

RULEMAKING NOTICE FORM

Notice Number 2016-1	Rule Number He-W 606.31 & He-W 637.07
<p>1. Agency Name & Address:</p> <p>Dept. of Health and Human Services Division of Family Assistance 129 Pleasant St, Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 167:83, II(c) & (l)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 40px;">Adoption _____</p> <p style="padding-left: 40px;">Amendment _____</p> <p style="padding-left: 40px;">Repeal _____</p> <p style="padding-left: 40px;">Readoption _____</p> <p style="padding-left: 40px;">Readoption w/amendment <u> X </u></p>

5. Short Title: **Verification of Good Cause for Non- Cooperation with Child Support Requirements for FANF and Good Cause for Non-Participation in the New Hampshire Employment Program (NHEP)**

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

The Department of Health and Human Services (Department) is proposing to readopt with amendments He-W 606.31 and He-W 637.07. These rules are scheduled to expire March 15, 2016, but are subject to extension pursuant to RSA 541-A:14-a.

He-W 606.31 describes the verification requirements for Financial Assistance to Needy Families (FANF) applicants and recipients claiming good cause for non-cooperation with child support requirements. The Department is proposing to readopt this rule with amendments to:

- **update citations found in the rule;**
- **change the term “client” to “individual”;** and
- **link text in the rule to the applicable federal and state citations.**

He-W 637.07 describes good cause reasons for non-participation in the New Hampshire Employment Program (NHEP), including lack of adequate child care, net loss of income, loss of shelter, and domestic violence, and describes acceptable verification for each good cause reason. The Department is proposing to readopt this rule with amendments to:

- **add specific citations;**
- **change the term “client” to “individual”;**
- **specify in He-W 637.07(e)(2)-(3) that acceptable documentation includes a signed, written statement under penalty of unsworn falsification, pursuant to RSA 641:3, and to remove the requirement that the signed, written statement be presented on a form provided by the Department; and**
- **correct a spelling error found in subparagraph He-W 637.07(j)(2).**

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

FANF applicants and recipients will be affected by the rule.

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>RSA/ Federal Citation</u>
He-W 606.31	RSA 167:79, III(c); RSA 167:82, III(b); 45 CFR 232.40, & .42-.43; 45 CFR 260, Subpart B; 42 USC 602(a)(7)
He-W 637.07	RSA 167:82, III(c)-IV; 45 CFR 260, Subpart B; 42 USC 602(a)(7)

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

Name: **Catherine Bernhard** Title: **Rules Coordinator**
Address: **Dept. of Health & Human Services** Phone #: **271-9374**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant Street E-mail: **catherine.bernhard@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: **Thursday, February 11, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, February 4, 2016 10:00 a.m.**

Place: **[DHHS, Brown Bldg, Room 232, 129 Pleasant St., Concord, NH 03301](#)**

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

FIS # 15:225, dated 12/28/15

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:

45 CFR 232.43(b) mandates that an applicant or recipient who claims good cause for non-cooperation with child support requirements must provide corroborative evidence. 45 CFR 260.52(c) and 42 USC 602 (a)(7)(A)(iii) require states that offer the family violence option to waive compliance with certain program requirements if the individual or a member of the assistance group claims to be a victim of domestic violence as defined at 42 USC 608(a)(7)(C)(iii). There is no anticipated cost or impact on state funds associated with these requirements.

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:

None.

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

The proposed rules do not create a new program or responsibility. 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.

Readopt with amendment He-W 606.31, effective 3-15-08 (Document #9104), cited and to read as follows:

PART He-W 606 VERIFICATION

He-W 606.31 Good Cause Reasons for Non-Cooperation with Child Support Requirement.

(a) To claim a good cause waiver for non-cooperation with the child support requirements described in RSA 167:79, III(c)(1)-(2) & (c)(4), for any of the reasons specified in ~~He-W 636.09(e)~~RSA 167:82, III(b), the ~~individual client~~ shall provide verification pursuant to 45 CFR 232.~~42(b)-45~~ CFR 232.43, except as specified in this section.

(b) If a claim for good cause for non-cooperation with child support requirements is due to the claimant being or having been battered or subjected to extreme cruelty pursuant to 42 USC 602(a)(7), He-W 636.09(e)(1) is made but verification pursuant to ~~45 CFR 232.43~~He-W 602.10(a)(1)(b)(1.) is not submitted to support the claim, the department of health and human services (DHHS) shall accept a signed, written statement from the individual, under penalty of unsworn falsification pursuant to RSA 641:3, that:

(1) States the reason for the claim of the battering or extreme cruelty; and

(2) Indicates that cooperation with a child support requirement in RSA 167:79, III(c)(1)-(2) or (c)(4) would, pursuant to 45 CFR 260.52(c):

a. ~~That cooperation with the child support requirement would m~~Make it more difficult for the family to escape the situation of battering or extreme cruelty described in He-W 636.09(e)(1);

b. ~~That a child support requirement referenced in (a) above would u~~Unfairly penalize the family who is or has been victimized by the situation of battering or extreme cruelty described in He-W 636.09(e)(1); or

c. ~~That a child support requirement referenced in (a) above would p~~Put the family at further risk of the situation described in He-W 636.09(e)(1) of battering or extreme cruelty.

(c) False information provided on a signed, written statement pursuant to (b) above shall result in the loss of the good cause waiver for non-cooperation with the child support requirement due to being battered or subjected to extreme cruelty, pursuant to 42 USC 602(a)(7)(B) RSA 167:82, III(b), and be considered a violation of RSA 167:17-b and RSA 641:3.

Readopt with amendment He-W 637.07, effective 3-15-08 (Document #9104), cited and to read as follows:

PART He-W 637 THE NEW HAMPSHIRE EMPLOYMENT PROGRAM (NHEP)

He-W 637.07 Good Cause.

(a) Good cause shall exist, pursuant to RSA 167:82, III(c), ~~when: for lack of adequate child care~~ when:

(1) A family experiences a net loss of income or loss of shelter, pursuant to (f) and (g) below;
or

(2) A family includes an individual who has been battered or subject to extreme cruelty as defined in 42 U.S.C. 6028(a)(7)(~~BC~~), pursuant to (h) below.

(b) Good cause for lack of adequate child care pursuant to ~~(a) above~~ RSA 167:82, III(c)(8) shall:

(1) Apply for children under age 13; or

(2) Apply for children over age 13 but under age 18 provided the child's physical or mental condition is such that the child would cause harm to him/herself or to others without supervision;

(3) Not include instances where providers refuse to provide child care due to intentional non-payment of child care bills by the individual; and

(4) Be considered to exist when the individualelient provides in writing the claim and the specific reasons why the claim is made that the quality of care from a provider is not adequate as described in (d)(4) below;

(c) When the individual NHEP-client claims inadequate child care as identified in (b)(4) above, the individualelient shall explore other child care providers and options for obtaining adequate child care;

(d) Adequate child care, as referenced in (b) above, shall be considered available from those providers who:

(1) Have openings and to whom the individual has a means of transporting the children;

(2) Are licensed or license exempt;

(3) Meet all the qualifications and requirements for providers and/or contract agencies specified in He-C 6910.18(b)-(d) and meet the definitions at RSA 170-E:2, IV or RSA 170-E:3;

(4) Provide care that is representative of the quality of child care provided to other children in the community; and

(5) Meet the household's basic requirements for child care, such as providing care during the required hours, or providing special treatment for a handicapped child if necessary;

(e) Acceptable verification for a good cause reason for non-participation with NHEP work requirements shall include, but not be limited to:

(1) Written verification from a third party pertaining to the individual's medical visits, mandated appointments or other circumstances beyond the individuals' control;

(2) A signed, written statement from the individual, under penalty of unsworn falsification pursuant to RSA 641:3Documentation, indicating the individual's efforts to contact local

agencies to resolve the reason for non-participation, ~~presented on a form provided by the department~~; or

(3) A signed, written statement from the individual, under penalty of unsworn falsification pursuant to RSA 641:3~~Documentation~~, indicating the individual's continued efforts to resolve the reason for non-participation, ~~presented on a form provided by the department~~.

(f) The good cause provision due to net loss of income as identified in (a)(1) above, shall be met when the net income available to a family at the time the offer of employment was made is less than the financial assistance the family received under ~~NHEP/FAP/FANF~~;

(g) Net loss of income shall be calculated as the family's gross income, which shall include, but not be limited to, earnings, unearned income and cash assistance less the total of necessary work-related expenses, such as child care, transportation, and any other mandatory work related expense required by the employer;

(h) Individuals who make a good cause claim due to (a)(2) above shall be required to provide the following corroborative evidence to verify the claim:

(1) Court, medical, criminal, child protective services, psychological or law enforcement records or a statement from a social service provider;

(2) A written statement from a social worker from a public or private social service agency; or

(3) Sworn statements from an individual other than assistance group members with knowledge of the circumstances.

(i) Pursuant to 45 CFR 260.52(c), ~~If the individual is~~ not able to provide corroborative evidence as described in (h) above, the individual shall submit ~~—~~a signed, written statement, under penalty of unsworn falsification, pursuant to RSA 641:3, that indicates:

(1) The existence of the situation in (a)(2) above and that compliance with the work program participation requirements would make it more difficult for the assistance group to escape the situation;

(2) That the work participation requirements would unfairly penalize the assistance group which is or has been victimized; or

(3) That the work participation requirements would put the assistance group at further risk.

(j) Good cause for loss of shelter shall be deemed to temporarily exist for failure to comply with voluntary quit and work-related activities when the individualelient:

(1) Is in immediate threat of eviction;

(2) Is living in an abandoned building, place of business, car or other vehicle, or in a place not designed to be, or not ordinarily used as, a regular sleeping accommodation for human beings; or

(3) Has provided documentation establishing an unstable living arrangement that impedes the individual's client's ability to meet work participation requirements.

(k) An individual may make the claim for good cause for non-participation with NHEP work requirements when they indicate that they are, or have previously been, battered or subjected to extreme cruelty as defined in 42 U.S.C. 6028(a)(7)(~~BE~~)(iii), where compliance with normal work program requirements would:

- (1) Make it more difficult to escape the situation;
- (2) Unfairly penalize those who are or have been victimized; or
- (3) Put them at further risk.

(l) All good cause decisions shall be made by ~~the NHEP representative~~ [the department of health and human services](#) considering all available facts and circumstances, including information submitted by:

- (1) The individual;
- (2) The employer;
- (3) Other agencies providing a NHEP service/activity; and
- (4) Any other individual with first hand knowledge of the facts and/or circumstances of the situation.

(m) Good cause decisions shall be subject to the administrative appeal process established by He-C 200.

APPENDIX

<u>Rule</u>	<u>RSA/ Federal Citation</u>
He-W 606.31	RSA 167:79, III(c); RSA 167:82, III(b); 45 CFR 232.40, & .42-.43; 45 CFR 260, Subpart B; 42 USC 602(a)(7)
He-W 637.07	RSA 167:82, III(c)-IV; 45 CFR 260, Subpart B; 42 USC 602(a)(7)