

RULEMAKING NOTICE FORM

Notice Number 2018-194

Rule Number He-C 5001.01(e) & He-C 5002.01

<p>1. Agency Name & Address:</p> <p>Department of Health & Human Services Medicaid Business & Policy 129 Pleasant St. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 161:4-a, IX & X; RSA 167:65, IV</u></p> <p>3. Federal Authority: <u>42 USC 1396r-4; 42 CFR 447.298 and 447.299</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <u> X </u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **Payments to Non-Public Disproportionate Share Hospitals & Uncompensated Care Fund Reporting**

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

He-C 5001 and He-C 5002 describe how disproportionate share non-public hospital (DSH) payments are paid to qualifying hospitals in accordance with state and federal law. The rules explain the allocation amount allowed, the types of hospitals eligible, and the methodology for receiving DSH payments. The rules also specify the mechanism for reporting Medicaid uncompensated care cost data to the Department of Health and Human Services (Department). The rule He-C 5001.01 contains definitions and He-C 5001.01(e) defines “uncompensated care.” The rule He-C 5002.01 requires hospitals to use the Department “Annual Medicaid Uncompensated Care Cost Data Request Form” so that an accurate calculation of each qualifying disproportionate share hospital’s eligible uncompensated care costs (UCCs) is made. The amount of UCC is a dominant factor in determining each hospital’s interim DSH payment for each year.

Each hospital’s interim DSH payment is subject to adjustment following an annual federally-required independent audit, which occurs about three years subsequent to the date of annual, interim DSH payments. The independent auditor uses a more detailed method for calculating each hospital’s cost to charge ratio (CCR) than the Department has required to date. The CCR is used to convert a hospital’s reported *charges* for patient care to a corresponding level of *costs incurred* by the hospital for that patient care. When CCRs are calculated under different methods, there is more variation in the amount of uncompensated care costs determined and, therefore, more variation in audit findings, which results in larger retroactive adjustments to prior year interim DSH payments.

The proposal amends the definition of “uncompensated care” in He-C 5001.01(e) and readopts with amendment He-C 5002.01 in an effort to reduce this audit variation and the magnitude of retroactive DSH payment adjustments in the future. The proposal collects more detailed data, by cost center, from each hospital in order to calculate each hospital’s CCR in a manner that more closely tracks the way in which the independent DSH auditor does this calculation. The form incorporated by reference is being updated in He-C 5002.01(a). It requires submission of additional data in order to reduce the audit variation.

Specifically, proposed changes include:

- 1. Updating the required “Annual Medicaid Uncompensated Care Data Request Form” incorporated by reference in He-C 5002.01(a), including the following changes:**
 - **More thorough instructions regarding populations to be included;**
 - **More thorough instructions on the types of services to be included;**
 - **Clarifying definitions of existing terms, including “sub-provider” and “charity care”**
 - **Requiring additional data from hospitals relative to cost to charge ratios.**
 - **Modifying the calculation of each hospital’s CCR to collect cost and charge data by cost centers within a hospital in order to more closely follow the approach used by the independent DSH Audit protocol, but it is still less.**
 - **The Uncompensated Care Costs Worksheet (page 2 and 3 of the Annual Medicaid Uncompensated Care Data Request Form) will require hospitals to report costs, charges, and days on a cost-center specific level, for Medicaid and uninsured patients, as well as the entire hospital.**
 - **The current form collects total hospital costs and total hospital charges, which is used to determine the CCR. The current form also collects total charges for Medicaid and uninsured individuals. The product of the CCR and the Medicaid and Uninsured charges yields Uncompensated Care Costs (UCCs). The cost centers are defined using the same cost centers that are used in the CMS-2552-10 hospital cost report. The overall hospital days, costs, and charges by cost center will be derived from the hospitals’ CMS-2552-10 cost report for the applicable fiscal year. Medicaid and uninsured days and charges by cost center will be derived from hospital records.**
 - **Other sections of the form, including collection of payment data and other information needed to ensure compliance with federal DSH regulations, are unchanged.**
 - **The state will use this expanded data to calculate UCCs on a cost-center specific level. The DSH audit protocol requires DSH auditors to use the cost-center specific calculation when determining the auditor’s estimate of UCCs. Therefore, the proposed method will more closely align with the final determination from the DSH auditor.**
- 2. Making a change to the definition of “uncompensated care” in He-C 5001.01(e) so that it conforms to federal case law decided by the Federal District Court for the District of New Hampshire, which is binding on the department pending appeals of the same legal issue in several federal jurisdictions; and**
- 3. Clarifying in He-C 5002.01(c) that hospitals are still required to maintain all data on claims related to Medicaid and uninsured patients, including Medicare and third party liability revenue.**

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

The rules affect hospitals who provide uncompensated care to Medicaid recipients and uninsured patients.

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 Implemented</u>
He-C 5001.01(e)	RSA 167:63-65
He-C 5002.01	RSA 167:63-65

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

Name: **Kim Reeve** Title: **Legal counsel-admin rules**
Address: **Dept. of Health and Human Services** Phone #: **271-9640**
Administrative Rules Unit Fax#: **271-5590**
129 Pleasant St. E-mail: Kimberly.reeve@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, December 20, 2018**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, December 13, 2018 at 3 PM**

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

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

FIS # **18:201**, dated **11/15/2018**

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

When compared to the existing rule, the proposed rule may increase state general fund expenditures by a small but indeterminable amount, and will have an indeterminable impact on individually-owned businesses to the extent that those businesses are hospitals impacted by the rule.

2. Cite the Federal mandate. Identify the impact on 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:

The Department of Health and Human Services states the proposed rule may result in an indeterminable increase in administrative costs, due to the staff time needed to review the more detailed data request submitted by hospitals under the revised rule.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

The proposed changes to the rule and to the uncompensated care cost (UCC) data request form may result in modest administrative costs for hospitals due to an expected increase in the time required to complete the revised form. In addition, the proposed changes may reduce disproportionate share hospital (DSH) payments to some hospitals and increase DSH payments to others depending on how the revised methodology affects the value of each hospital's cost-to-charge ratio (CCR). If the CCR increases, the DSH payment will increase; if the CCR decreases, the DSH payment will decrease. For this reason, the proposed rule may alter the distribution of DSH funding among qualifying hospitals. Aggregate DSH payments to hospitals, however, will be unaffected by the change, as the total DSH distribution is established by statute (RSA 167:64,I(a)(2)(A)) and is unchanged by this rule.

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

The proposal 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.

CHAPTER He-C 5000 DEPARTMENTAL MEDICAID PROGRAM ADMINISTRATION

PART He-C 5001 PAYMENTS TO NON-PUBLIC DISPROPORTIONATE SHARE HOSPITALS

Amend He-C 5001.01(e), effective 1/26/18 (Document #12468), cited and to read as follows:He-C 5001.01 Definitions.

(e) “Uncompensated care” means losses arising from the difference between the cost of providing inpatient or outpatient hospital services to Medicaid recipients and to uninsured patients during the year, and the reimbursement received for those recipients and patients, ~~regardless of the source of such reimbursement,~~ consistent with 42 U.S.C. section 1396r-4(g) and related federal regulations promulgated by the Centers for Medicare and Medicaid Services.

Readopt with amendment He-C 5002.01, effective 1/26/18 (Document #12468), cited and to read as follows:

PART He-C 5002 UNCOMPENSATED CARE FUND REPORTING

He-C 5002.01 Reporting Requirements.

(a) All disproportionate share non-public hospitals, as defined in He-C 5001.01(b) and all rehabilitation hospitals, shall complete and submit the “Annual Medicaid Uncompensated Care Data Request Form” (January 201~~9~~⁸ edition) as follows:

- (1) To the office of the commissioner, NH department of health and human services;
- (2) Annually, no later than the second to last Friday in February of each year; and
- (3) Signed by the chief financial officer (CFO) of each hospital.

(b) Copies of the “Annual Medicaid Uncompensated Care Data Request Form” (January 201~~9~~⁸ edition) may be obtained from the office of the commissioner, department of health and human services, Concord, NH 03301-6505.

(c) Hospitals are required to maintain all data on claims related to Medicaid and uninsured patients, including Medicare and third-party liability revenue until such time as directed otherwise by the Department.

APPENDIX

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-C 5001.01(e)	RSA 167:63-65
He-C 5002.01	RSA 167:63-65