

RULEMAKING NOTICE FORM

Notice Number 2019-17

Rule Number He-W 837

<p>1. Agency Name & Address:</p> <p>Dept. of Health & Human Services Division of Medicaid Services 129 Pleasant Street, Brown Bldg. Concord NH 03301</p>	<p>2. RSA Authority: <u>RSA 126-AA:2, III(b) intro. & (b)(4)</u></p> <p>3. Federal Authority: <u>42 U.S.C. 1315, Pub.L. 111-148, 42 U.S.C. 1396(a)(10)(A)(i)(VIII)</u></p> <p>4. Type of Action:</p> <p>Adoption <u> X </u></p> <p>Amendment <u> </u></p> <p>Repeal <u> </u></p> <p>Readoption <u> </u></p> <p>Readoption w/amendment <u> </u></p>
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5. Short Title: **NH Granite Advantage Health Care Program**

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

The proposed new rule, He-W 837, describes the community engagement requirements for the Granite Advantage program, exemptions from the work and community engagement program, qualifying activities for community engagement, impacts of noncompliance with the community engagement requirement, and how to cure deficit community engagement hours.

In 2018, Chapter Law 342 (SB 313) replaced the New Hampshire Health Protection Program (NHHPP), which expires on 12/31/18, with the Granite Advantage Health Care Program (Granite Advantage) under RSA 126-AA effective on January 1, 2019. In accordance with SB 313, the Department of Health and Human Services filed a waiver amendment and extension with the Centers for Medicare and Medicaid Services (CMS) to continue its existing authority to implement work and community engagement requirements as a condition of continued eligibility under section 1902(a)(10)(A)(i)(VIII) [42 U.S.C 1396(a)(10)(A)(i)(VIII)] of the Social Security Act. The waiver was approved by CMS on November 30, 2018.

The Granite Advantage program is currently also the subject of Proposed Interim Rule INT 2018-26, where rulemaking notice was published in the Rulemaking Register on December 13, 2018. The Joint Legislative Committee on Administrative Rules (JLCAR) objected to the rule on December 20, 2018, and the Department responded by submitting an amended proposal on January 10, 2019, which is now being considered by JLCAR.

This initial proposal differs from the Department’s Objection Response to the Interim Rule as follows:

- **Editorial changes were made throughout the rule to remove extra spacing, and insert semicolons, periods, and verbs as needed. References to He-W 837.04 were inserted in He-W 837.05.**
- **No major substantive changes were made.**

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

The proposed rule affects the newly eligible Medicaid beneficiaries who are currently receiving their Medicaid benefits through the NH Health Protection Program. These beneficiaries will be transitioned to the Granite Advantage Health Care Program and if not otherwise exempted, be required to engage in 100 hours per month of qualifying community engagement activities as a condition of eligibility for Granite Advantage.

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

Rule Section	Statute Implemented
He-W 837.01	RSA 126-AA; 42 U.S.C. §12101 et seq.; Pub. L. No. 93-112; Pub. L. 111-148; 42 CFR 435.916
He-W 837.02	42 CFR 435.603(a)-(h)
He-W 837.03	RSA 126-AA
He-W 837.04	RSA 126-AA; RSA 167:82,II(g); 42 CFR 435.4; 42 CFR 440.315(f)
He-W 837.05	RSA 126-AA; RSA 167:3-i; RSA 167:6, IV-VI; RSA 167:3-e; RSA 167:3-f; §1902(a)(10)(A)(ii)(XV); 42 CFR 435.4; 42 CFR 435.121; §1902(e)-(f); §1915(c); 42 U.S.C. Chapter 7; 42 U.S.C. 1381 et seq.
He-W 837.06	RSA 126-AA
He-W 837.07	RSA 126-AA; RSA 641:3; RSA 167:82,II(g)
He-W 837.08	RSA 126-AA; 45 CFR 475
He-W 837.09	RSA 126-AA; 45 CFR 400.75
He-W 837.10	RSA 126-AA; 42 U.S.C. §12101 et seq.
He-W 837.11	RSA 126-AA
He-W 837.12	RSA 126-AA; 24 CFR 5.2005; 24 CFR 5.2009
He-W 837.13	RSA 126-AA
He-W 837.14	RSA 126-AA; 24 CFR 5.2005; 24 CFR 5.2009
He-W 837.15	RSA 126-AA
He-W 837.16	RSA 126-AA
He-W 837.17	RSA 126-AA
He-W 837.18	RSA 126-AA
He-W 837.19	RSA 126-AA

APPENDIX II-C (Continued)

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

Name:	Kim Reeve, Esq.	Title:	Legal Counsel – Admin Rules
Address:	NH Dept. of Health & Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9640
		Fax#:	271-5590
		E-mail:	Kimberly.reeve@dhhs.nh.gov

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: **February 26, 2019**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, February 19, 2019 5:30 PM**

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

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

FIS # 19:008, dated January 16, 2019

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

Not applicable, as this is a new rule.

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

No federal mandate, no impact on state funds.

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

Chapter 342:1, Laws of 2018 (SB 313) established the New Hampshire Granite Advantage Health Care Program and imposed a work and community engagement requirement for participation in the program. Specifically, the bill established RSA 126-AA:2, III(a), which reads as follows:

“Newly eligible adults who are unemployed shall be eligible to receive benefits under this paragraph if the commissioner finds that the individual is engaging in at least 100 hours per month based on an average of 25 hours per week in one or more work or other community engagement activities...”

RSA 126-AA:2, III(b)-(d) provides for a number of good cause exemptions to this requirement, as well as a list of circumstances under which the work requirement shall not apply. To the extent that the work requirement provisions contained in the proposed rule implement these statutory provisions, any cost is attributable to statute rather than to the rule.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

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

The proposal 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 837 cited and to read as follows:

CHAPTER He-W 800 ELIGIBILITY FOR MEDICAL ASSISTANCE

PART He-W 837 GRANITE ADVANTAGE HEALTH CARE PROGRAM

He-W 837.01 Definitions.

- (a) “Beneficiary” means an individual determined eligible and currently receiving medicaid.
- (b) “Commissioner” means the commissioner of the NH department of health and human services, or his or her designee.
- (c) “Community engagement requirement” means a condition of continuing eligibility for the granite advantage health care program that requires beneficiaries to engage in at least 100 hours per calendar month in one or more community engagement activities.
- (d) “Cure” means meeting the community engagement requirement for a noncompliant month by making up the deficit hours for the month that resulted in noncompliance, demonstrating good cause for the deficit hours, or providing certification of an exemption status.
- (e) “Deficit hours” means the number of hours below 100 hours that the beneficiary did not participant in community engagement activities.
- (f) “Department” means the New Hampshire department of health and human services.
- (g) “Disability” means disability as defined by the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, or Section 1557 of the Patient Protection and Affordable Care Act.
- (h) “Disenrollment” means the termination of medicaid eligibility at the annual redetermination of a suspended beneficiary.
- (i) “Granite advantage health care program (granite advantage)” means the granite advantage health care program established under RSA 126-AA and provides medicaid coverage to adults eligible under Title XIX of the Social Security Act 1902(a)(10)(A)(i)(VIII).
- (j) “Good cause” means circumstances beyond the beneficiary’s control that prevented the beneficiary from meeting the community engagement requirement.
- (k) “Immediate family member” means a spouse, child(ren), mother-in-law, father-in-law, parent(s), step-parent(s), step-child(ren), step-brother(s), step-sister(s), grandparent(s), grandchild(ren), brother(s), sister(s), legal guardian(s), daughter(s)-in-law, son(s)-in-law, and foster child(ren).
- (l) “Medical professional” means a licensed physician, a licensed advanced practice registered nurse (APRN), a licensed behavioral health professional, a licensed physician assistant, a licensed alcohol and drug counselor (LADC), or a board-certified psychologist.
- (m) “Medicaid” means the Title XIX and Title XXI programs administered by the department, which makes medical assistance available to eligible individuals.

(n) “Medically frail” means a beneficiary, as defined in 42 CFR 440.315(f), with a disabling mental disorder, chronic substance use disorder (SUD), serious and complex medical condition, or a physical, intellectual or developmental disability that significantly impairs the ability to perform one or more activities of daily living as certified by a medical professional.

(o) “Noncompliant” means a status where a beneficiary failed to meet the 100 hour per calendar month community engagement requirement.

(p) “Redetermination” means the annual medicaid eligibility renewal process required by 42 CFR 435.916, He-W 606, and He-W 684.

(q) “Voluntary” means a community engagement status in which a beneficiary is not required to participate in the community engagement requirement but chooses to do so.

He-W 837.02 Medicaid Eligibility. Medicaid eligibility for the granite advantage population shall be determined in accordance with the requirements of 42 CFR 435.603 (a)-(h).

He-W 837.03 Community Engagement Requirement.

(a) Unless exempted under He-W 837.04 below or able to demonstrate good cause under He-W 837.11, beneficiaries enrolled in granite advantage shall engage in at least 100 hours per calendar month in one or more the community engagement activities listed in He-W 837.08 below.

(b) A beneficiary shall have until the first full month following 75 calendar days from the date of eligibility or expiration of an exemption to come into compliance with the community engagement requirement.

He-W 837.04 Exemptions.

(a) Beneficiaries meeting at least one of the following conditions shall be exempted from the community engagement requirement:

(1) Beneficiaries who are unable to participate due to illness, incapacity, or treatment, including inpatient or residential outpatient treatment, as certified by a medical professional. This exemption shall include the beneficiary’s participation in inpatient and residential outpatient SUD treatment or in intensive outpatient SUD services that is consistent with Levels 2.1 and above as found in the American Society of Addiction Medicine (ASAM) Criteria: Treatment Criteria for Substance-Related, Addictive, and Co-Occurring Conditions, Third Edition (2013), henceforth referred to as “ASAM Criteria 2013”, available as noted in Appendix A;

(2) Beneficiaries who are participating in a state-certified drug court program as certified by the administrative office of the superior court;

(3) A custodial parent or caretaker as defined in RSA 167:82, II(g) where the required care is considered necessary by a medical professional;

(4) A custodial parent or caretaker of a dependent child under 6 years of age provided that the exemption shall only apply to one parent or caretaker of a common child or children in the case of a 2-parent household;

- (5) A custodial parent or caretaker of a child with developmental disabilities who is residing with the parent or caretaker;
 - (6) Pregnant women as defined in 42 CFR 435.4 whose circumstance or condition is not previously known to the department;
 - (7) Beneficiaries with a disability who are unable to comply with the community engagement requirement due to disability-related reasons;
 - (8) Beneficiaries residing with an immediate family member who has a disability and is unable to meet the community engagement requirement for reasons related to the disability of that family member;
 - (9) Beneficiaries who experience a hospitalization or serious illness;
 - (10) Beneficiaries residing with an immediate family member who experiences a hospitalization or serious illness; or
 - (11) Beneficiaries who are medically frail, as certified by a medical professional.
- (b) Beneficiaries meeting at least one of the conditions in (a)(1) – (11) above shall complete the required form for the condition as specified for the condition in accordance with He-W 837.07 below.
- (c) Beneficiaries who fall in at least one of the following categories, based on the information available in the department's eligibility system(s), shall be exempted from the community engagement requirement and do not have to supply additional information to the department:
- (1) Beneficiaries who are approved by the department for aid to the permanently and totally disabled (APTD), aid to the needy blind (ANB), medicaid for employed adults with disabilities (MEAD), nursing facility, home and community based services (HCBS), or home care for children with severe disabilities through age 20 (HC-CSD);
 - (2) Beneficiaries who are receiving supplemental security income (SSI), social security disability income (SSDI), railroad disability, or veteran disability benefits;
 - (3) Beneficiaries who are pregnant as defined in 42 CFR 435.4, and whose pregnancy status is indicated in the department's eligibility system(s);
 - (4) A beneficiary who is a custodial parent or caretaker for a dependent child under 6 provided that the exemption shall only apply to one parent or caretaker in the case of a 2-parent household;
 - (5) A beneficiary who is a custodial parent or caretaker of a child with developmental disabilities who is residing with the parent or caretaker and who is currently approved by the department for services under the home and community based services developmental disability waiver (HCBS-DD);
 - (6) Beneficiaries who are receiving SNAP benefits and who are exempt from the program's employment requirements;
 - (7) Beneficiaries who are receiving TANF benefits and who are exempt from the program's employment requirements; and

(8) Beneficiaries who are enrolled in HIPP.

(d) The exemption in (c) above shall continue for as long as the particular circumstance continues to exist.

(e) A beneficiary who is exempted in (c) above may request to participate voluntarily in the community engagement requirement and shall have access to the services described in He-W 639.

He-W 837.05 Request for Exemption; Duration of Exemptions.

(a) All beneficiaries requesting an exemption shall complete, submit, and attest under penalty of unsworn falsification pursuant to RSA 641:3 on BFA Form 330 “Exemption Request Form- Granite Advantage Health Care Program” (01/19) that the information provided to the department in support of the request for an exemption is true to the best of the beneficiary’s knowledge and belief:

“By filing in the circle for an exemption in Section I or II below and signing this form, I attest under penalty of unsworn falsification pursuant to RSA 641:3 that the information provided to the department in support of this request is true to the best of my knowledge and belief.”

(b) Beneficiaries requiring certification by a licensed medical professional in (c) below shall have a licensed medical professional certify on BFA Form 330 “Exemption Request Form – Granite Advantage Health Care Program” (01/19) to the following:

“As a licensed medical professional caring for this beneficiary, I hereby certify (based on the description of the exemptions provided in the instructions to this form) that the beneficiary meets the qualifications for the exemption(s) requested in Section II.”

(c) Beneficiaries shall provide the following third party certification or documentation to the department for the following exemption types:

(1) For beneficiaries unable to participate due to illness, incapacity, or treatment under He-W 837.04(a)(1) above, provide a certification by a medical professional specifying the duration and limitations of the illness, incapacity, or treatment. The duration of the exemption shall be 1 month or the date range specified by the medical professional, whichever is longer;

(2) For beneficiaries participating in a state certified drug court program under He-W 837.04 (a)(2) above, provide a copy of the court order requiring the person to participate in the drug court program. The duration of this exemption shall be 1 year from the date that the required documentation is received;

(3) For a parent or caretaker under He-W 837.04 (a)(3) above, provide a certification by a medical professional that specifies the duration that such care is required. Unless specified otherwise by the medical professional, the duration of this exemption shall be 1 year from the date that the required documentation is received;

(4) For a parent or caretaker of a dependent child under 6 years of age under He-W 837.04 (a)(4) above, provide a self-attestation and the child’s date of birth;

(5) For a custodial parent or caretaker of a child with developmental disabilities under He-W 837.04 (a)(5) above, provide a certification by a medical professional of the child’s developmental disability. The duration of this exemption shall be for as long as the particular circumstance continues to exist;

(6) For beneficiaries updating pregnancy status with the department, perform one of the following:

- a. Complete and submit the form required in He-W 837.07(a) below;
- b. Call the department's customer service line at 1-844-275-3447 to report the pregnancy;
- c. Send a note via United States postal service to the department along with the due date;
- d. Complete a change report on nheasy.nh.gov; or
- e. Go to the local district office and provide the information in person.

(7) For beneficiaries with a disability under He-W 837.04 (a)(7) above, provide an annual certification by a medical professional of the person's inability to meet the community engagement requirement for reasons related to the disability. The duration of this exemption shall be 1 year from the date that the required documentation is received;

(8) For persons with an immediate family member in the home with a disability under He-W 837.04 (a)(8) above, provide an annual attestation of the beneficiary's inability to meet the community engagement requirement for reasons related to the disability of a family member and an annual certification by the family member's medical professional specifying the family member's disability. The duration of this exemption shall be 1 year from the date that the required documentation is received;

(9) For beneficiaries unable to participate due to hospitalization or serious illness under He-W 837.04 (a)(9) above, provide copies of discharge summaries, or financial or billing information, documenting the hospitalization or serious illness or dates of stay. The duration of this exemption shall be 1 month or the date range specified by the medical professional, whichever is longer;

(10) For beneficiaries who are unable to participate due to hospitalization or serious illness of an immediate family member under He-W 837.04 (a)(10) above, provide copies of the family member's discharge summaries, or financial or billing information, documenting the hospitalization or serious illness. The duration of this exemption shall be 1 month or the date range specified by the medical professional, whichever is longer; and

(11) For medically frail beneficiaries under He-W 837.04 (a)(11) above, an annual completion and submission of a. and b. below:

- a. BFA Form 320A "Beneficiary Authorization for Licensed Medical Professional to Release Protected Health Information- Granite Advantage Health Care Program" (01/19) permitting and authorizing disclosure of protection health information as follows:

"I hereby authorize the following licensed medical professional to disclose my protected health information for the purposes described above."

"In addition, I hereby authorize the following specific disclosures (place your initials on the line by those statements which apply)

I specifically authorize the release of my mental health treatment records.
I specifically authorize the release of my HIV and AIDS results and/or treatment.
I specifically authorize the release of my alcohol and/or drug abuse treatment records in accordance with 42 CFR Part 2.”

“I give authorization for my protected health information to be released to the following individual or organization:

Name: Granite Advantage Health Care Program Manager
Organization: Department of Health and Human Services
Address: DHHS, Granite Advantage Health Care Program, P.O. Box 3778,
Concord, NH 03302-3778 or Fax # 603-271-5623

I understand this authorization may be revoked by notifying the Department of Health and Human Services in writing to the address above.”

b. BFA Form 331 “Licensed Medical Professional Certification of Medical Frailty” (01/19) indicating that the person is unable to comply with the work and community engagement requirement as a result of their condition including the duration of such disability. The duration of this exemption shall be 1 year from the date that the required certification is received. The medical professional shall certify as follows:

“As a licensed medical professional caring for this beneficiary, I hereby certify that the beneficiary is medically frail based on the beneficiary having one or more of the conditions identified in part III below.”

(d) To the extent practicable, third party certification or documentation shall be submitted to the department with BFA Form 330 “Exemption Request Form - Granite Advantage Health Care Program” (01/19).

(e) A request for an exemption under this section shall not be considered complete until all required documentation(s) are received by the department.

He-W 837.06 Qualifying Activities Meeting the Community Engagement Requirement. The following activities shall qualify as activities for the community engagement requirement:

- (a) Unsubsidized employment including by non-profit organizations;
- (b) Subsidized private sector employment;
- (c) Subsidized public sector employment;
- (d) On the job training;
- (e) Job skills training related to employment;
- (f) Enrollment at an accredited community college, college or university that is counted on a credit hour basis;
- (g) Job search and job readiness assistance, including but not limited to participation in job search or job training activities offered through the department of employment security or through other job search or job readiness assistance program such as Workforce Innovation and Opportunity Act (WIOA) or work ready New Hampshire;

- a. Time spent in any assessment, training, enrollment or case management activity that is necessary for participation under this section shall be credited as job search and job readiness assistance hours;
- (h) Vocational educational training not to exceed 12 months with respect to any beneficiary;
- (i) Education directly related to employment, in the case of a beneficiary who has not received a high school diploma or certificate of high school equivalency;
- (j) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a beneficiary who has not completed secondary school or received such a certificate;
- (k) Community service or public service except that community service or public service under this part shall not include services provided to or on behalf of a political organization or campaign;
- (l) Caregiving services for a non-dependent relative or other person with a disabling medical mental health or developmental condition;
- (m) Participation in ASAM Level 1 outpatient SUD services, including medication assisted treatment, and recovery supports, as set forth in ASAM Criteria (2013);
- (n) Participation in and compliance with SNAP employment requirements;
- (o) Participation in and compliance with the TANF employment requirements; or
- (p) Participation in and compliance with the employment requirements of the refugee resettlement program pursuant to 45 CFR 400.75.

He-W 837.07 Reporting of Community Engagement Activities and Crediting of Hours.

- (a) The following types of community engagement activities shall be reported on BFA Form 321 “Reporting Education Participation in Qualifying Community Engagement Activities – Granite Advantage Health Care Program” (01/19):
 - (1) For job skills training related to employment under He-W 837.06(e), the beneficiary shall provide documentation of enrollment that includes the duration and the number of hours the beneficiary is participating in the activity;
 - (2) For enrollment at an accredited community college under He-W 837.06(f), the beneficiary shall provide documentation of enrollment that includes a copy of the beneficiary’s class schedule, the number of credit hours assigned for the enrolled class(es) and the semester begin and end date.
 - a. The number of community engagement hours to be credited toward the community engagement requirement each month shall be determined by multiplying the number of credit hours assigned for the enrolled class(es) by 4.33;
 - (3) For vocational educational training under He-W 837.06(h), the beneficiary shall provide documentation of enrollment that includes the duration of the activity and a copy of the beneficiary’s enrollment in the program. Community engagement hours shall be credited at 100 hours per month for the duration of the beneficiary’s verified participation in the activity not to exceed 12 months;

- (4) For education directly related to employment under He-W 837.06(i), the beneficiary shall provide documentation of enrollment that includes the duration of the activity. Community engagement hours shall be credited at 100 hours per month for the duration of the beneficiary's verified participation in the activity; and
 - (5) For study leading to a certificate of general equivalence under He-W 837.06(j), the beneficiary shall provide documentation of enrollment that includes the duration of the activity. Community engagement hours shall be credited at 100 hours per month for the duration of the beneficiary's verified participation in the activity;
- (b) The following types of community engagement activities shall be reported on BFA Form 320 "Reporting Monthly Participation in Qualifying Community Engagement Activities - Granite Advantage Health Care Program" (01/19), and the hours reported shall be credited toward the community engagement requirement as follows:
- (1) For time spent participating in job search and job readiness efforts under He-W 837.06(g), the beneficiary shall report the type, duration of the activity, and total number of hours per month;
 - (2) For community service or public service under He-W 837.06(k), the beneficiary shall report where and when the community or public service was performed, the number of hours worked, and the contact information for the community service or public service agency;
 - (3) For caregiving services under He-W 837.06(l), the beneficiary shall report the name and contact information for the non-dependent relative or other person cared for, a description of the services provided, and the number of hours of caregiving services provided; and
 - (4) For participation in ASAM Level 1, as set forth in ASAM Criteria (2013), outpatient SUD services under He-W 837.06(m), the beneficiary shall report the name of the agency or organization the services were received from, and the number of hours that the beneficiary participated in the services up to 40 hours per month;
- (c) The following types of community engagement activities shall be credited as follows if the activity is verified by the department's eligibility system(s):
- (1) For system verified participation in and compliance with SNAP employment requirements, community engagement hours shall be credited at 100 hours per month for the duration of the beneficiary's verified participation in the program;
 - (2) For system verified participation in and compliance with TANF employment requirements, community engagement hours shall be credited at 100 hours per month for the duration of the beneficiary's verified participation in the program;
 - (3) For participation in and compliance with the employment requirements of the refugee resettlement program pursuant to 45 CFR 400.75, systemic verification of legal status and enrollment in the program. Community engagement hours shall be credited at 100 hours per month for 12 months from the date of the beneficiary's entry into the United States; and

(4) Employment information gathered during the granite advantage or medicaid eligibility or redetermination application process or in the department's eligibility system(s) shall be used to determine a beneficiary's average monthly employment hours and shall be credited towards the community engagement requirement for employment activities listed in He-W 837.06(a)-(d).

- a. A temporary increase in monthly employment hours for seasonal or other work above the beneficiary's average monthly employment hours shall be reported as extra employment hours for purposes of reporting increased qualifying activities; and
- b. Beneficiary shall report within 10 calendar days any increase or decrease in average monthly employment hours that will continue for more than one month or that will affect any other benefits the beneficiary is receiving pursuant to He-W 803.03 and He-W 603.03.

He-W 837.08 Beneficiaries with Disabilities: Reasonable Modification.

(a) A beneficiary with a disability shall be entitled to reasonable modifications related to meeting the community engagement requirements.

(b) Reasonable modifications may include:

- (1) Modification in the number of hours of participation required where the beneficiary is unable to participate in the required number of hours; or
- (2) Assistance with understanding the granite advantage program to include, but not limited to, departmental notices, eligibility requirements, exemption requirements, how to apply for an ADA exemption, program benefits, how to establish eligibility, and how to meet and report community engagement activities to maintain eligibility.

He-W 837.09 Opportunity to Cure Noncompliance.

(a) If a beneficiary fails to meet the required community engagement hours, the beneficiary shall satisfy the community engagement requirement by making up the deficit hours for the month that resulted in noncompliance by doing one of the following:

- (1) Curing the deficit hours by engaging in the activities listed in He-W 837.06 above in the following month for only the number of deficit hours for the noncompliant month. For example, a beneficiary engaged in 60 hours of community engagement activities in January, resulting in a 40-hour deficit. The beneficiary must only complete 40 hours of community engagement activities in February to cure January. In March, the beneficiary would have to complete 60 hours of activities to cure February. If the beneficiary worked 100 hours in March, February is cured and March's community engagement hours are met. At no time is a beneficiary required to work more than 100 hours;
- (2) Demonstrating good cause for the failure to meet the community engagement requirement in the noncompliant month as described in He-W 837.11; or
- (3) Providing documentation of an exemption pursuant to He-W 837.05.

(b) Within 10 days following the first month of noncompliance, the department shall provide written notice to the beneficiary of failure to meet the community engagement requirement to include:

- (1) How a beneficiary can cure the noncompliance as described in (a)(1) above; and
- (2) Information regarding potential suspension pursuant to He-W 837.10 below.

He-W 837.10 Suspension for Noncompliance.

(a) If a beneficiary does not cure the deficit hours as described in He-W 837.09(a)(1), the department shall suspend the beneficiary's eligibility effective the first of the month following the one-month opportunity to cure.

(b) Within 10 days following the failure to cure in the one-month opportunity to cure, the department shall provide written notice to the beneficiary that his or her medicaid eligibility shall be suspended due to noncompliance, and shall include all applicable notice requirements found in 42 CFR 431, Subpart E.

(c) The suspension shall remain in effect until the beneficiary reactivates eligibility by:

- (1) Satisfying within a single calendar month the deficit hours that resulted in noncompliance;
- (2) Demonstrating good cause for the failure to meet the community engagement requirement in the noncompliant month;
- (3) Providing documentation of an exemption pursuant to He-W 837.05; or
- (4) Becoming eligible for Medicaid under an eligibility category that is not subject to the community engagement requirement.

(d) Reactivation shall be effective on the date that the deficit hours are reported to the department or the date the department receives the required attestation or third party certification or documentation to establish good cause or an exemption.

(e) Upon reactivation in (d) above, a beneficiary's obligation to meet the community engagement requirement shall begin on the first full month following the month in which the beneficiary's eligibility is reactivated.

(f) The deficit hours that are made up in the immediately following month for the month that resulted in noncompliance shall also be credited toward the community engagement requirement for the current month in which the hours are earned. For example, January, a beneficiary, who has no good cause or exemption, works 0 hours. In February, that same beneficiary works 40 hours. This would result in suspension of coverage in March. If the beneficiary works 60 hours in March, the 60 hours in March are added to the 40 hours of February to achieve cure. February is then cured, the suspension would be lifted, and reactivation would result in accordance with (d) above.

(g) A beneficiary may reactivate eligibility prior to the redetermination date without having to complete a new medicaid application.

He-W 837.11 Good Cause for Noncompliance With Community Engagement Requirement.

(a) The department shall not suspend eligibility if a beneficiary failed to meet the community engagement requirement for a good cause.

(b) Good cause shall include, but be not limited to, the following circumstances:

- (1) The beneficiary experiences the birth or death of a family member residing with the beneficiary;
 - (2) The beneficiary experiences severe inclement weather, including a natural disaster, and was unable to meet the requirement;
 - (3) The beneficiary has a family emergency or other life-changing event such as divorce;
 - (4) The beneficiary is a victim of domestic violence, dating violence, sexual assault or stalking consistent with definitions and documentation required under the Violence Against Women Reauthorization Act of 2013 under 24 CFR section 5.2005 and 24 CFR section 5.2009;
 - (5) The beneficiary is a custodial parent or caretaker of a child 6 to 12 years of age who, as determined by the commissioner on a monthly basis, is unable to secure child care in order to participate in qualifying community engagement either due to a lack of child care scholarship or the inability to obtain a child care provider due to capacity, distance, or another related factor;
 - (6) The beneficiary has a disability, is voluntarily participating in the community engagement requirement, and was unable to meet the requirement for reasons related to that disability;
 - (7) The beneficiary resides with an immediate family member who has a disability, and was unable to meet the requirement for reasons related to the disability of that family member, but was not exempted from community engagement requirements;
 - (8) The beneficiary experienced a hospitalization or serious illness, but did not request an exemption from community engagement requirements;
 - (9) The beneficiary resides with an immediate family member who experienced a hospitalization or serious illness, but the beneficiary was did not request an exemption from community engagement requirements;
 - (10) The beneficiary is homeless or unable to find stable housing; or
 - (11) Other good cause such as a circumstance beyond the beneficiary's control which related to the beneficiary's ability to obtain or retain a qualifying community engagement activity.
- (c) All beneficiaries requesting good cause for noncompliance with the community engagement requirement shall complete, submit, and attest under the penalty of unsworn falsification pursuant to RSA 641:3 on BFA Form 340 "Good Cause Request Form- Granite Advantage Health Care Program" (01/19) along with any required third party certification(s) to the department as follows:

"By filling in the circle for good cause and signing the form, I attest under penalty of unsworn falsification pursuant to RSA 641:3, that the information provided to the department in support of this request is true to the best of my knowledge and belief."

(d) Beneficiaries requiring certification by medical professional for good cause in (e) below shall have the medical professional certify on BFA Form 340 “Good Cause Request Form – Granite Advantage Health Care Program” (01/19) as follows:

“A showing of good cause for “ADA disability” or “Caretaker residing with immediate family member with ADA disability” requires certification by a licensed medical professional. As a licensed medical professional caring for this beneficiary or for a beneficiary’s family member with a disability, I hereby certify that: The beneficiary is disabled and unable to meet the community engagement requirement for reasons related to their disability; or the family member identified above is disabled.”

(e) A beneficiary’s request for good cause shall be attested to and certified as follows:

(1) For a beneficiary who experiences the birth or death of a family member residing with the beneficiary, attestation by the beneficiary of the event to include the name of the family member, the date of the event the family member’s relationship to the beneficiary, and the number of days impacted;

(2) For a beneficiary who experiences severe inclement weather, including a natural disaster, and therefore was unable to meet the requirement, attestation by the beneficiary of the date(s) of the severe inclement weather or natural disaster and the number of days impacted;

(3) For a beneficiary who has a family emergency or other life-changing event such as divorce, attestation by the beneficiary of the nature of the family emergency or life-changing event to include the date(s) and the number of days that the beneficiary was unable to participate due to the circumstance;

(4) For a beneficiary who is a victim of domestic violence, dating violence, sexual assault, or stalking, documentation of the date range specified in the court order or the number of days impacted and:

a. A copy of a court order which indicates the beneficiary was the victim of domestic violence, dating violence, sexual assault or stalking; or

b. Self-attestation of domestic violence, dating violence, sexual assault or stalking in accordance with the Violence Against Women Reauthorization Act of 2013 under 24 CFR section 5.2005 and 24 CFR section 5.2009;

(5) For custodial parents as described in (b)(5) above, a monthly attestation by the beneficiary of the inability to secure child care and the number of days impacted;

(6) For a beneficiary who has a disability, is voluntarily participating in the community engagement requirement, and was unable to meet the requirement for reasons related to that disability the following shall be required:

a. Attestation by the beneficiary that the beneficiary was unable to meet the community engagement requirement for reasons related to the disability; and

b. The certification described in (d) above;

- (7) For a beneficiary who resides with an immediate family member who has a disability, and was unable to meet the requirement for reasons related to the disability of that family member, but did not request an exemption from the community engagement requirements, the following shall be required:
- a. Attestation by the beneficiary of the number of days the beneficiary was unable to meet the community engagement requirement for reasons related to that disability; and
 - b. The certification described in (d) above;
- (8) For a beneficiary who experienced a hospitalization or serious illness, but did not request an exemption from community engagement requirements, attestation of the number of days of the hospitalization or serious illness and copies of the discharge summaries, or financial or billing information that would substantiate the hospitalization or serious illness;
- (9) For a beneficiary who resides with an immediate family member who experienced a hospitalization or serious illness, but the beneficiary did not request an exemption from community engagement requirements, the following shall be required:
- a. Attestation by the beneficiary of the number of days of the hospitalization or serious illness; and
 - b. Copies of the family member's discharge summary, or financial or billing information, or other medical records that would substantiate the hospitalization or serious illness;
- (10) For a beneficiary who is homeless or unable to find stable housing, attestation by the beneficiary of the beneficiary's homelessness or inability to find stable housing; or
- (11) For a beneficiary to claim other good cause under(b)(11), attestation by the beneficiary of the circumstance beyond the beneficiary's control which relate to the beneficiary's ability to obtain or retain a qualifying activity to participate in.
- (f) A request for a finding of good cause under this section shall not be approved unless the required attestation(s) and certification(s) are received by the department.
- (g) The department shall use the documentation received to determine if the community engagement requirement would have been met if not for the good cause.

He-W 837.12 Crediting a Finding of Good Cause Toward the Required Community Engagement Hours.

- (a) A finding of good cause shall be credited toward the monthly community engagement requirement as follows:
- (1) For a beneficiary who experiences the birth or death of a family member residing with the beneficiary, 8 hours per day for each day the beneficiary attested being unable to participate;
 - (2) For a beneficiary who experiences severe inclement weather including a natural disaster, 8 hours per day for each day the beneficiary attested being unable to participate;

- (3) For a beneficiary who has a family emergency or other life changing event such as divorce, 8 hours per day for each day the beneficiary attested being unable to participate;
- (4) For a beneficiary who is a victim of domestic violence, dating violence, sexual assault or stalking, 8 hours per day for each day the beneficiary attested being unable to participate or the date range specified in the court order;
- (5) For a beneficiary who is a custodial parent or caretaker of a child 6 to 12 years of age who is unable to secure child care in order to participate in qualifying community engagement, 8 hours per day for each day the beneficiary attested being unable to participate;
- (6) For a beneficiary with a disability who was unable to meet the requirement for reasons related to that disability, for each day the beneficiary was unable to participate, or, if no date range is indicated, 100 hours per month for each month the beneficiary was unable to participate;
- (7) For a beneficiary residing with an immediate family member who has a disability, and was unable to meet the requirement for reasons related to the disability of that family member, 8 hours a day for each day the beneficiary was unable to participate, or, if no date range is indicated, 100 hours per month for each month the beneficiary was unable to participate;
- (8) For a beneficiary who experiences a hospitalization or serious illness, but was not exempted from the community engagement requirement:
 - a. For inpatient hospitalization, 100 hours per month for each month the beneficiary was unable to participate; or
 - b. For outpatient hospitalization or serious illness, 8 hours per day for each day the beneficiary was unable to participate as documented through self-attestation or certification by a medical professional;
- (9) For a beneficiary who resides with an immediate family member who experienced a hospitalization or serious illness, but the beneficiary was not exempted from the community engagement requirement:
 - a. For inpatient hospitalization, 8 hours per day for each day the beneficiary attested being unable to participate; or
 - b. For outpatient hospitalization or serious illness, 8 hours per day for each day the beneficiary was unable to participate as documented through self-attestation or certification by a medical professional;
- (10) For a beneficiary who is homeless or unable to find stable housing, 8 hours per day for each day the beneficiary attested being unable to participate; and
- (11) For other good cause, 8 hours per day for each day the beneficiary attested being unable to participate.

(b) If the beneficiary's good cause did not cover the number of deficit hours in that month, the beneficiary shall be determined noncompliant for the month, resulting in the beneficiary's responsibility to cure as required in He-W 837.09(a)(1).

(c) For the reporting of extra employment hours due to a temporary increase in monthly employment hours for seasonal or other work that is above the beneficiary's average monthly employment hours, the reporting of additional hours shall be limited to 2 consecutive months.

He-W 837.13 Limitation on the Repeated Consecutive Use of Curing to Meet the Community Engagement Requirement.

(a) Beginning May 1, 2020, a beneficiary who engages in the repeated consecutive use of cure for 12 months immediately prior to redetermination, shall be suspended at redetermination.

(b) Following suspension in (a) above, a beneficiary may reactivate eligibility under this section by providing 100 hours of community engagement within a single calendar month.

(c) Reactivation shall be effective on the date the 100 community engagement hours are reported to the department.

(d) After reactivation in (d) above, a beneficiary's participation start date shall be the 1st of the month following the month in which the beneficiary's eligibility is reactivated.

He-W 837.14 Extra Hours. A beneficiary shall not be permitted to carry-over hours in excess of the 100-hour requirement in order to satisfy the community engagement requirement.

He-W 837.15 Disenrollment and Reconsideration.

(a) A beneficiary who is suspended for noncompliance with the community engagement requirement, and fails to cure that suspension during redetermination, shall be dis-enrolled from granite advantage.

(b) A dis-enrolled beneficiary shall be re-enrolled as follows:

(1) Within 90 days of disenrollment, a beneficiary may return to granite advantage by providing 100 hours of community engagement within a single calendar month;

(2) Upon the department's receipt of the reported 100 hours in (b)(1) above, the beneficiary's eligibility shall be reopened as of the date that the hours are reported to the department; and

(3) The beneficiary's participation start date shall be the 1st of the month following the report in (b)(2) above.

(c) A beneficiary who is compliant with the community engagement requirement at redetermination but whose eligibility is terminated at redetermination for other reasons may, within 90 days of disenrollment, return to granite advantage by:

(1) Satisfying any outstanding medicaid redetermination requirements pursuant to 42 CFR 435.119, 42 CFR 435.916, He-W 606, and He-W 684;

(2) Upon satisfying any outstanding redetermination requirements, the beneficiary's eligibility shall be reactivated to the date of closure; and

(3) The beneficiary shall resume the reporting of community engagement hours the 1st of the month following the month that the outstanding redetermination requirements are met.

He-W 837.16 Re-Application.

(a) A beneficiary may reapply for medicaid at any time after disenrollment.

(b) If a beneficiary reapplies, the following shall apply:

(1) A beneficiary who was dis-enrolled at redetermination and who reapplies after 90 days, but within 6 months and is determined eligible, shall begin to report community engagement hours on the 1st of the month following the month in which the application is filed;

(2) A beneficiary who was disenrolled at redetermination and who reapplies 6 or more months thereafter and is determined eligible, shall in accordance with He-W 837.03 have until the first full month following 75 calendar days from the date of their eligibility determination before they are required to meet the 100-hour community engagement requirement; and

(3) For purposes of this section, the 6-month period shall be calculated using 182 days (365/2 rounded down).

He-W 837.17 Screening for Other Bases of Medicaid Eligibility Prior to Termination, Disenrollment or Denial of Eligibility. Termination, disenrollment, or denial of eligibility shall only occur after a beneficiary is screened and determined to be ineligible for all other bases of medicaid eligibility and reviewed for eligibility for insurance affordability programs in accordance with 42 CFR 435.916(f).

He-W 837.18 Appeals.

(a) A beneficiary may appeal the department's decision to deny an exemption under He-W 837.04, denying a request for good cause under, or suspending, denying, or terminating the beneficiary's eligibility for failing to meet the community engagement requirement under He-W 837.03 by filing a request for an appeal with the department's administrative appeals unit in accordance with He-C 200.

(b) The department shall not suspend, deny, or terminate the beneficiary's eligibility under (a) above if the beneficiary:

(1) Submits a hearing request to the local district office within 30 days from the date on the written notice of adverse decision; and

(2) Submits a request to the local district office for a continuation of benefits during the appeal process within 15 days of the date on the written notice of adverse decision.

He-W 837.19 Other Department Obligations.

(a) The department shall periodically assess compliance with the community engagement requirement in labor market areas, within the state, to assess whether mitigation strategies are needed so that the community engagement requirement is not unreasonably burdensome. The department shall examine the following:

- (1) Areas that experience high rates of unemployment;
 - (2) Areas with limited economies and educational opportunities; and
 - (3) Areas with a lack of public transportation.
- (b) The department shall provide information and assistance to beneficiaries, including information on community engagement activities, exemptions from participation in the community engagement requirement, good cause exemptions, and the opportunity to cure to facilitate beneficiaries' compliance with the program's community engagement requirement.

APPENDIX A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-W 837.04(a)(1)	ASAM Criteria: Treatment Criteria for Substance- Related, Addictive, and Co-Occurring Conditions, 3 rd edition (2013)	<p>Publisher: American Society of Addiction Medicine (ASAM).</p> <p>The ASAM Criteria (2013) can be purchased online through the ASAM website at: http://www.asamcriteria.org/.</p> <p>Cost = \$95 (non-members) or \$85 (members). Discounts are available for large purchases.</p>

APPENDIX B

Rule Section	Statute Implemented
He-W 837.01	RSA 126-AA; 42 U.S.C. 12101 et seq.; Pub. L. No. 93-112; Pub. L. 111-148; 42 CFR 435.916
He- W 837.02	42 CFR 435.603(a)-(h)
He- W 837.03	RSA 126-AA
He W 837.04	RSA 126-AA; RSA 167:82,II(g); 42 CFR 435.4; 42 CFR 440.315(f)
He- W 837.05	RSA 126-AA; RSA 167:3-i; RSA 167:6, IV-VI; RSA 167:3-e; RSA 167:3-f; 42 U.S.C.1396a(a)(10)(A)(ii)(XV); 42 CFR 435.4; 42 CFR 435.121; 42 U.S.C. 1396a(e)-(f); 42 U.S.C. 1396n; 42 U.S.C. Chapter 7; 42 U.S.C. 1381 et seq.
He- W 837.06	RSA 126-AA
He- W 837.07	RSA 126-AA; RSA 641:3; RSA 167:82,II(g)
He- W 837.08	RSA 126-AA; 45 CFR 475
He- W 837.09	RSA 126-AA; 45 CFR 400.75
He- W 837.10	RSA 126-AA; 42 U.S.C. 12101 et seq.
He- W 837.11	RSA 126-AA
He- W 837.12	RSA 126-AA; 24 CFR 5.2005; 24 CFR 5.2009
He-W 837.13	RSA 126-AA
He-W 837.14	RSA 126-AA; 24 CFR 5.2005; 24 CFR 5.2009
He-W 837.15	RSA 126-AA
He-W 837.16	RSA 126-AA; 42 CFR 435.916(f)
He-W 837.17	RSA 126-AA
He-W 837.18	RSA 126-AA
He-W 837.19	RSA 126-AA