

RULEMAKING NOTICE FORM

Notice Number 2020-13

Rule Number He-C 6918

1. Agency Name & Address:
**Department of Health and Human Services
Division of Economic and Housing Stability
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority: **RSA 167:83, II(o)**
3. Federal Authority: _____
4. Type of Action:
Adoption _____
Amendment _____
Repeal _____
Readoption _____
Readoption w/amendment **X**

5. Short Title: **Child Care Provider Billing and Payment Requirements**

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

He-C 6918 identifies the requirements that enrolled child care providers must meet to bill the Department of Health and Human Services (Department) and receive payment for child care services provided through the New Hampshire child care scholarship program. He-C 6918 includes all billing and payment costs and benefits associated with proposed rules He-C 6910 and He-C 6912.

The Department is proposing to readopt with amendment He-C 6918.

The Department is required, pursuant to 45 CFR 98, to delink provider payment from a child’s occasional absences. This proposal amends He-C 6918 to change from an annual absentee allotment to a monthly absentee allotment by providing full payment if a child attends at least 85 percent of the authorized time. The annual allotment of absentee hours did not meet federal requirements. This payment practice will also apply to both employment related child care and preventive and protective child care.

The Department is also required to allow for payment for reasonable mandatory registration fees that the provider charges to private-paying parents pursuant to 45 CFR 98. This proposal amends He-C 6918 to allow enrolled child care providers to be paid, per calendar year, for Thanksgiving day, Christmas day, New Year’s day, twelve hours of staff professional development, and twelve hours of program closures. Additionally, enrolled providers can be paid for federal, state, and Department administrator declared disaster closures.

In addition to the above amendments, the proposal:

- **Updates the rule for better clarity, program integrity, and makes minor, substantive and editorial changes throughout;**
- **Adds the definitions of “license-exempt facility based program”, “license-exempt in home provider”, and “registration fee”;**
- **Updates the definitions of “authorized service level”, “child care”, “child experiencing significant special needs”, “cost share”, and “job search”;**
- **Removes the definition of “assistance group”, “license-exempt”, “New Hampshire employment program (NHEP)”, “provider”, “redetermination”, and “wait list”;**

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

FIS # 19:229, dated January 2, 2020

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, benefit state citizens, and have an indeterminable impact on independently-owned businesses.

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

The Department of Health and Human Services states that the proposal for employment-related child care includes federally-mandated requirements to pay for a child's occasional absence and registration fees pursuant to 45 CFR 98. The Department notes that the cost associated with these mandates is attributable to the mandate rather than to the rule.

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

As noted above, the proposed rule includes a federal requirement pursuant to 45 CFR 98 to provide a payment practice to allow for a child's occasional absence. The proposed rule includes a change from an annual absentee allotment to a monthly absentee allotment by providing full payment if a child attends at least 85 percent of the authorized time. The Department estimates this change will cost approximately \$536,882 annually in FY 2020-21. This cost will be paid for with federal funds from the Child Care and Development Fund (CCDF), as well as general funds included in the operating budget.

The same federal rule also requires the Department to allow payment for registration fees that the provider charges to private-paying parents. The Department estimates this requirement will cost \$422,000 annually in FY 2020-21, which will again be paid for using federal CCDF funds and general funds in the operating budget.

Finally, the proposed rule will result in a cost, not mandated by the federal rule, related to the payment of proposed closure days. The Department estimates this cost at approximately \$952,000 annually in FY 2020-21, which will again be paid for with CCDF funds and general funds in the operating budget.

A. To State general or State special funds:

See response to 3 above.

B. To State citizens and political subdivisions:

Eligible families will benefit from payment for monthly allotment hours and closure hours, as these will reduce out-of-pocket expenses for child care.

C. To independently owned businesses:

Waivers granted to childcare providers may result in a small administrative cost to providers, depending on the number of waivers that need to be prepared. Providers may benefit from the payments for monthly absentee allotment hours and closure hours, as these will help in providing sufficient payment for child care services for eligible families.

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

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-P 6918, effective 7-10-17 (Document #12224), to read as follows:

PART He-C 6918 CHILD CARE PROVIDER BILLING AND PAYMENT REQUIREMENTS

He-C 6918.01 Purpose. The purpose of this part is to identify the requirements to bill the department of health and human services (DHHS) and receive payment for child care services, ~~provided through the New Hampshire child care scholarship program.~~

He-C 6918.02 Scope.

(a) This part shall apply to licensed and license-exempt child care providers who receive financial reimbursement from the ~~department of health and human services (DHHS)~~ for those families utilizing employment-related, preventive or protective child care services.

(b) The scholarship payments established pursuant to He-C 6918 shall be contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DHHS be liable for any payments here under in excess of such available appropriated funds.

He-C 6918.03 Definitions.

~~(a) “Assistance group” means the individuals who are residing in the same household whose needs and income are considered and combined together when determining eligibility and the amount of assistance for child care.~~

(ab) “Authorized representative” means the person(s) who is designated or authorized by a child care provider to act on behalf of that provider in matters related to billing DHHS for child care services provided and is not the parent of a child in the provider’s care who is receiving child care scholarship.

(be) “Authorized service level” means full time, half time or part time service level based on the number of hours per week of child care according to the approved activities plus commute time, in He-C 6910.03(d) and He-C 6912.03(d).

(ce) “Caretaker relative” means a specified relative as defined in RSA 167:78, III, namely “a specified relative, other than a parent, who provides care and parental control to a dependent child.”

(de) “Case plan” means the division for children, youth and families (DCYF) written plan for the child and the family which outlines how services will be provided, and requirements to be met by a parent receiving a protective child care scholarship, pursuant to RSA 170-G: 4, III and 42 U.S.C. 671, Part E- Federal Payments for Foster Care and Adoption Assistance 42 USC 671(a) (16) and 42 USC 675(5) (a)-(D) state plan for foster care and adoption assistance.

(ef) “Child care” means the act of providing safe and healthy care, including supervision, food, activity, and rest for a child for any portion of a 24-hour day, in order to promote healthy child development and assist the child’s parent(s) in preparing for, securing, ~~or maintaining an approved activity maintaining employment or employment-related education or training or for an approved activity~~ that supports service or case plan goals.

(fg) “Child care scholarship” means payment to a provider of child care services on behalf of a family who meets the eligibility criteria of He-C 6910 or He-C 6912.

(gh) “Child experiencing a disability or significant special need(s)” means a child through the age of 17 who has a verified medical, physical, developmental, educational, or emotional disability requiring additional funds for accommodation or classroom adaptation in the child care setting.

(~~hi~~) “Commissioner” means the commissioner of the New Hampshire department of health and human services or designee.

(~~ij~~) “Commute time” means for employment related child care one hour per day in a week, during which the parent(s) travels for active participation to and from an employment related activity.

(~~jk~~) “Cost share” means a DHHS determined portion of the standard rate charged as a fee to parents for child care services, based on family size and income pursuant to He-C 6910.18, which may fluctuate during the current eligibility period. ~~and He-C 6910.19.~~

(~~kl~~) “Department (DHHS)” means the department of health and human services of the state of New Hampshire.

(~~lm~~) “Division for children, youth, and families (DCYF)” means the organizational unit of DHHS that provides services to children, ~~and~~ youth and families referred by courts pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-B, RSA 170-C and RSA 463.

(~~mn~~) “Employment-related activities” means participation in an approved activity that is designed to assist parents to enter, re-enter, or remain in the workforce as described in He-C 6910.07(e).

(~~no~~) “Enrolled child care provider” means a child care provider who has met the qualifications and requirements found in He-C 6914 and He-C 6912 and is authorized to receive payment from DHHS for child care services provided. The term includes the definition of “registered provider” pursuant to RSA 170-E:6-a.

(~~op~~) “Family” means a child(ren) and an adult(s) who reside in the same household and who have a birth, foster, step, adoptive, legal guardianship, or caretaker relative relationship.

(~~pq~~) “Foster parent” means an individual who has a license or permit for foster family care, pursuant to He-C 6446.

(~~qr~~) “Fraud” means “fraud” as defined in RSA 167:58,IV.

(~~rs~~) “Full time” means greater than 30 hours of child care per week.

(~~st~~) “Half time” means greater than 15 and equal to or less than 30 hours of child care per week.

(~~tu~~) “Job search” means a 92 calendar day period:

(1) Granted at initial eligibility, during which a parent is actively seeking employment; or

(2) Granted during a 12-month eligibility period when, during which a parent’s approved activity terminates, to allow a parent is given the opportunity to engage or re-engage in an approved activity, employment or employment related training or education when a parent has had a non-temporary cessation of employment, or employment related training or education.

(~~uv~~) “Legal guardian” means an individual who is given legal authority by a court and charged with the duty to provide care, custody, and supervision of the child(ren).

(~~vw~~) “Licensed” means a child care provider has been issued a child care license to operate by the commissioner of DHHS, in accordance with RSA 170-E, or has been issued a child care license to legally operate as a child care provider in accordance with the licensing requirements of a state neighboring New Hampshire.

~~(w) “License-exempt facility based program” means ” means a license-exempt child care provider pursuant to RSA 170-E:3, I (f) and(g).~~

~~(x) “License – exempt in home provider” means a person who is:~~

~~(1) Providing child care in a private home;~~

~~(2) Exempt from licensure pursuant to RSA 170-E:3; and~~

~~(3) One of the following program types:~~

~~a. “Relative provider” where “the only children in care are the provider’s own children, children related to the provider, and children residing with, the provider” pursuant to, RSA 170-E:3(1); or~~

~~b. “Friend or neighbor provider” where “any number of the provider’s own children, whether related biologically or through adoption, and up to 3 additional children are cared for regularly for any part of the day, but less than 24 hours, pursuant to RSA 170-E:3.~~

~~“License exempt” means a child care provider is not required to be licensed, in accordance with RSA 170-E, I(a), (c), (f), (g), and (h) or is not required to be licensed but can legally operate as a child care provider in accordance with the regulations of a state neighboring New Hampshire.~~

~~(yy) “NH Bridges” means the automated case management, information, tracking, and reimbursement system used by DHHS the division for children, youth and families (DCYF).~~

~~(z) “New Hampshire employment program (NHEP)” means the program administered by DHHS in accordance with RSA 167:78 through RSA 167:92.~~

~~(zaa) “Notification” means a written or printed document that advises:~~

~~(1) Families of:~~

~~a. The results of eligibility determinations; and~~

~~b. Other changes in child care scholarship; or~~

~~(2) Providers of:~~

~~a. Changes to a family’s child care scholarship, as applicable;~~

~~b. The maintenance of the provider’s enrollment status; and~~

~~c. Other information related to the provider’s compliance with these rules.~~

~~(aaab) “Parent” means an individual who has a birth, adoptive, or step-parent relationship to the child(ren), a foster parent as defined in (pq) above, a legal guardian as defined in (uv) above, or a caretaker relative as defined in (cd) above.~~

~~(abe) “Part time” means one to 15 hours of child care per week.~~

~~(acd) "Preventive child care" means child care authorized by the comprehensive family support agencies to prevent child abuse or neglect and to give the parent an opportunity to participate in programs designed to teach positive parenting skills and address concerns that could lead to child abuse or neglect.~~

~~(ade) “Protective child care” means child care authorized by DCYF while there is an open assessment or a founded case of child abuse or neglect in order to assist the parent, according to (aaab)~~

above, in maintaining employment, or when child care is in the best interest of the child or to provide an opportunity to address the concerns that lead to abuse or neglect.

~~(af) “Provider” means an individual or a public or private organization supplying child care services to a family and requesting enrollment for financial reimbursement from DHHS.~~

(ae) “Recipient” means a member of a family who meets eligibility requirements or authorization pursuant to He-C 6910 or He-C 6912 and is receiving child care scholarship from DHHS. The term includes the definition of “parent” in (aaab) above.

(af) “Registration fee” means a fee paid to a child care provider to register, enroll or sign up for child care services.

~~(ah) “Redetermination” means a scheduled review of a parent’s eligibility for child care scholarship, and includes verification of all aspects of eligibility.~~

~~(ai) “Wait list” means a prioritized list of children eligible for child care scholarship who are waiting for funding to become available to receive child care scholarship.~~

(agj) “Weekly standard rate (WSR)” means a DHHS determined rate used to calculate a child care scholarship and cost share amounts.

He-C 6918.04 Child Care Billing and Payment Requirements.

(a) DHHS shall make child care payments on behalf of an eligible child directly to a DHHS enrolled child care provider within 21 calendar days from receipt of the provider’s correctly completed invoice based on the child’s attendance up to the authorized service level~~level of service~~ if all of the requirements of He-C 6918 are met.

(b) ~~Beginning 8/7/17~~ All child care providers and authorized representatives, if any, shall be required to submit invoices via the DHHS web billing application at <https://business.nh.gov/beb/pages/index.aspx>, and:

(1) Request a web billing account from DHHS by completing, signing, and submitting Form 2679 “Provider Web Billing User Account Request Form” (February 2017); ~~and~~

(2) Be issued a logon ~~and a personal identification number (PIN)~~ by DHHS for use in accessing the web billing account; and

(3) Be issued a temporary personal identification number (PIN) by DHHS for use in submitting web billing invoices. The PIN denotes the users signature.

(c) Neither the child care provider nor any authorized representative shall transfer his or her log-on or PIN, or allow use of his or her log on or PIN by any other person.

(d) Each child care provider shall maintain weekly attendance records as described in (ed) below for a period of 3 years for each week billed to DHHS.

(e) Each child care provider shall accurately document the following information on a weekly attendance record:

(1) The name of the child care provider or program;

(2) The date of service including the month, day, and year;

- (3) The child's first and last name;
 - (4) The time of the child's arrival and departure; and
 - (5) The parent's original signature, or electronic signature, including the first and last name.
- (f) Child care payments in (a) above shall be made if the child care provider:
- (1) Is enrolled with the DHHS child care scholarship program pursuant to He-C 6914 ~~and He-C 6912~~;
 - (2) Has on a weekly basis, submitted a billing invoice for each eligible child according to (g) or (h) below, as applicable:
 - a. Where the hours present billed matches the arrival and departure times on the attendance records signed by the parent;
 - b. Where the child absentee hours reflect hours the child was absent;
 - c. Where the hours billed do not include any hours beyond the child's last day in attendance; or
 - d. Where the invoice does not include fees or extra charges such as materials, activity, field trip, fees, ~~registration fees~~, or late pick up charges or deposits which cover a portion of the payment; and
 - (3) Is an enrolled license-exempt child care provider and has been the only person providing the child care and supervision for the time billed to DHHS.
- (g) For employment-related child care, DHHS shall make payment to the provider if:
- (1) The provider or parent has submitted a completed, signed, and dated Form 1863, "Child Care Provider Verification," (~~April 2020~~ ~~February 2017~~) pursuant to He-C 6910;
 - (2) The family was eligible for child care scholarship during the time period indicated in the child care provider's billing invoice;
 - (3) The child care provider or an authorized representative completes and submits a billing invoice for each child pursuant to He-C 6918.04(b); and
 - (4) The web billing PIN is submitted to DHHS to certify that:
 - a. The billing was completed in accordance with this section;
 - b. The hours included on the invoice are one of the following:
 1. Hours in which the child care services were provided; ~~or~~
 2. Hours the child was absent; ~~and~~
 3. The closure hours available, per calendar year, to the provider include:
 - (i) Thanksgiving day;
 - (ii) Christmas day;

(iii) New Year's day;

(iv) Twelve hours of staff professional development;

(v) Twelve hours of program closures;

4. A federal, state, or DHHS administrator declared disaster closure day(s); or

5. Any combination of 1. – 4. above; and

c. The billing is true and accurate.

(h) Payment for preventive or protective child care services shall be authorized on either:

(1) For protective child care, Form 2110 "Service Authorization,"(6/30/08), completed by the child protection social worker (CPSW);~~or~~

(2) For preventative child care, Form 1902 "Referral for Preventive Child Care Services," (June 2017), completed by the comprehensive family support agency; and

(3) For both protective and preventive child care, Form 1864 "Child Care Provider Verification" (February 2017), completed by the provider, pursuant to He-C 6912.

(i) Payment for preventive or protective child care services shall be made by DHHS if:

(1) The child was authorized for child care scholarship during the time period indicated on the child care provider billing invoice;

(2) The child care provider or an authorized representative completes and submits a billing invoice for each child; and

(3) The web billing PIN is submitted to DHHS to certify the invoice in accordance with (g) 4. above.~~to certify that:~~

~~a. The billing was completed in accordance with this section;~~

~~b. The hours included on the invoice are one of the following:~~

~~1. Hours in which the childcare services were provided; or~~

~~2. Hours the child was absent; and~~

~~c. The billing is true and accurate.~~

(j) Billing pursuant to (g)(4)b.2. and 3. above shall only reflect the hours the child was scheduled to attend the program.

(k) The provider shall only bill for the holidays listed in (g)(4)b.3.(i)-(iii) above, when the child care program is closed.

(l) DHHS shall not accept paper billing for provider closures listed in (g)(4)b. 3.4. above.

(m) The provider shall maintain a closure and training calendar in the web billing application.

~~_____ (n) A foster parent with valid licensure to provide child day care services shall be approved to provide child day care services for children in care only when the ratio of children in care to other children receiving child day care services in the home is at least one to one. If the provider is both a licensed child care provider and a licensed foster family home, and providing child care for the foster child there shall be at least a one to one ratio between unrelated, non-household child care recipients and foster child recipients. Foster parents shall not be eligible for child care payment or assistance if they do not provide licensed child care services to children other than the foster child or other children living in their home.~~

~~(k)~~ Upon written request from DHHS, and within 7 business days of such request, each child care provider shall provide DHHS with weekly attendance records as described in ~~(e)~~ above as supplemental billing documentation.

~~(p)~~ If DHHS determines at the child care provider receives notification by DHHS of submitted incorrect billing;

~~_____ (1) DHHS shall adjust the incorrect billing invoice to negate the payment; the provider shall:~~

~~(2)~~ The provider shall ~~C~~correct the billing errors and resubmit the billing invoice no later than 30 calendar days from the date of the notification;

(q) If the provider does not comply with (1) (2) above, DHHS shall withhold the total amount of the child care payment from future DHHS payments to the provider, beginning with the next scheduled payment.

~~(2) Upon the second notification of the same rejected or returned billing invoice notification, call provider relations at DCYF at (800) 852-3345; and~~

~~(3) Correct the billing errors and resubmit the billing invoice within 30 calendar days of the date of the second notification.~~

~~(m)~~ DHHS shall not pay the billing invoice if the provider does not resubmit the billing invoice correctly in accordance with ~~(f), (g), (h), (i) and (j)~~ above.

~~(s)~~ If DHHS determines the provider or the provider's authorized representative has repeatedly submitted the billing invoices incorrectly, DHHS shall issue a letter with the following information:

(1) A description of the billing errors, including the type and frequency of the errors, and instructions on how to correct the billing errors;

(2) The required web-based training the provider shall attend within 20 business days of the date of the notification;

(3) How to access the mandated web-based training; and

(4) Notification that provider disqualification shall occur if:

a. Further billing errors occur after the provider has attended the mandated web-based training; or

b. The provider does not attend the mandated web-based training within 20 business days of the day of notification.

(~~t~~) Any child care provider applying for a DHHS assistance program shall report all child care payments received as income.

(~~u~~) A child care provider shall not be eligible to receive payments for child care services for a specific child when the provider has not:

- (1) Submitted a weekly billing invoice ~~and been paid within and been paid within the past 90~~ 60 days of the date of service in accordance with (~~f~~), (~~g~~), and (~~h~~) above; or
- (2) Submitted invoices in accordance with (~~e~~) above;

(v) No claims shall be paid over 60 days.

(~~w~~) If DHHS does not pay the child care provider because the provider's billing practices are contrary to the provider agreement, ~~and~~ He-C 6914, He- C 6912 and He-C 6918, the provider shall:

- (1) Only charge the parent the DHHS cost share plus the co-payment and not bill the parent for the cost of the child care services that could have been paid by DHHS; and
- (2) ~~f~~Forfeit the right to pursue payment, and shall not bill the parent for the cost of the child care services that could have been paid by DHHS.

(~~x~~) DHHS shall issue to a child care provider a federal Form 1099 in January of each calendar year if the total reportable payment from all state agencies equals \$600.00 or more.

(~~y~~) If an overpayment is received, a provider shall contact DHHS provider relations at ~~DCYF~~ at (800) 852-3345.

(~~z~~) A provider and a parent shall determine whether the amount the parent or guardian pays the provider each week shall include one or both of the following:

- (1) All or part of the cost share; and
- (2) All or part of the copayment which is the difference between the DHHS maximum standard rate and the provider's regular weekly fee.

(aa) DHHS shall allow one child care registration fee payment for employment related child care, up to \$50.00 per calendar year for each child eligible for child care scholarship.

(ab) DHHS shall allow for preventive and protective child care registration fee payment, determined by the provider charge, -for each child eligible for child care scholarship.

(ac) The registration fee charged in (z) and (aa) above shall not exceed the amount charged to a private paying family.

(ad) DHHS shall not accept paper billing for child care registration fees.

He-C 6918.05 Child Care Scholarship Payment.

(a) ~~Beginning 9/11/2017, C~~child care scholarship payments shall be made when children are absent such that each child shall receive a DHHS determined ~~monthly~~ annual allotment of absentee hours based on the child's authorized service level that will be used whenever a child is absent until the ~~monthly~~ annual allotment is exhausted.

(b) The monthly absentee allotment shall be:

(1) Twenty-one hours for full time; or

(2) Thirteen hours for half time.

(c) Part time service level does not require a monthly allotment.

~~(d)~~ Child care providers shall be paid a weekly standard rate based on the child care scholarship standard rate methodology pursuant to He-C 6910.17 and He-C 6912. ~~1607(a) and (b)~~.

~~(e)~~ The employment related NH child care scholarship cost share for each family shall be determined according to He-C 6910.18.

~~(f)~~ The child care scholarship payments established pursuant to He-C 6910 and He-C 6912 shall be contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DHHS be liable for any payments hereunder in excess of such available appropriated funds.

(g) For employment related child care, child care scholarship payment begins on the date of child care scholarship application or the child care provider link date, whichever is later.

(h) For preventive and protective child care, child care scholarship payment begins on the date of the child care authorization for child care scholarship.

(j) A provider shall submit an annual report to DHHS specifying how monies were spent for a child(ren) experiencing a disability or significant special need in accordance with He-C 6910 and He-C 6912

He-C 6918.06 Provider Disqualification. Any enrolled licensed or license-exempt child care provider shall be disqualified if he or she has:

(a) Submitted a billing invoice, including, but not limited to the following:

(1) Billing for child care services not provided; or

(2) Billing for child care services provided:

a. By another person or provider; or

b. While not in compliance with child care licensing requirements under He-C 4002;

(b) Either:

(1) Not provided the supporting billing documentation as required by He-C 6918.04(~~g~~)and (h); or

(2) Provided information on the supporting billing documentation that is fraudulent, false or misleading, including weekly attendance records;

(c) Not met the criteria in He-C 6914.08(c)(2), or He-C 6912.17 (c)(2) but has been determined to have repeated billing errors after receiving a letter from the DHHS identifying the errors and correct billing procedures pursuant to He-C 6918.04(~~rk~~), and the provider:

- (1) Failed to complete the mandated web-based training; or
- (2) Completed the mandated web-based training but continued to submit the billing invoices or attendance records incorrectly; or

(d) Been disqualified pursuant to He-C 6914.08(c) or (d) or He-C 6912.17 (c) or (d).

He-C 6918.07 Appeals.

(a) A provider or parent may appeal a decision made by DHHS within 10 business days of the receipt of the notification when:

- (1) The payment has been withheld; or
- (2) The payment amount is disputed.

(b) The request for an appeal shall be made in accordance with He-C 200.

He-C 6918.08 Recoupment of Overpayments.

(a) An overpayment shall have occurred under one of the following conditions:

- (1) When a provider or parent requests continuation of a child care scholarship according to He-C 6918.07, pending the outcome of an appeal and the appeal decision upholds the DHHS proposed action; or
- (2) For any other reason that a provider received an incorrect higher amount of payment than he or she should have received.

(b) When an overpayment has occurred, DHHS shall determine the cause in accordance with (c), (e), (h), and (i) below.

(c) The overpayment shall be solely the fault of the provider when the parent is in compliance with the provisions of He-C 6910 and He-C 6912 and the provider has been paid for child care services:

- (1) Not provided; or
- (2) That were not provided in compliance with He-C 6912, He-C 6914, and He-C 6918, and the provider agreement.

(d) If the overpayment has been determined to be solely the fault of the provider, the provider shall receive a notification that an overpayment has occurred and that repayment shall be made in accordance with (j) below.

(e) The overpayment shall be solely the fault of the parent if:

- (1) The provider is in compliance with He-C 6912, He-C 6914 and He-C 6918 and the provider agreement;
- (2) The parent has not complied with the provisions of He-C 6910 or He-C 6912; and

(3) The provider has no knowledge that the parent was out of compliance with the provisions of He-C 6910 or He-C 6912.

(f) If an overpayment has been determined to be solely the fault of the parent, the parent shall receive notification that an overpayment has occurred and payments shall be recouped in accordance with RSA 167:17-a.

(g) The overpayment shall be the fault of both the parent and provider when:

(1) Both parties are out of compliance with He-C 6910, He-C 6912, He-C 6914 and He-C 6918; or

(2) Both parties were in collusion, meaning they agreed to actions with the understanding that their actions constituted a violation of the provisions of these rules, He-C 6910, He-C 6912, He-C 6914 or He-C 6918.

(h) If the overpayment is determined to be the fault of both the parent and the provider, notification shall be sent to both parties, and DHHS shall initiate further action such as recoupment of payment from either or both the parent and provider.

(i) If the provider or parent has opted to continue to receive a child care scholarship pending the outcome of the appeal and the appeal decision upholds the DHHS proposed action as in (a)(1) above, the provider or parent requesting the continuing child care scholarship shall be the cause of the overpayment and shall be responsible for the repayment.

(j) Within 30 days of notification in accordance with (d) above, the provider shall agree to do one of the following:

(1) Repay the overpayment in full; or

~~(2) Choose to repay at a rate no lower than 10 percent of the full amount of child care payments owed per month until the overpayment is repaid in full whether the provider is currently enrolled or no longer enrolled; or~~

~~(23) For a currently enrolled child care provider, choose to have the total amount of child care payment withheld from future DHHS child care payments to the provider, beginning with the next scheduled payment after an agreement has been reached or after the 30 days has elapsed, whichever occurs first, until the overpayment is repaid in full.~~

(k) If the provider fails to comply with (j) above, then the overpayment shall be recouped in full beginning with the next scheduled payment to the provider after the 30 days has elapsed, or for as long as is necessary to recoup the overpayment in full.

He-C 6918.09 Confidentiality

(a) Except for law enforcement agencies or in an administrative proceeding against the child care provider, the department shall keep confidential any information collected during an investigation, unless it receives an order to release, destroy, or take any action relating to the information from a court of competent jurisdiction.

(b) A provider shall maintain all records, whether in electronic or paper format, required by He-C 6918. Records shall be:

(1) On the premises; and

(2) Accessible and available for review by the department, upon request, for 3 years, unless otherwise specified.

(c) A child care provider shall keep confidential all records required by the department pertaining to the admission, progress, health, and discharge of children under their care and all facts learned about children and their families with the following exceptions:

(1) A child care provider shall allow the department access to all records required by department rule or state statute to keep, and to such records as necessary for the department to determine staffing patterns and staff attendance; and

(2) A child care provider shall release information regarding a specific child only as directed by a parent of that child, or upon receipt of written authorization to release such information, signed by that child's parent.

He-C 6918.10 Waiver of Rules.

(a) Providers who request a waiver of a requirement in He-C 6918 shall submit a written request to DHHS, which includes the following information:

(1) The program name, address, phone number, and Bridges resource ID number assigned by the department;

(2) The specific reference to the section of the rule for which a waiver is being requested;

(3) An explanation of why a waiver is necessary, the length of time for which the waiver is requested, and any effect the granting of the waiver will have on the health and safety of the children in the program;

(4) The number and age range of children who will be affected by the waiver;

(5) A written plan to achieve compliance with the rule or explaining how the provider will satisfy the intent of the rule, if the waiver is granted;

(6) The signature of the enrolled child care provider; and

(7) The signature of the parent or copy of a notice which has been shown to, or mailed to each parent, explaining the waiver request and informing the parent that he/she may call the department if they have any concerns about the requested waiver.

(b) A waiver shall be granted to the child care provider if:

(1) The department concludes that authorizing deviation from compliance with the rule from which the waiver is sought does not contradict the intent of the rule or conflict with statute; and

(2) The alternative proposed ensures that the object or intent of the rule will be accomplished.

(c) When a waiver is approved, the program’s subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which the waiver was sought.

(d) The department shall not approve any request for a waiver of any of the provisions relevant to state or federal law or any rules of other state agencies, which are referred to in this rule.

(e) A waiver request shall be denied when any of the following occurs:

(1) The department finds that approval of the requested waiver will jeopardize the health or safety of children;

(2) The department finds that approval of the requested waiver will impair the program’s ability to adequately care for children; or

(3) The department finds that approval of the requested waiver will impair the operations of the program.

(f) A waiver shall be granted in writing for a specific duration not to exceed 12 months from the date the waiver was granted.

Appendix

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
He-C 6918.01	RSA 167:77
He-C 6918.02	RSA 161:2, XII; and RSA 167:83, I(b)
He-C 6918.03	RSA 161:2, XXI; and RSA 167:83, I(b)
He-C 6918.04	RSA 167:83, II(o)
He-C 6918.05	RSA 161:2, XII; and RSA 167:83, II
He-C 6918.06	RSA 161:2, XV; RSA 167:17-b, I(a); RSA 167:17-c; RSA 167:58, IV; RSA 167:61-a, I(a)-(c) and (e); RSA 167:83, II(k); RSA 170-E:7; and RSA 170-E:12, V
He-C 6918.07	RSA 161:2, XII; RSA 167:83, II(a); and RSA 170-G:4,a.
He-C 6918.08	RSA 167:83, II(i)
He-C 6918.09	RSA 170-E:11, II; and RSA 170-G:8-a
He-C 6918.10	RSA 170-E:11, I (m)