

APPENDIX II-K
COVER SHEET FOR EMERGENCY RULE

Document Number 13156

Rule Number He-W 504.02(b)

1. Agency Name & Address:
**Dept. of Health and Human Services
Division of Medicaid Services
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority: RSA 167:3-c, XII

3. Federal Authority: _____

4. Type of Action:

Adoption _____

Amendment X

Repeal _____

Readoption _____

5. Date of Filing: **January 7, 2021**

6. Short Title: **Emergency Rule Amendment Related to MEAD Disability Determinations**

7. Contact person for copies and questions:

Name: **Allyson Zinno**
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Administrative Rules Unit
129 Pleasant Street
Concord, NH 03301**

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****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.
9. A summary of the effect if the rule were not adopted.
10. A description of those affected.

***PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority, * hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: 1/6/2021

Signature:



Name: Lori A. Shibinette

Title: Commissioner

Countersigned by:



Lori A. Weaver
Deputy Commissioner

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

He-W 504.02 describes the medical eligibility requirements for Medicaid for Employed Adults with Disabilities (MEAD).

The Department of Health and Human Services, Division of Medicaid Services (Department) is proposing emergency rulemaking to amend He-W 504.02(b), by amending paragraph (b) in order to come into compliance with federal guidance and prevent the imminent peril to the public health or safety for individuals applying for MEAD.

The MEAD eligibility group described in section 1902(a)(10)(A)(ii)(XV) [42 U.S.C 1396a(a)(10)(A)(ii)(XV)] are individuals who “but for their earnings . . . , *would be considered to be receiving supplemental security income*, who are at least 16 but less than 65 years of age, and whose assets, resources, and earned or unearned income (or both) do not exceed such limitations (if any) as the State may establish”. The Centers for Medicaid Services (CMS) noted in guidance, determining whether an individual “would be considered to be receiving supplemental security income” requires a determination of whether the individual is “disabled as defined under the SSI program (except for earnings). The current effective rule, He-W 504(b)(2) requires a MEAD applicant to, “*Have a medical impairment that meets the Social Security Administration’s Listing of Impairments in accordance with 20 CFR 404, Subpart P, Appendix I*”.

The Department will subsequently enter into regular rulemaking to permanently amend He-W 504.02.

9. A summary of the effect if the rule were not adopted.

If the amendment of He-W 504.02 was not adopted, the Department may incorrectly deny Medicaid under the MEAD eligibility group because the requirement in He-W 504.02(b)(2) limits the definition of disability under the SSI program.

10. A description of those affected.

He-W 504.02(b)(2) affects individuals applying for Medicaid under the MEAD eligibility group.

Doc. #13156, (eff 1-7-21)
EMERGENCY RULE EXPIRES: 7-6-21

PART He-W 504 MEDICAID FOR EMPLOYED ADULTS WITH DISABILITIES

Amend He-W 504.02(b), effective 04-25-13 (Document #10321), cited and to read as follows:

He-W 504.02 Medical Eligibility. To be medically eligible for MEAD:

(b) An individual who is not currently an APTD or ANB recipient shall be:

(1) ~~Be e~~Employed, or self-employed, for pay, pursuant to the provisions of He-W 641.03(b)-(c), on the date of application and during the time eligibility for MEAD is being determined; and

(2) Disabled as defined by the federal Social Security Act, Titles II and XVI, except that the required minimum duration of the disabling impairment is expected to result in death or last for a period of at least 48 months, despite prescribed treatment.

~~(2) Have a medical impairment that meets the Social Security Administration’s Listing of Impairments in accordance with 20 CFR 404, Subpart P, Appendix I; and~~

~~(3) Have a medical impairment that has persisted or is expected to persist for a minimum of 48 consecutive months.~~

Appendix B

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-W 504.02(b)	RSA 167:6, VI, RSA 167:6, IV,