

RULEMAKING NOTICE FORM

Notice Number 2016-224

Rule Number He-C 203.14(f) intro & (f)(5)

1. Agency Name & Address:

**Dept. of Health & Human Services
Administrative Appeals Unit
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority:

**RSA 541-A:16, I(b)(2); RSA
541-A:30-a, III (d) and (e);
RSA 126-A:5, VIII(b)**

3. Federal Authority:

4. Type of Action:

Adoption _____

Amendment **X**

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Standards and Burden of Proof**

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

He-C 200 specifies the procedures governing the conduct of administrative appeals of Department actions or decisions, how hearings are to be conducted, and the procedures for filing and disposition of rulemaking petitions and requests for declaratory rulings. He-C 203.14 specifies the standards of evidence and burdens of proof for administrative appeals of Department actions and decisions. Paragraph (f) contains the preponderance of evidence standard by which the Department must prove its case in certain instances.

The proposed rule amends He-C 203.14(f)(5) to include decisions regarding complaint investigations for mental health services in He-M 204 within the preponderance of evidence standard.

The proposed rule makes a technical correction based on a 2010-2011 rulemaking which split He-M 202 into two parts: He-M 202 for rights protection procedures for developmental services and He-M 204 for rights protection procedures for mental health services. It was the Department's intent for appeals from He-M 204 to continue to have the same preponderance of evidence standard as appeals from He-M 202. The proposed rule amendment clarifies this intent.

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

This rule affects individuals receiving mental health services from state funded facilities as well as community mental health programs and providers and other state funded facilities which serve individuals who receive mental health 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>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</u>
He-C 203.14 (f) intro & (f)(5)	RSA 126-A:5, VIII; RSA 541-A:16, I(b)(2); RSA 541-A:30-a, II

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: **Tuesday, January 3, 2017**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, December 23, 2016 at 11:00 a.m.**

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

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

FIS # 16:241, dated 11/15/16

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):

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 it 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-C 203.14(f)(5), effective 4/13/07 (Doc # 8866-A), so that He-C 203.14(f) intro and (f)(5) are cited and read as follows:

He-C 203.14 Standards and Burden of Proof.

(f) The department shall prove its case by a preponderance of the evidence in hearings that address the following:

- (5) Complaint investigations under department rules He-M 202, as provided in He-M 202.08
- (e) concerning programs or facilities, and under He-M 204, as provided in He-M 204.12(d).

Appendix

Rule	Specific State Statute the Rule Implements
He-C 203.14 (f) intro & (f)(5)	RSA 126-A:5, VIII; RSA 541-A:16, I(b)(2); RSA 541-A:30-a, II