

**RULEMAKING NOTICE FORM**

Notice Number	<b>2016-126</b>	Rule Number	<b>He-W 820, He-W 821 &amp; He-W 856.05</b>
1. Agency Name & Address:  <b>Dept. of Health and Human Services Office of Medicaid Bus. &amp; Policy 129 Pleasant St., Brown Bldg. Concord, NH 03301</b>	2. RSA Authority: <b>RSA 167:3-c, I &amp; RSA 167:4, I(b) &amp; IV(e)</b>		
	3. Federal Authority: _____		
	4. Type of Action:		
	Adoption	<u>      X      </u>	
	Amendment	<u>                  </u>	
	Repeal	<u>                  </u>	
	Readoption	<u>                  </u>	
	Readoption w/amendment	<u>          X          </u>	

5. Short Title: **Asset Transfers, Undue Hardship Waivers for Asset Transfer Penalties or for Individuals with Substantial Home Equity, and Real Property Resources in the Medical Assistance Programs**

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

**The Department of Health and Human Services (Department) is proposing to adopt rules in the He-W 800 chapter related to asset transfers, undue hardship waivers for asset transfer penalties, or for individuals with substantial home equity and real property resources for certain medical assistance programs. The Department is proposing to transfer the medical assistance policy found in He-W 620.01, He-W 621, and He-W 656.05 into the new He-W 800 chapter of administrative rules that have been established for medical assistance. The existing rules He-W 620.01, He-W 621 and He-W 656.05 are interim rules which expire on September 20, 2016.**

**The Department is proposing to:**

- **Adopt He-W 820, which describes how asset transfers shall be treated for individuals applying for or receiving institutionalized medical assistance or any category of home and community-based care (HCBC), and the individual’s spouse. This rule prevents individuals who have artificially impoverished themselves from qualifying for medical assistance, pursuant to RSA 167:4, IV;**
- **Readopt with amendment and renumber He-W 621 as He-W 821. He-W 821.01 describes the requirements an institutionalized or HCBC applicant or recipient must follow when submitting an undue hardship waiver due to an asset transfer penalty and the requirements that must be met for the Department to approve the waiver. The proposed amendments to He-W 821.01 clarify and expand upon this waiver process in response to findings against the Department from the Administrative Appeals Unit (AAU). He-W 821.02 describes the requirements for submitting a hardship waiver for individuals with substantial home equity. The proposed amendments align the process for this hardship waiver to the process described in He-W 821.01. He-W 821.03 allows individuals denied the waivers described in He-W 821.01 and He-W 821.02 to request an administrative appeal. He-W 621 is scheduled to expire September 20, 2016; and**
- **Adopt He-W 856.05, which describes how real property resources shall be treated for the adult categories of medical assistance, and specifies how disposal of real property shall be treated.**

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

**Applicants and recipients of medical assistance are affected by the rule.**

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

<b>Rule</b>	<b>Federal Reg./RSA</b>
He-W 820.01	RSA 126-A:4-b(a); RSA 161:4-a, II; RSA 167:3-c, I; RSA 167:4, I(b), III-a & IV; 42 USC 1396p(c)
He-W 821.01(formerly He-W 621.01)	RSA 126-A:4-b,(a); RSA 167:3-c, I; RSA 167:4, III-a & IV; 42 USC 1396p(c)(2)(D)
He-W 821.02 (formerly He-W 621.02)	RSA 126-A:4-b,(a); RSA 167:3-c, I; RSA 167:4, III-a & IV; 42 USC 1396p(f)
He-W 821.03 (formerly He-W 621.03)	RSA 126-A:4-b,(a); RSA 126-A:5, VIII; 42 USC 1396p(c)(2)(D)
He-W 856.05	RSA 161:4-a, II; RSA 167:3-c,I; 42 CFR 435.210

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.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: **Friday, August 26, 2016**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, August 19, 2016 at 10:00 a.m.**

Place: **DHHS, Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH 03301**

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

FIS # **16:131**, dated **07/15/16**

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

When compared to the existing rules, the proposed rules may reduce state general fund expenditures by \$1,387,114 annually.

**2. Cite the Federal mandate. Identify the impact of state funds:**

42 USC 1396p(c) describes the requirements for how states are to approach transfers of assets for less than fair market value, which impacts the proposed policies in He-W 820.01, and 42 USC 1396p(c)(2)(D) and (f)(4) allow states to waive the mandated penalties associated with transfers of assets or excess home equity, which impacts the proposed policies in He-W 821.01 and He-W 821.02. These mandates impose no costs, but may yield a benefit to the state general fund as noted in 3A below.

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

**A. To State general or State special funds:**

During FY 2015, the Department denied nursing facility/Home and Community-Based Care services to 72 individuals due to those individuals having transferred assets in the 60 months prior to application. Of these, 49 applied for and were granted an undue hardship waiver or were denied a waiver that was overturned on appeal. In total, \$2,774,229.50 was expended in FY 2015 for individuals who were granted undue hardship waivers. Since these expenditures are 50% general funds and 50% federal funds, the Department anticipates that readoption with amendment and renumbering of He-W 621.01 as He-W 821.01 will save the state general fund \$1,387,114.25 annually if, once the proposed rules are in place, the Department's Administrative Appeals Unit (AAU) ceases findings against the department on this policy.

**B. To State citizens and political subdivisions:**

Proposed He-W 820 describes how asset transfers shall be treated for individuals applying for or receiving institutionalized medical assistance or any category of home and community-based care. While the proposed rule may present an indeterminable cost to state citizens in that financial institutions may charge a fee for the retrieval of financial records necessary for the Department's determination process, these and any other costs are attributable to RSA 167:4 and not to the rule itself. .

**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 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.**

**Adopt He-W 820 to read as follows:**

PART He-W 820 ASSET TRANSFERS

He-W 820.01 Asset Transfers.

- (a) Asset transfers described in this rule shall:
- (1) Be in addition to and shall not supersede 42 USC 1396p(c)(2)(A), (B), (C), and (D);
  - (2) Include every type of income and resource, unless otherwise noted in this rule; and
  - (3) Apply to:
    - a. Individuals applying for or receiving institutionalized medical assistance or any category of home and community-based care, pursuant to He-W 856.01(d); and
    - b. The individual's spouse.
- (b) A transfer of assets shall be considered to have been made when:
- (1) Action is taken that reduces or eliminates an individual's ownership or control of such assets;
  - (2) Another person has been given access to the asset through joint ownership and any action is taken, either by the individual or by any other person, that reduces or eliminates such individual's ownership;
  - (3) An instrument to transfer title at some future date has been completed by the individual who is applying for or receiving assistance and delivered to the individual who is to receive title;
  - (4) An individual who is applying for or receiving assistance has transferred or transfers title or ownership of an otherwise excluded home to another individual or entity, including a home, which has become income producing;
  - (5) An individual places assets into an irrevocable trust or similar legal device, including an annuity;
  - (6) An individual applying for or receiving assistance obtains a reverse mortgage, a home equity conversion mortgage, or similar loan on an otherwise excluded home or other real property and transfers the proceeds to another individual;
  - (7) An individual applying for or receiving assistance converts a countable asset;
  - (8) An individual is entitled to an asset but does not receive the asset because of action:
    - a. By the individual or the individual's spouse;
    - b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse;

(9) An individual who is applying for or receiving medical assistance services described in 42 USC 1396p(c)(1) purchases a promissory note, loan, or mortgage, unless such note, loan, or mortgage:

a. Provides a repayment term that is actuarially sound pursuant to (i)(3) below;

b. Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments; and

c. Prohibits the cancellation of the balance upon the death of the lender; or

(10) An individual who is applying for or receiving medical assistance described in 42 USC 1396p(c)(1) purchases a life estate interest in another individual's home, unless they have resided in the home for a period of at least one year after the date of the purchase.

(c) Actions which would cause income or resources not to be received shall include but not be limited to:

(1) Irrevocably waiving pension income or any other form of income;

(2) Waiving an inheritance;

(3) Not accepting or accessing injury settlements, judgments, or court awards;

(4) Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of the plaintiff; or

(5) Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.

(d) For individuals applying for or receiving assistance, the department of health and human services (DHHS) shall evaluate asset transfers to determine if the individual derived fair market value, as defined in He-W 601.04(b), from the transfer.

(e) DHHS shall evaluate the transfer to determine if the individual derived fair market value, as defined in He-W 601.04(b), whenever an individual applying for or receiving assistance has transferred, assigned or disposed of title or ownership of an otherwise excluded home to another individual or entity.

(f) Asset transfers in which the individual receives fair market value shall require no further evaluation for asset transfer.

(g) For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset shall be in a tangible or otherwise assessable form with intrinsic value. A transfer of assets for love and consideration, or similar reasons, shall not be considered to be a transfer for fair market value.

(h) Although relatives may legitimately be paid for providing care, a transfer of assets to a relative for care provided in the past shall not be a transfer for fair market value. It shall be assumed that services provided for free in the past were intended to be provided without compensation unless it can be rebutted with tangible evidence that a compensation arrangement had been agreed to in writing at the time services were provided.

(i) When determining whether an individual has received fair market value for a transfer when a life estate has been established, DHHS shall:

- (1) Determine what the fair market value of the asset was at the time of transfer;
- (2) Take into account the individual's age at the time of the transfer; and
- (3) Calculate the value of the life estate using the life estate tables found in the Supplemental Security Income (SSI) Program Operations Manual System (POMS), section SI 01140.120 as follows:
  - a. The life estate value shall be established by multiplying the market value of the asset by the life estate factor that corresponds to the individual's age at the time of the transfer;
  - b. The value of the life estate shall be subtracted from the value of the asset transferred; and
  - c. The difference between the value of the life estate and the amount the individual was reimbursed for the remainder interest shall be the portion of the asset transferred for less than fair market value.

(j) When determining whether an individual or spouse has received fair market value for a transfer of assets into an annuity, DHHS shall:

- (1) Determine the fair market value of the asset at the time of transfer into the annuity;
- (2) Determine if the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary to determine whether the annuity is actuarially sound;
- (3) Use the life expectancy tables published by the office of the chief actuary of the social security administration, pursuant to 42 USC 1396p(c)(1)(G)(ii)(II);
- (4) Determine that the individual has received fair market value for the annuity if the average number of years of expected life remaining for the individual coincides or exceeds the life of the annuity; and
- (5) Determine that the individual did not receive fair market value for the annuity if the average number of years of expected life remaining for the individual is less than the life of the annuity.

(k) The background information of the asset transfer shall be evaluated further to determine if assets might have been transferred for purposes of qualifying for assistance if DHHS determines that the individual did not receive fair market value from the transfer.

(l) Factors to be evaluated in assessing asset transfers shall include:

- (1) Timeframes between the transfer of assets and the date of application;
- (2) The individual's health at the time of the transfer; and
- (3) The individual's economic situation at the time of the transfer.

(m) The transfer shall be considered questionable if the evaluation of background information of the transfer suggests that the individual transferred assets for purposes of qualifying for assistance or results in qualifying earlier than otherwise would have been possible if the individual had retained all of the asset(s).

(n) The individual shall provide additional information and documentation to demonstrate that assets were not transferred for purposes of qualifying for assistance, if the transfer is considered questionable.

(o) Reasons for transferring assets for purposes other than qualifying for assistance shall include:

- (1) The individual transferred the asset to prevent foreclosure or sale of the asset by the lien holder, thus preventing total loss of the asset;
- (2) The individual transferred the asset for self-support because the individual's income and resources were insufficient to meet basic needs or to maintain upkeep of the asset, such as taxes and repairs, and the individual's basic needs were provided for in return for the transfer, or the individual lived off the proceeds of the asset;
- (3) The individual transferred the asset to meet the terms of a written agreement, including debts arising from such agreement;
- (4) The individual transferred the asset to meet the terms of an oral agreement, including debts arising from such agreement; or
- (5) The individual is not able to afford to take the necessary action to obtain the asset or the cost of obtaining the asset is greater than the asset is worth, resulting in a case of failure to cause assets to be received.

(p) The burden of proof for substantiating the fact that assets were not transferred for purposes of qualifying for assistance shall rest with the individual.

(q) If the individual refuses or fails to prove that assets were not transferred for purposes of qualifying for medical assistance, DHHS shall determine that the assets were transferred for the purposes of qualifying for assistance and the individual shall be ineligible pursuant to (r) below for:

- (1) Nursing facility services;
- (2) A level of care in any institution equivalent to that of nursing facility services; and
- (3) All categories of home and community-based services.

(r) ~~DHHS shall use the following methodologies to~~ determine the number of months of ineligibility for the services described in (q) above for an individual who has transferred property for purposes of qualifying for medical assistance the following methodologies shall be used:

- (1) The penalty date for all individuals who transfer assets for less than fair market value to make themselves eligible for assistance prior to February 8, 2006, shall be the first day of the month in which the asset was transferred, provided that the date does not occur during an existing penalty period as described in (5) below;
- (2) The penalty date for all individuals who transfer assets for less than fair market value to make themselves eligible for assistance on or after February 8, 2006, shall be whichever is later:
  - a. The first day the individual met all other eligibility criteria and would be eligible but for the transfer, provided that the date does not occur during an existing penalty period as described in (5) below; or
  - b. The first day of a month after which assets have been transferred provided that the date does not occur during an existing penalty period as described in (5) below;
- (3) When an individual or an individual's spouse makes multiple fractional transfers of assets in more than one month for less than fair market value, the penalty shall be based on the total cumulative uncompensated value of all such transfers, pursuant to 42 USC 1396p(c)(1);
- (4) The penalty period shall be based solely on the value of the assets transferred;
- (5) When a countable transfer takes place during an existing penalty period, a new penalty period shall not begin until the existing penalty period has expired;
- (6) When an individual makes a series of transfers within one month, the total value of the individual transfers for the month shall be used to calculate the penalty;
- (7) The penalty period shall be the number of months equal to:
  - a. The uncompensated value of assets transferred by the individual, divided by the average statewide monthly nursing facility private rate; and
  - b. The average statewide daily nursing facility rate shall be established by dividing the average statewide monthly nursing facility private rate, as determined and updated annually by the division's bureau of audits and rate setting, by 30.42;
- (8) When the penalty period consists of any number of full months and a partial month, the partial month penalty period shall apply in accordance with (10) below;
- (9) When the amount of the transfer is less than the average statewide monthly nursing facility private rate, a partial month penalty shall apply;
- (10) To determine the number of days the partial month penalty shall be in effect, the uncompensated value of assets transferred by the individual shall be divided by the average daily nursing facility rate described in (7)b. above;



(11) When assets have been transferred so that the penalty periods overlap, the individual penalty periods shall be calculated and imposed sequentially;

(12) When multiple transfers are made in such a way that the penalty period for each transfer would not overlap, each transfer shall be treated as a separate event, each with its own penalty period;

(13) When a spouse of an individual transfers an asset that results in a penalty for the individual, the penalty period shall be apportioned between the spouses when:

- a. The spouse either is or becomes eligible for Medicaid;
- b. A penalty could be assessed against the spouse; and
- c. Some portion of the penalty against the individual remains at the time the above conditions are met;

(14) When the penalty period for an individual is interrupted due to the death of the individual or due to discharge from institutionalized care, the remaining penalty period applicable to both spouses shall be served by the remaining spouse; and

(15) A penalty period imposed for a transfer of assets shall run continuously from the first date of the penalty period, regardless of whether the individual remains institutionalized.

(s) A penalty shall not be assessed for transfers of assets for less than fair market value under any of the following circumstances:

(1) The individual intended and attempted to dispose of the asset either at fair market value, or for other valuable consideration, and circumstances caused the individual to transfer the asset for less than fair market value;

(2) The individual transferred the assets for a purpose other than to qualify for medical assistance; or

(3) All of the assets transferred for less than fair market value have been returned to the individual.

(t) Individuals claiming that circumstances caused the asset to be transferred for less than fair market value pursuant to (s)(1) above, shall provide documentation of:

(1) The individual's attempt to dispose of the asset at fair market value, or for other valuable consideration; and

(2) The value at which the asset was disposed.

(u) Individuals claiming that assets were transferred for a purpose other than to qualify for medical assistance pursuant to (s)(2) above, shall provide documentation of:

(1) The specific purpose for which the asset was transferred; and

(2) The reason it was necessary to transfer the asset for less than fair market value.

(v) If a penalty was assessed for transferring an asset for less than fair market value and the asset was returned to the individual, then DHHS shall:

- (1) Generate a retroactive adjustment back to the beginning of the penalty period if the individual met all other eligibility criteria; or
- (2) Redetermine the penalty period pursuant to (r) above, when only part of an asset, or its equivalent value, has been returned.

(w) Asset transfer penalties shall not be imposed due to undue hardship pursuant to RSA 167:4, III-a and 42 USC 1396p(c)(2)(D).

**Readopt with amendment and renumber He-W 621, effective 3-24-16 (Document #11058), as He-W 821, and hold He-W 621 in reserve, so that He-W 821 reads as follows:**

PART He-W 8621 TECHNICAL REQUIREMENTS FOR NURSING FACILITY~~IES~~ (NF) AND HOME AND COMMUNITY BASED CARE (HCBC) SERVICES

He-W 8621.01 ~~Waiver of~~ Asset Transfer Penalty Undue Hardship Waiver.

(a) Definitions. As used in this section, the following terms shall have the meanings indicated:

(1) “Discharge” means “discharge” as defined in RSA 151:19, I-a, namely, the “movement of a patient from a facility to a non-institutional setting or the termination of services by a home health care provider when the discharging facility or home health care provider ceases to be legally responsible for the care of the patient”.

(2) “Good cause” means any circumstance beyond a person’s control that prevents that person from complying with a requirement, including:

- a. A death in the person’s immediate family;
- b. Personal injury or serious illness of the person or an immediate family member; or
- c. Another compelling reason or justification.

(3) “Individual” means the person who applied for or is receiving services from the nursing facility (NF) or under the home and community based (HCBC) waiver program.

(4) “Necessities of life” means, among other things, heat, hot water, electricity, gas service, or cooking fuel.

(5) “Sworn statement” means a statement made under oath or affirmation reciting facts which are personally known by the signer, and which are sworn to or affirmed and notarized by either a notary public or justice of the peace.

(6) “Undue hardship” means a hardship that imposes an unreasonable or disproportionate burden on the individual, as described in RSA 167:4, III-a, and 42 USC 1396p(c)(2)(D).

~~(ba) Requests for an waiver of the asset transfer penalty due to undue hardship pursuant to RSA 167:4,III a and 42 USC 1396p(e)(2)(D) as amended by Public Law 109-171 Section 6014 asset transfer penalty undue hardship waiver, shall be submitted on a document provided by the department, which includes all of the following:~~

- ~~(1) The individual's name, address, and telephone number, as well as the individual's medicaid identification (MID) number, if known;~~
- ~~(2) The reason(s) for the undue hardship waiver request; and name, address, telephone number, and relationship to the individual, of the individual's legal guardian, authorized representative (AR), power-of-attorney, or attorney, if any;~~
- ~~(3) The individual's or authorized representative's signature. Identification of the specific reason(s) for the request for an asset transfer penalty undue hardship waiver from the following list:~~
  - ~~a. The asset was transferred by a person representing the individual and it can be demonstrated that the individual lacked the mental capacity to comprehend the disqualifying nature of the transfer;~~
  - ~~b. The application of the asset transfer penalty would result in the individual being deprived of, and otherwise unable to obtain, necessary care such that the individual's health or life would be endangered; and~~
  - ~~c. The application of the asset transfer penalty would result in the individual being deprived of, and otherwise unable to obtain, food, clothing, shelter, and/or other necessities of life; and~~
- ~~(4) The printed name and dated signature of the individual, or, if filed by the individual's agent or representative, the printed name and dated signature of the agent or representative, and their relationship to the individual.~~

~~(cb) For the request for a waiver described in (a) above to be considered complete, the individual shall provide all required verifications pursuant to (e) or (f) below, or RSA 167:4,III a(a). A request for an asset transfer penalty undue hardship waiver shall include the following attachments:~~

- ~~(1) If the request for an undue hardship waiver was filed by the individual's agent or representative, a copy of the legal documentation that authorizes the agent or representative to act on behalf of the individual, such as an authorized representative declaration, court order appointing a guardian, power of attorney, etc.~~
- ~~(2) The following verifications are required in all cases:~~
  - ~~a. Written documentation or other evidence that a good faith effort was made to recover the asset(s) transferred or to make the asset(s) available to the individual, such as:~~
    - ~~1. Any written request for the asset(s) to be returned to the individual;~~
    - ~~2. Any demand letter(s);~~
    - ~~3. Any response letters from any recipient of the transferred asset(s);~~

4. Any documents or other evidence showing that legal action has been initiated to recover the asset(s); and

5. Any document or other evidence that demonstrates that action has been taken to recover the asset(s) or to make the asset(s) available to the individual to help pay for the cost of the individual's stay in the NF or to pay for HCBC services.

(3) The following verifications are required if the request for an asset transfer penalty undue hardship waiver is based upon a claim that the individual lacked the mental capacity to comprehend the disqualifying nature of the transfer, pursuant to (b)(3)a. above:

a. A written, dated, and signed statement from a licensed physician stating that the individual was mentally incapacitated at the time of the transfer, along with supporting medical records; or

b. An order of findings from a probate court concerning the individual's competency at the time of the transfer; and

c. Financial records that demonstrate that the asset(s) was transferred by the individual's agent or representative.

(4) The following verifications are required if the request for an asset transfer penalty undue hardship waiver is based upon a claim that the individual's health or life will be endangered pursuant to (b)(3)b. above:

a. For NF services:

1. A dated and signed statement from the NF that documents:

(i) The individual is currently residing in the NF;

(ii) The individual's current arrearage owed to the NF; and

(iii) The monthly amount currently being paid to the NF by the individual;

2. A sworn, signed, and dated statement from the individual or the individual's agent or representative that documents:

(i) The individual lacks the income and resources to pay for the NF services; and

(ii) A list of the individual's health insurances;

3. A signed and dated statement from a licensed physician or licensed nurse practitioner that documents:

(i) He or she is the individual's primary care provider (PCP);

(ii) The specific services that the individual requires and receives in the NF;

(iii) Any other services that the individual would need if discharged from the NF;

(iv) The specific needs of the individual that cannot be met in the community if the individual is discharged from the NF; and

(v) A brief explanation of the consequences to the individual if deprived of NF services and why the individual's life or health will be endangered;

4. Evidence that the NF has, in good faith, initiated the process to discharge the individual due to a lack of payment; and

5. Sworn and dated statement(s) from the person(s) who received the transferred asset(s) explaining why that person is unable to assist the individual in paying for the NF services during the asset transfer penalty period.

b. For HCBC services:

1. Documents that show the individual lacks the income and resources to pay for the HCBC services;

2. A statement dated and signed by the individual's PCP that documents:

(i) The medical services that the individual requires;

(ii) The services that the individual will lose if the asset transfer penalty is imposed, if any;

(iii) A brief explanation of why the imposition of an asset transfer penalty will deprive the individual of medical care such that the individual's life or health will be endangered; and

(iv) A list of the individual's health insurances; and

3. Sworn and dated statements from the person(s) who received the transferred asset(s) explaining why that person is unable to assist the individual in paying for the HCBC services during the asset transfer penalty period.

(5) The following verifications are required if the request for an asset transfer penalty undue hardship waiver is based upon a claim that the individual will be deprived of food, clothing, shelter, or other necessities of life pursuant to (b)(3)c. above:

a. A signed and dated statement from the individual, or the individual's agent or representative, explaining how the imposition of a penalty period will result in the deprivation of food, clothing, shelter, or other necessities of life;

b. Signed and dated statements from the NF or HCBC service providers describing the specific services that the individual must retain to avoid being deprived of food, clothing, shelter, or other necessities of life; and

c. Sworn and dated statements from the person(s) who received the transferred asset(s) explaining why that person is unable to provide the individual with food, clothing, shelter, or other necessities of life during the asset transfer penalty period.

(de) The date the department receives the completed request described in (b) above, shall be the individual's filing date for a waiver of the asset transfer penalty. Requests for an asset transfer penalty undue hardship waiver, including required verifications, shall be filed no later than 30 calendar days from the date on the notice of asset transfer penalty.

(ed) The filing date pursuant to (e) above, shall be no later than 30 calendar days from the date on the department's notice of a penalty period for NF or HCBC services. Upon receipt of a request for an asset transfer penalty undue hardship waiver, the department of health and human services (DHHS) shall:

(1) Review the request, attachments, and any other supporting documentation provided with the request;

(2) Determine whether the request establishes that the individual will suffer an undue hardship if the asset transfer penalty is imposed; and

(3) Notify the individual, or the individual's agent or representative who submitted the request for an asset transfer penalty undue hardship waiver, of DHHS' decision on the request, including the individual's appeal rights.

(fe) Failure to comply with the requirements for an asset transfer penalty undue hardship waiver request will result in the request being denied, unless DHHS determines that there was good cause for the non-compliance. To verify the undue hardship described in 42 USC 1396p(e)(2)(D)(1)(A), as amended by Public Law 109-171 Section 6011, the individual shall provide:

(1) For NF services:

a. A signed statement from the institution documenting that the individual:

1. Is currently residing in the institution; and

2. Does not demonstrate the ability to pay the institution for services; and

b. A signed statement from a licensed physician, or a licensed nurse practitioner documenting that:

1. They are the individual's primary health care professional; and

2. The deprivation of NF or HCBC services would deprive the individual of medical care such that the individual's health or life would be endangered; or

(2) For HCBC services:

a. A signed statement from a licensed physician, or a licensed nurse practitioner documenting that;

1. They are the individual's primary health care professional;

2. The individual does not demonstrate the ability to pay for HCBC services; and

~~3. The deprivation of NF or HCBC services would deprive the individual of medical care such that the individual's health or life would be endangered.~~

~~(f) To verify the undue hardship described in 42 USC 1396p(e)(2)(D)(1)(B), as amended by Public Law 109-171 Section 6011, the individual shall provide:~~

~~(1) A signed statement from the applicant or recipient of NF or HCBC services documenting that the application of a penalty period would deprive the individual of food, clothing, shelter, or other necessities of life; and~~

~~(2) A signed statement from every individual who directly received any asset transferred by the applicant or recipient of NF or HCBC services that are subject to a penalty period pursuant to 42 USC 1396p(e), documenting that the individual who received the transferred asset is unable or unwilling to provide the applicant or recipient of NF or HCBC services with food, clothing, shelter, or other necessities of life.~~

~~(g) Pursuant to 42 USC 1396p(e)(2)(D)(1)(B), as amended by Public Law 109-171 Section 6011, an individual shall be considered to be deprived of other necessities of life when the individual experiences:~~

~~(1) A discontinuation of heat, hot water, electricity, gas service, or cooking fuel; or~~

~~(2) A lack of transportation to obtain Medicaid covered medical and dental services from Medicaid enrolled providers.~~

He-W 8621.02 Hardship Waiver for Individuals with Substantial Home Equity.

(a) To request a waiver of being~~Individuals shall not be~~ denied for or terminated from NF or HCBC services due to excess home equity pursuant to He-W 8656.05(d), ~~if~~the individual shall:

(1) ~~The individual s~~Submits a request for a waiver of the eligibility criteria described in He-W 8656.05(d), pursuant to (b) below; and

(2) Identify the specific reason(s) for the request ~~The denial of NF or HCBC services from the following list would deprive the individual of:~~

a. Being denied for or terminated from NF or HCBC services due to excess home equity would result in the individual being deprived of, and otherwise unable to obtain, N~~n~~ecessary care such that his or her individual's health or life would be endangered; or~~and~~

b. Being denied for or terminated from NF or HCBC services due to excess home equity would result in the individual being deprived of, and otherwise unable to obtain, F~~F~~ood, clothing, shelter, and/or, pursuant to He-W 621.01(d), other necessities of life.

(b) The requests for a waiver described in (a) above shall ~~be submitted on a document provided by the department, which~~ includes all of the following:

(1) The individual's name, address, and telephone number, as well as the individual's medicaid identification (MID) number, if known:

(2) Identification of T~~the~~ specific reason(s) for the undue hardship waiver request, pursuant to (a)(2) above; and

(3) The name, address, telephone number, and relationship to the individual of the individual's legal guardian, or authorized representative's (AR), power-of-attorney, or attorney, if any; and

(4) The printed name and dated signature of the individual or, if filed by the individual's agent or representative, the printed name and dated signature of the agent or representative, and their relationship to the individual.

(c) ~~For a~~ request for a waiver described in (b) ~~above to be considered complete, the individual shall provide~~ include all required verification pursuant to (f) ~~or~~ and (g) below.

(d) The date the department of health and human services (DHHS) receives the completed request described in (b) and (c) above, shall be the individual's filing date for a waiver.

(e) The filing date pursuant to (d) above shall be no later than 30 calendar days from the date on ~~the department's~~ DHHS' notice of a denial or termination of NF or HCBC services.

(f) Individuals shall verify the undue hardship described in (a)(2)a. above by submitting the documentation described in He-W 821.01(c)(1) and:

(1) He-W 8621.01(ce)(41)a. for NF services; or

(2) He-W 8621.01(ce)(42)b. for HCBC services.

(g) Individuals shall verify the undue hardship described in (a)(2)b. above by submitting the documentation described in He-W 821.01(c)(1) and:

(1) A signed and dated statements/Notarized written declaration that documents from the individual, or the individual's agent or representative, explaining how the imposition of a penalty period due to home equity exceeding the limit will result in the deprivation of food, clothing, shelter, or other necessities of life/undue hardship; and

(2) A signed and dated statements from the NF or HCBC service providers describing the specific services that the individual must retain to avoid being deprived of food, clothing, shelter, or other necessities of life.

(h) Upon receipt of a request for a hardship waiver, DHHS shall:

(1) Review the request, attachments, and any other supporting documentation provided with the request;

(2) Determine whether the request establishes that the individual will suffer an undue hardship if the excess home equity penalty is imposed; and

(3) Notify the individual, or the individual's agent or representative who submitted the request, of DHHS' decision on the request.

(i) Failure to comply with the requirements for the waiver request will result in the request being denied, unless DHHS determines that there was good cause for the non-compliance.



He-W 8621.03 Administrative Appeals.

~~(a)~~—Individuals denied waivers described in He-W 8621.01 and He-W 8621.02 may appeal ~~the~~ department's the department of health and human services' decision and request an administrative appeal pursuant to He-C 200.

**Adopt He-W 856.05 to read as follows:**

He-W 856.05 Real Property Resources.

(a) For the adult categories of medical assistance, real property resources shall be treated as follows:

- (1) The home occupied by the individual shall not be counted when determining eligibility for adult categories of medical assistance;
- (2) An unoccupied home shall not be counted during periods of temporary absence such as short term hospitalization or institutionalization;
- (3) Income-producing property shall not be counted;
- (4) Any real property not otherwise excluded shall not be counted if it is necessary as the residence for the individual's spouse, minor child, or disabled child;
- (5) One burial plot per assistance group member shall not be counted; and
- (6) The equity value of real property which is not specifically excluded above shall be counted as a resource when determining eligibility for adult categories of medical assistance.

(b) For adult categories of medical assistance, the assistance group shall take action to dispose of the property within 6 months of being notified by the department of health and human services (DHHS) that the property must be liquidated, and:

- (1) The equity value of the property shall not be counted during the disposal period; and
- (2) The disposal period shall be extended as long as:
  - a. The individual verifies that action has been taken to sell the property and that there are valid reasons for inability to sell the property; or
  - b. The individual's hospitalization or institutionalization, although long term, is not expected to be permanent and it is likely that the individual will return to the home.

(c) If disposal does not occur within the disposal period, as specified in (b) above, medical assistance shall be denied or terminated.

(d) Applicants and recipients of medical assistance described in He-W 820.01(q), whose equity interest in their primary residence exceeds the 2016 limit of \$552,000, updated annually pursuant to 42 USC 1396p(f)(1)(C), shall not be eligible for such services, but shall remain eligible for other medical assistance services, unless the individual's spouse, minor child or disabled child resides in the property.

**APPENDIX**

<b>Rule</b>	<b>Federal Reg./RSA</b>
He-W 820.01	RSA 126-A:4-b,(a); RSA 161:4-a, II; RSA 167:3-c, I; RSA 167:4, I(b), III-a, & IV; 42 USC 1396p(c)
He-W 821.01 (formerly He-W 621.01)	RSA 126-A:4-b,(a); RSA 167:3-c, I; RSA 167:4, III-a & IV; 42 USC 1396p(c)(2)(D)
He-W 821.02 (formerly He-W 621.02)	RSA 126-A:4-b,(a); RSA 167:3-c, I; RSA 167:4, III-a & IV; 42 USC 1396p(f)
He-W 821.03 (formerly He-W 621.03)	RSA 126-A:4-b,(a); RSA 126-A:5, VIII; 42 USC 1396p(c)(2)(D)
He-W 856.05	RSA 161:4-a, II; RSA 167:3-c, I; 42 CFR 435.210