

**RULEMAKING NOTICE FORM**

Notice Number      **2016-157**

Rule Number      **He-W 854.02, He-W 854.18, He-W 858.05  
& He-W 858.06**

1. Agency Name & Address:

**Dept. of Health and Human Services  
Office of Medicaid Bus. & Policy  
129 Pleasant St., Brown Bldg.  
Concord, NH 03301**

2. RSA Authority:                          **RSA 167:3-c, I**                    

3. Federal Authority:      \_\_\_\_\_

4. Type of Action:

Adoption                                          **X**                    

Amendment                      \_\_\_\_\_

Repeal                              \_\_\_\_\_

Readoption                                          **X**                    

Readoption w/amendment                          **X**                    

5. Short Title: **Expiring Rules Related to Income Computation for Medical Assistance, Employment Expense Disregard for Medical Assistance, Eligibility for Nursing Facility Care and Home and Community-Based Care**

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

**The New Hampshire Department of Health and Human Services (Department) is proposing to:**

- **Adopt He-W 854.02 which describes the income computation used when determining eligibility and benefits for applicants and recipients of medical assistance;**
- **Adopt He-W 854.18 which describes the employment expense disregard subtracted from earned income for applicants and recipients of OAA, APTD and ANB requesting medical assistance nursing facility care;**
- **Readopt the substance and wording of existing rule He-W 658.05 and renumber the rule as He-W 858.05 in He-W 800, where all rules associated with eligibility for medical assistance will now be located. He-W 858.05 describes eligibility for adult category medical assistance nursing care;**
- **Readopt with amendment existing rule He-W 658.06 and renumber the rule as He-W 858.06 in He-W 800, where all rules associated with eligibility for medical assistance will now be located. The amendments are editorial. He-W 858.06 describes eligibility for adult category medical assistance for home and community based care.**

**He-W 658.05 and He-W 658.06 are scheduled to expire 10-03-16 but are subject to extension pursuant to RSA 541-A:14-a.**

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

**The rule affects applicants and recipients of medical assistance and individuals who receive nursing facility services or home and community-based care services.**

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 854.02	RSA 167: 3-c, IX, RSA 167:4, I(a); RSA 167:6, VII; Section 1902(f) of the Social Security Act (SSA) [42 USC 1396a(f)]; 42 CFR 435.401(c)(2); 42 CFR 435.601(b);
He-W 854.18	RSA 167:3-c, IX ; RSA 167:4, I(a); Section 1902(a) of the SSA [42 USC 1396a(a)(17)(B),(C)]; 20 CFR 416.1112(c); 42 CFR 435.601(b)
He-W 858.05 (formerly He-W 658.05)	RSA 151-E:3; RSA 167:4, I(a); 20 CFR 416.405; 20 CFR 416.410; 42 CFR 435.211; 42 CFR 435.236; 42 CFR 435.622
He-W 858.06 (formerly He-W 658.06)	RSA 151-E:3; RSA 167:4, I(a), 42 CFR 435.217(a); 42 CFR 435.622; 42 CFR 435.831(b)-(c); 42 CFR 435.1005

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.nh.gov**  
**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, September 29, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, September 22, 2016 at 11:30 a.m.**

Place: [\*\*DHHS, Brown Bldg., 288, 129 Pleasant St., Concord, NH 03301\*\*](#)

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

FIS # 16:157 , dated 08/09/16

**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:**

No federal mandate, no impact on state funds.

**Adopt He-W 854.02, cited and to read as follows:**

## CHAPTER He-W 800 ELIGIBILITY FOR MEDICAL ASSISTANCE

## PART He-W 854 EVALUATION AND TREATMENT OF INCOME

He-W 854.02 Income Computation.

(a) In computing eligibility and benefits, if any subtraction results in a negative amount, the result shall be considered to be zero instead of the negative amount.

(b) For individuals not living in nursing facilities who are applying for or receiving adult category medical assistance, and, if applicable, their applicant spouses, as defined in He-W 601.01(o), net income, as defined in He-W 601.05(v), shall be computed as follows:

(1) The amount of the individual's and the individual's applicant spouse's countable gross earned income, as defined in He-W 601.04(m)-(n), shall be determined;

(2) For each individual, the earned income disregard for the adult category under which each individual is applying or receiving assistance, as specified in He-W 654.15, shall be computed and subtracted from each individual's countable gross earned income to obtain each individual's net earned income, as defined in He-W 601.05(u);

(3) The individual net earned income amounts shall be added together to obtain the assistance group's (AG's) net earned income amount;

(4) The countable gross unearned income, as defined in He-W 601.08(k), of each individual shall be added to the AG's net earned income;

(5) From the total in (4) above, the adult standard disregard, as specified in He-W 6854.16, and allowable deductions, as specified in He-W 6854.20 and He-W 654.21, shall be subtracted; and

(6) The result shall be the AG's net income.

(c) For individuals not living in nursing facilities who are applying for or receiving APTD or OAA medical assistance, and who live with their nonapplicant spouses, as defined in He-W 601.05(x), net income, as defined in He-W 601.05(v), shall be computed as follows:

(1) The countable gross earned incomes of the applicant and nonapplicant spouse shall be combined;

(2) The earned income disregard shall be subtracted from the combined gross earned income determined in (1) above to obtain the AG's net earned income, except as follows:

a. For APTD medical assistance applicants, allowable impairment related work expenses (IRWEs), as described in 20 CFR 416.1112, shall be subtracted from the gross earned income of the applicant only, and not subtracted from the gross earned income of the nonapplicant spouse; and

b. For OAA medical assistance recipients, the IRWE deduction shall be subtracted only when the recipient's case is transferred from APTD medical assistance to OAA medical assistance.

(3) The countable gross unearned income, as defined in He-W 601.08(k), of all AG members shall be added to the AG's net earned income amount determined in (2) above;

(4) From the total in (3) above, the adult standard disregard, as specified in He-W 854.16, and allowable deductions, as specified in He-W 6854.20 and He-W 654.21, shall be subtracted; and

(5) The result shall be the AG's net income as defined in He-W 601.05(v).

(d) For individuals applying for or receiving ANB medical assistance who live with their nonapplicant spouses as defined in He-W 601.05(x), eligibility and level of benefits shall be computed as in (c) above, except that the individualized plan for employment work expenses subtracted from the applicant's earned income shall be those described in He-W 654.15(d).

(e) For individuals living in nursing facilities who are applying for or receiving OAA, APTD or ANB, gross income for purposes of determining categorical eligibility for nursing facility care, as defined in He-W 858.05, shall be computed by adding together the individual's countable gross earned income and countable gross unearned income.

(f) The amount of an individual's net income for purposes of determining eligibility for nursing facility care as medically needy, as defined in He-W 858.05, shall be computed as follows:

(1) The earned income disregard for the adult category under which the individual is applying for or receiving assistance, as defined in He-W 654.15, shall be subtracted from the individual's countable gross earned income to obtain the individual's net earned income;

(2) The individual's countable gross unearned income shall be added to the net earned income; and

(3) The allowable deductions, as specified in He-W 6854.20 and He-W 654.21, shall be subtracted, in order, from the amount in (2) above to arrive at the individual's net income as defined in He-W 601.05(v).

**Adopt He-W 854.18, cited and to read as follows:**

CHAPTER He-W 800 ELIGIBILITY FOR MEDICAL ASSISTANCE

PART He-W 854 EVALUATION AND TREATMENT OF INCOME

He-W 854.18 Adult Employment Expense Disregard.

(a) Expenses which are reasonably attributable to the earning of income shall be subtracted from the earned income of individuals living in nursing facilities who are receiving OAA, APTD or ANB when determining the amount of the individual's cost of care liability as defined in He-W 854.17.

(b) The amount of the employment expense disregard shall be either a flat rate of \$18.00 per month, or the amount of actual verified expenses if higher than \$18.00 per month.

(c) The following expenses, if actually incurred and verified, shall be considered reasonably attributable to the earning of income:

- (1) Social security taxes, at the rate set by SSA;
- (2) Railroad retirement taxes;
- (3) Federal withholding taxes, corresponding to the number of exemptions which the individual is legally entitled to claim;
- (4) Mandatory retirement payments;
- (5) Mandatory union dues;
- (6) Other mandatory deductions from wages provided that the individual can document that the payroll deduction is not elective;
- (7) Costs for transportation to and from work or to and from child care when child care is necessary for employment, subject to the following conditions:
  - a. To qualify as an allowable employment expense, the transportation used shall be the least expensive reasonable means available to the individual;
  - b. The amount of allowable transportation costs shall be computed by multiplying the average number of days per month an individual is employed, without deducting temporary absences of short duration, by the transportation cost for one day;
  - c. If the individual has been or will be reimbursed for transportation costs in any manner, the amount of the reimbursement shall be subtracted from the amount that would otherwise be allowed;
  - d. For travel incurred by an individual using his or her own vehicle, the allowable transportation cost shall be \$0.21 per mile multiplied by the number of miles anticipated to be traveled in a month;
  - e. For travel provided in another person's privately owned vehicle, the allowable transportation cost shall be as charged up to the amount that would be allowed if the individual used his or her own vehicle; and
  - f. For travel provided by public transportation, such as by taxi or bus, the allowable transportation cost shall be the amount charged the public for such travel;
- (8) Costs for uniforms and other unique clothing required for employment and not worn outside the work environment, subject to the following conditions:
  - a. Cleaning of uniforms shall not be an allowable employment expense unless the individual can document that a standard of cleanliness requires professional cleaning as a condition of employment;

- b. The allowable expense shall be the amount actually paid by the individual for the special clothing;
- c. If the amount varies monthly, an average shall be computed and applied until the next regularly scheduled redetermination; and
- d. If the individual has been or will be reimbursed in any manner for a claimed special clothing expense, the reimbursed amount shall be subtracted from the amount which would otherwise be allowed; and

(9) Other mandatory employment related expenses claimed and verified by the individual.

**Readopt and renumber He-W 658.05, effective 10-3-08 (Document #9289), as He-W 858.05, and hold He-W 658.05 in reserve, so that He-W 858.05 is cited and reads as follows:**

CHAPTER He-W 800 ELIGIBILITY FOR MEDICAL ASSISTANCE

He-W ~~658~~58.05 Eligibility for Adult Category Medical Assistance Nursing Care.

(a) The nursing facility cap shall be 300% of the maximum SSI benefit for an eligible individual as determined in accordance with 20 CFR 416.410, adjusted by cost-of-living increases pursuant to 20 CFR 416.405.

(b) The individual shall be income eligible for nursing facility care as categorically needy when the individual's monthly gross income, as defined in He-W 601.04(o), is less than or equal to the nursing facility cap specified in (a) above.

(c) The individual shall be income eligible for nursing facility care as medically needy when:

(1) The individual's monthly gross income, as defined in He-W 601.04(o), exceeds the nursing facility cap specified in (a) above; and

(2) The individual's net income, as defined in He-W 601.05(v), is less than or equal to the monthly medicaid nursing facility rate, as defined in He-E 806.01(aa).

(d) When determining resource eligibility for nursing facility care as categorically needy, \$1,000 of the individual's resources shall be disregarded.

**Readopt with amendment and renumber He-W 658.06, effective 10-3-08 (Document #9289), as He-W 858.06, and hold He-W 658.06 in reserve, so that He-W 858.06 is cited and reads as follows:**

CHAPTER He-W 800 ELIGIBILITY FOR MEDICAL ASSISTANCE

He-W ~~68~~58.06 Eligibility for Adult Category Medical Assistance for Home and Community-Based Care Choices for Independence (HCBC-CFI), Home and Community-Based Care for the Developmentally Disabled (HCBC-DD), Home and Community-Based Care for Individuals with an Acquired Brain Disorder (HCBC-ABD), and Home and Community-Based Care for In-Home Supports (HCBC-IHS).

(a) The individual shall be income eligible for HCBC-CFI, HCBC-DD, HCBC-ABD, or HCBC-IHS services as medically needy when:

(1) The individuals' monthly gross income, as defined in He-W 601.04(o), exceeds the nursing facility cap specified in He-W 6858.05(a); and

(2) The individual's net income, as defined in He-W 601.05(v), is equal to or less than the PIL, as specified in He-W 6858.04(b).

(b) If the individual's net income in (a)(2) above exceeds the PIL, medically needy income eligibility shall be determined in accordance with He-W 8678.01.

(c) When determining resource eligibility for individuals described in 42 CFR 435.217(a) at the categorically needy level, \$1,000 of the individual's resources shall be disregarded.

#### APPENDIX

<b>Rule</b>	<b><u>RSA/ Federal Citation</u></b>
He-W 854.02	RSA 167: 3-c, IX, RSA 167:4, I(a); RSA 167:6, VII; Section 1902(f) of the Social Security Act (SSA) [42 USC 1396a(f)]; 42 CFR 435.401(c)(2); 42 CFR 435.601(b);
He-W 854.18	RSA 167:3-c, IX ; RSA 167:4, I(a); Section 1902(a) of the SSA [42 USC 1396a(a)(17)(B),(C)]; 20 CFR 416.1112(c); 42 CFR 435.601(b)
He-W 858.05 (formerly He-W 658.05)	RSA 151-E:3; RSA 167:4, I(a); 20 CFR 416.405; 20 CFR 416.410; 42 CFR 435.211; 42 CFR 435.236; 42 CFR 435.622
He-W 858.06 (formerly He-W 658.06)	RSA 151-E:3; RSA 167:4, I(a), 42 CFR 435.217(a); 42 CFR 435.622; 42 CFR 435.831(b)-(c); 42 CFR 435.1005