396r-5(d)]
He-W 854.20	RSA 167:4, I(a)