**RULEMAKING NOTICE FORM**

<table>
<thead>
<tr>
<th>Notice Number</th>
<th>Rule Number</th>
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<tbody>
<tr>
<td><strong>2018-101</strong></td>
<td>He-P 301.11 (various) and He-P 301.17 (various)</td>
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1. **Agency Name & Address:**
   Dept. of Health & Human Services  
   Division of Public Health Services  
   Bureau of Infectious Disease Control  
   29 Hazen Drive  
   Concord, NH 03301

2. **RSA Authority:**
   RSA 141-C:6, VIII, RSA 141-F:4, VI, VII

3. **Federal Authority:**
   45 CFR 75

4. **Type of Action:**
   - Adoption
   - Amendment **X**
   - Repeal
   - Readoption
   - Readoption w/amendment

5. **Short Title:** HIV/AIDS NH CARE Program and Tuberculosis Patient Care Financial Assistance Program

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

   **He-P 301.11** establishes the eligibility of HIV/AIDS patients seeking financial assistance with treatment. These rule amendments are proposed in order to expand coverage for outpatient and insurance services to meet the requirements of the program as mandated by federal law. Specifically, **He-P 301.11** is being amended as follows:

   - Updating **He-P 301.11** (b) and (c) to include the terms “outpatient health services” and “insurance services”;
   - Clarifying the requirements of drug services covered under the statute by amending **He-P 301.11** (c) (3) to include the leading clause “For drug services only…”;
   - Changing **He-P 301.11(c)(4)** to expand the Federal poverty level threshold comparison from 400% to 500% and apply an allowance of 10% above or below the threshold in order to more readily respond to any changes in the federal funding environment or if access to health insurance or medications becomes limited;
   - Deleting paragraph **He-P 301.11(d)** relating to notification of medical debt in order to alleviate the burden on the patient to determine eligibility and allow all patient eligibility to be determined by gross household income as amended in **He-P 301.011(c)** above;
   - Other minor wording edits in paragraph (e) renumbered as (d); and
   - Updating **He-E 301.11(h)(1)d.**, renumbered as **He-P 301.11(g)(1)d.**, to remove reference to answering machines and adding the requirement that telephone and voicemail information of an applicant as required information.

   **He-P 301.17** establishes the eligibility of tuberculosis (TB) patients seeking financial assistance with treatment. These rule amendments are proposed in order to update eligibility guidelines, clarify application documentation, and make minor editorial changes.
6. (a) Continued.

Specifically, He-P 301.17 is being amended as follows:
- Changing He-P 301.17(c)(4) to expand the Federal poverty level threshold comparison from 200% to 300%;
- Deleting paragraph (d) relating to notification of medical debt in order to alleviate the burden on the patient to determine eligibility and allow all patient eligibility to be determine by gross household income as amended in He-P 301.17 (c) above;
- Amending He-P 301.17(i)(3, renumbered as He-P 301.17(h)(3), to require documentation of active TB or high risk latent TB infection;
- Addition of He-P 301.17(h)(5)e. to require a copy of insurance card or proof of insurance as applicable to be included with the statement of financial resources information;
- Updating the contact information in paragraph (p), renumbered as paragraph (o), from the NH CARE program to the ID Care Services for clarification purposes; and
- Other minor wording edits in paragraph (f), renumbered as paragraph (e).

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

Groups affected by this rule include persons seeking financial assistance with treatment of TB and HIV/AIDS.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<table>
<thead>
<tr>
<th>RULE</th>
<th>STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS</th>
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</thead>
<tbody>
<tr>
<td>He-P 301.11(b), (c) intro., (c)(3), (c)(4), (d) [deleted], (d), (g) intro., (g)(1) intro., and (g)(1)d.</td>
<td>RSA 141-C:2, IV, RSA 141-C:3, III, RSA 141-C:4, X., RSA 141-C:15, IV</td>
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<td>RSA 141-C:15, III</td>
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7. Contact person for copies and questions including requests to accommodate persons with disabilities:

<table>
<thead>
<tr>
<th>Name:</th>
<th>David Newton, Esq.</th>
<th>Title:</th>
<th>Legal Counsel – Rules Unit</th>
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<tbody>
<tr>
<td>Address:</td>
<td>Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301</td>
<td>Phone #:</td>
<td>271-9640</td>
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<td></td>
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<td>Fax#:</td>
<td>271-5590</td>
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<td></td>
<td>E-mail:</td>
<td><a href="mailto:David.newton@dhhs.nh.gov">David.newton@dhhs.nh.gov</a></td>
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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](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, June 28, 2018

- [ ] Fax
- [ ] E-mail
- [ ] Other format (specify):
9. Public hearing scheduled for:

   Date and Time:   Thursday, June 21, 2018 at 11:00 AM
   Place:           DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH

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

   FIS # 18:098, dated May 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 benefit state citizens and increase costs to independently-owned businesses by indeterminable amounts.

2. **Cite the Federal mandate. Identify the impact of state funds:**
   The federal rule for this proposal is 45 CFR 75. Federal funding for the program remains unchanged at this time and has no effect on state funds. There is no new federal mandate directing the proposed amendments, and no state funds will be used should federal funding amounts change.

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

   A. **To State general or State special funds:**
      None. The Department of Health and Human Service states that while eligibility may increase as a result of the removal of the medical debt notice in He-P 301.11(d), it is anticipated that this will be offset by increasing the federal poverty level for gross household income from 400% to 500%. Additionally, the expanded coverage for outpatient and inpatient services will be covered by federal funding. Similarly, the Department anticipates that while removing the medical debt notice in He-P 301.17(d) may result in increased eligibility determinations, this increase should be offset by increasing the federal poverty limit for gross household income from 200% to 300%.

   B. **To State citizens and political subdivisions:**
      Qualified citizens will benefit from expanded eligibility for financial assistance for tuberculosis care and HIV/AIDS care.

   C. **To Independently owned businesses:**
      The Department states there may be indeterminable costs to businesses in the form of additional work to determine financial assistance and resolve billing issues related to expanded outpatient and insurance services. The Department expects these costs to be minimal.

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.
Amend He-P 301.11(b), (c) intro., (c)(3), and (c)(4), effective 11-3-16 (Document #12033), cited and to read as follows:

He-P 301.11 HIV/AIDS NH Comprehensive Aids Resource Emergency (CARE) Program.

(b) Qualified applicants shall be eligible to receive financial assistance for outpatient health services, insurance services, and drugs that receive Food and Drug Administration approval for use as therapy for individuals infected with HIV and infants perinatally exposed to HIV and are authorized for payment through the program’s current formulary.

(c) Financial assistance for outpatient health services, insurance services, and approved drug therapies shall be provided to applicants who meet the following eligibility requirements:

(3) For drug services only, currently be prescribed antiretroviral drugs for the treatment of HIV/AIDS or meet one or more criteria under the US Department of Health and Human Services Guidelines for the Use of Antiretroviral Agents in HIV-1 Infected Adults and Adolescents available as noted in Appendix A; and

(4) Have an annual gross household income which is less than 5400% of the Federal poverty income guidelines, except if the applicant's annual gross income is greater than 400% of the allowed income in the federal poverty income guidelines, the difference shall be multiplied by 80% in order to determine the amount of out of pocket dollars that shall be spent on medical care before the applicant shall be eligible. The program shall maintain flexibility in implementation of the income limit, up to 10% above or below the 500% FPL threshold. The flexibility will be utilized if changes occur in the federal funding environment or if access to health insurance and medications becomes limited.

Amend He-P 301.11, effective 11-3-16 (Document #12033), by deleting paragraph (d) and renumbering the remaining paragraphs so that, for example, paragraph (e) becomes (d), as follows:

(d) The commissioner shall notify applicants in writing as to the amount of medical debt they shall accrue in order to be eligible for financial assistance pursuant to (3) above; and

Amend He-P 301.11(e), (h) intro., and (h)(1)d., effective 11-3-16 (Document #12033), and renumber as (d), (g) intro., (g)(1) intro., and (g)(1)d. are cited and read as follows:

(ed) The program shall be the payor of last resort and nothing contained in these rules shall authorize or require the program to provide payment for drugs, diagnostics, or monitoring services which would otherwise be paid for by medicaid, medicare, or any other medical insurance program or policy.

(hg) The application referred to in (ef) above shall include:

(1) The name and address of the applicant; and additional information about the applicant including:

d. Information relating to contacting the applicant by telephone, voicemail, answering machine, email or mail;
Amend He-P 301.17(c)(4), effective 11-3-16 (Document #12033), so that (c) intro. and (c)(4) are cited and to read as follows:

He-P 301.17 Tuberculosis Patient Care Financial Assistance Program.

(c) Financial assistance for approved TB patient care shall be provided for applicants who meet the following eligibility requirements:

(4) Have an annual gross household income which is less than 3200% of the Federal poverty income guidelines, except if the applicant’s annual gross income is greater than 200% of the allowed income in the Federal poverty income guidelines, the difference shall be multiplied by 80% in order to determine the amount of out-of-pocket dollars that shall be spent on medical care before the applicant is eligible.

Amend He-P 301.17, effective 11-3-16 (Document #12033), by deleting paragraph (d) and renumbering the remaining paragraphs so that, for example, paragraph (e) becomes (d), as follows:

(d) The department shall notify applicants in writing as to the amount of medical debt they shall accrue in order to be eligible for financial assistance under (4) above.

Amend He-P 301.17(f), (i) intro., (i)(3), (i)(5)e., and (p), effective 11-3-16 (Document #12033), and renumbered as (e), (h) intro., (h)(3), (h)(5) intro., (h)(5)e., and (o), so that (e), (h) intro., (h)(3), (h)(5) intro., (h)(5)e., and (o) are cited and read as follows:

(f) Each recipient shall notify the program in writing within 30 days of any change in the recipient’s medical insurance coverage, which results in a change in coverage for patient care costs which are being paid for by the program.

(h) The application referred to in (hg) above shall include:

(3) Documentation of HIV positive status, active tuberculosis or high-risk latent tuberculosis infection

(5) A statement of financial resources, including any of the following:

e. Copy of insurance card or proof insurance, if applicable;

(p) The applicant shall contact the NH CARE program Care Services manager if eligibility is denied; and may contact the NH section director if dissatisfied with the response from the NH CARE program Care Services manager.

APPENDIX

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