



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
LEGAL AND REGULATORY SERVICES

BUREAU OF GENERAL COUNSEL – ADMINISTRATIVE RULES UNIT

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June 6, 2022

David J. Alukonis, Director
Office of Legislative Services – Administrative Rules
25 Capitol Street
State House Annex, Room 219
Concord, NH 03301

RE: Notice Number: 2021-126

Dear Mr. Alukonis:

Enclosed is a “Conditional Approval Request” for proposed rule He-W 549 entitled “Home Visiting for Prenatal, Child, and Family Support Services”.

The conditional approval request makes changes in response to comments from the office of legislative services (OLS) staff attorney.

The NH Department of Health and Human Services submits this rule for review and approval by the Joint Legislative Committee on Administrative Rules at its next regular meeting on **June 16, 2022**.

Thank you for your cooperation and assistance with this process.

Sincerely,

A handwritten signature in cursive script that reads "Nicole Burke".

Nicole Burke
Administrative Rules Coordinator
Administrative Rules Unit

Enclosure

CONSENT/EDIT

Readopt with amendment He-W 549.01, effective 3-1-12 (Document #10092), as amended effective 7-1-12 (Document #10139), and as amended effective 8-20-13 (Document #10398), cited and to read as follows:

PART He-W 549 HOME VISITING FOR PRENATAL, CHILD, AND FAMILY SUPPORT SERVICES

He-W 549.01 Definitions.

(a) “Caregiver” means a parent, grandparent, or any other individual identified as having primary responsibility for the child.

(b) “Department” means the New Hampshire department of health and human services.

(c) “Healthy families America” (HFA) means the nationally recognized, evidence-based home visiting program for pregnant woman and for children through age 3; in New Hampshire, this program is provided by agencies contracted with the maternal and child health section of the New Hampshire division of public health services.

(d) “Home visiting for prenatal, child, and family support services” means services, which might include specialty nutrition services, that often take place in the home that are rehabilitative and preventive in nature and which, in addition to medical care, are rendered to Title XIX and Title XXI recipients for the purpose of improving their health status and function within the family and community by providing health education, support, and linkages to community services.

(e) “Low birth weight” means an infant weighing 2500 grams or less at birth.

(f) “Medicaid” means the Title XIX and Title XXI programs administered by the department, making medical assistance available to eligible individuals.

(g) “Premature” means an infant born before 37 weeks gestation.

(h) “Recipient” means any individual who is eligible for and receiving medical assistance under the medicaid program.

(i) “Title V” means the program described in Title V of the Social Security Act, and administered by the maternal and child health section of the New Hampshire division of public health services or by the bureau for family centered services of the New Hampshire division of long term supports and services as part of the health resources and services administration, United States department of health and human services.

(j) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

(k) “Title XXI” means the joint federal-state program described in Title XXI of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

(l) “Unit” means a 15-minute period of time for which a service is rendered.

Readopt with amendment He-W 549.02, effective 3-1-12 (Document #10092), as amended effective 8-20-13 (Document #10398), to read as follows:

He-W 549.02 Recipient Eligibility.

(a) The following recipients shall be eligible for home visiting for prenatal, child, and family support services, as described in He-W 549.05:

- (1) Pregnant women;
 - (2) Infants under age one; and
 - (3) Children age one to under age 21 if any one of the following 4 conditions are met:
 - a. At least 2 primary criteria outlined in (b) below;
 - b. At least 3 secondary criteria outlined in (c) below;
 - c. At least one primary and 2 secondary criteria outlined in (b) and (c) below; or
 - d. The recipient is eligible for Title V services through the special medical services section, in accordance with He-M 520.03(a), (b), and (d) and He-M 520.04(a)(2)(b).
- (b) Primary criteria for eligibility shall include:
- (1) The caregiver, child, or a household member has:
 - a. A diagnosed mental illness;
 - b. Known substance abuse; or
 - c. A disability or developmental delay, except that a child shall not be a recipient of family-centered early supports and services pursuant to He-M 510;
 - (2) The caregiver has been referred by a protective services agency or has a finding of child neglect or abuse;
 - (3) The caregiver or child has special health care needs;
 - (4) The child's family is homeless; or
 - (5) One of the child's parents or parent's partner is absent for circumstances including, but not limited to, death, missing, incarceration, military deployment, or as a result of a protective or restraining order.
- (c) Secondary criteria for eligibility shall include:
- (1) The caregiver is under 21 years of age;
 - (2) The caregiver is a first time parent;
 - (3) The caregiver has limited English proficiency;
 - (4) The caregiver is single without any identified social supports;
 - (5) The caregiver has less than a high school education;
 - (6) The child was premature or had a low birth weight and is not a recipient of family-centered early supports and services pursuant to He-M 510;
 - (7) There is documentation of family trauma, including, but not limited to:
 - a. An unexpected or untimely death in the family;

- b. Domestic violence in the family;
 - c. Caregiver is an adult victim of child abuse or neglect; or
 - d. The family has been the victim of a crime;
- (8) There is documentation of a disrupted or problematic parent-child relationship, including, but not limited to, insecure attachment;
- (9) The family's income is less than 125% of the most recent federal poverty level as published annually in the Federal Register by the Secretary of the U.S. Department of Health and Human Services; or
- (10) One or more grandparents is raising the child.

Readopt with amendment He-W 549.03, effective 3-1-12 (Document #10092), to read as follows:

He-W 549.03 Amount of Services.

- (a) There shall be no unit restriction for home visiting for prenatal, child, and family support services for pregnant women or for infants under the age of one.
- (b) For recipients from age one to under age 21, home visiting for prenatal, child, and family support services shall consist of 12 units of service per state fiscal year, including the units making up the assessment visits in He-W 549.05(a)(2).
- (c) For recipients from age one to under age 21 and identified in He-W 549.02(a)(3)d. for specialty nutrition services shall be eligible for 16 units of service per state fiscal year, including the units making up the assessment visits in He-W 549.05(a)(2).

Readopt with amendment He-W 549.04, effective 3-1-12 (Document #10092), as amended effective 6-22-16 (Document #11124), to read as follows:

He-W 549.04 Provider Participation.

- (a) Each participating provider shall:
- (1) Be under current services contract obligation with:
 - a. The maternal and child health section of the New Hampshire division of public health services to deliver the healthy families America program;
 - b. The bureau for family centered services of the New Hampshire division of long term supports and services, as a Title V agency; or
 - c. The bureau of family assistance of the New Hampshire division of economic and housing stability;
 - (2) Be a New Hampshire enrolled Title XIX provider; and
 - (3) Deliver home visiting for prenatal, child, and family support services through the following health care providers:

- a. Physicians licensed to practice by the states in which they practice, pursuant to RSA 329;
- b. Physician assistants licensed to practice by the states in which they practice, pursuant to RSA 328-D;
- c. Advanced practice registered nurses licensed to practice by the states in which they practice, pursuant to RSA 326-B;
- d. Registered nurses licensed to practice by the states in which they practice, pursuant to RSA 326-B;
- e. Licensed practical nurses licensed to practice by the states in which they practice, pursuant to RSA 326-B;

Edit: (4) and (5) are requirements on the contractor and not the provider. These should be separate paragraphs. Renumber as shown.

- f. Mental health providers, such as, clinical mental health counselors, clinical social workers, marriage and family therapists, and pastoral psychotherapists, licensed to practice by the states in which they practice, pursuant to RSA 330-A;
- g. Psychologists licensed to practice by the states in which they practice, pursuant to RSA 329-B; or
- h. Trained, non-licensed providers who work under the direction of a licensed multidisciplinary team, including, but not limited to, the licensed health care professionals listed above in (a)(3)a. ~~g. and:~~

Edit: "(b)"

(4) 1. For those trained, non-licensed providers under contract with the division of economic and housing security, the contractor shall ensure the providers have, at a minimum, experience and education including, but not limited to:

Edit: "(1)"

a. (i) A bachelor's degree in social work, counseling, nursing, human services, early childhood education, or a related field;

Edit: "(2)"

b. (ii) Two years of experience working with families and children in a social service, home health, or other early childhood program setting; and

Edit: "(3)"

c. (iii) A minimum of one provider and one provider supervisor are trained in either Growing Great Kids or Parents as Teachers curriculum and follow the Growing Great Kids requirements within 6 months of the contract effective date; and

Edit: "(c)"

(5) 2. For those trained, non-licensed providers under contract with the division of public health services, the contractor shall ensure that screening and selection of providers includes consideration of personal characteristics, including, but not limited to:

Edit: "(1)"

a. (i) Minimum of a high school diploma or equivalent, with college coursework preferred;

Edit: "(2)"

b. (ii) Experience in working with or providing services to children and families;

Edit: "(3)"

c. (iii) An ability to establish trusting relationships;

Edit: "(4)"

d. (iv) Acceptance of individual differences;

Edit: "(5)" → ~~e.~~ ~~(v)~~ Experience and willingness to work with the culturally diverse populations present among the site's target population;

Edit: "(6)" → ~~f.~~ ~~(vi)~~ Knowledge of infant and child development; and

Edit: "(7)" → ~~g.~~ ~~(vii)~~ Openness to reflective practice.

Edit: "(d)" → **(b)** Participating providers under current services contract obligation with the bureau for family centered services, in accordance with (a)(1)b. above:

- (1) Shall bill only for specialty nutrition-related consultation services for children with special health care needs as identified in He-W 549.05(b); and
- (2) Shall be dietitians licensed to practice in New Hampshire, pursuant to RSA 326-H, who have advanced pediatric training in nutrition for children with special health care needs.

Readopt with amendment He-W 549.05 and He-W 549.06, effective 3-1-12 (Document #10092), to read as follows:

He-W 549.05 Covered Services. Covered home visiting for prenatal, child, and family support services shall include the following services, delivered in accordance with a plan of care, or in accordance with an evaluation plan for specialty nutrition services, as described in He-W 549.07:

(a) Home visiting for prenatal, child, and family support services, exclusive of specialty nutrition services which:

- (1) Shall focus on healthy outcomes;
- (2) Shall include initial assessment, not to exceed 2 visits, and subsequent visits;
- (3) Shall be conducted through face-to-face visits at:
 - a. The recipient's home;
 - b. The participating provider agency; or
 - c. Any other location, as documented in the recipient's progress notes;
- (4) May be conducted, on a limited basis, by telephone or via a video conference, in lieu of a face-to-face visit if:
 - a. The service can be provided over the phone or via a video conference;
 - b. The provision of the service over the phone or via a video conference would not compromise the intent or anticipated result of the service; and
 - c. The call or video conference can be conducted in compliance with the privacy requirements of the Health Insurance Portability and Accountability Act; and

- (5) Shall include, but not be limited to, one or more of the following family-centered, child-focused, and trauma-informed services, to the parents or caregivers:
- a. Healthy eating assessment and education;
 - b. Coordinating with social support services;
 - c. Education in the areas of physical and behavioral health, social support, and parenting;
 - d. Health implications of risk behavior, such as smoking;
 - e. Family support activities geared toward developing and maintaining family support systems, including, but not limited to, education and consultation;
 - f. Parenting skills;
 - g. Child development screening, education, and guidance;
 - h. Parental assessment, support, and education to encourage parental coping and the parent's ability to develop attachment and nurturing skills;
 - i. Family planning;
 - j. Community support guidance for the purpose of securing and maintaining a safe and healthy home;
 - k. Education and support to assure recipient has access to, and obtains, preventive and acute health care; and
 - l. Follow-up education, support, or activities related to any of the above services; and
- (b) Specialty nutrition assessment and consultation which:
- (1) Shall provide community-based nutrition assessments, intervention, recommendations, and ongoing monitoring of the growth and health status of children;
 - (2) Shall focus on improving or maintaining adequate nutrition status in light of a child's chronic condition;
 - (3) Shall include initial assessment and subsequent visits;
 - (4) Shall be conducted through face-to-face visits at:
 - a. The child's home;
 - b. The participating provider agency; or
 - c. Any other location, as documented in the recipient's progress notes;
 - (5) May be conducted, on a limited basis, by telephone or via a video conference, in lieu of a face-to-face visit if:
 - a. The service can be provided over the phone or via a video conference;
 - b. The provision of the service over the phone or via a video conference would not compromise the intent or anticipated result of the service; and

- c. The call or video conference can be conducted in compliance with the privacy requirements of the Health Insurance Portability and Accountability Act; and
- (6) Shall include, but not be limited to, one or more of the following family-centered, child-focused, and trauma-informed services to the parents or caregivers:
 - a. Specialty nutrition assessment and education;
 - b. Coordinating with, at minimum, the child's primary care physician and other health care professionals involved in the treatment of the child's chronic condition;
 - c. Education in the areas of physical and behavioral health, as it pertains to the nutritional concerns of the child; and
 - d. Follow-up education, support, or activities related to any of the above services.

He-W 549.06 Non-Covered Services. The following services shall be non-covered as home visiting for prenatal, child, and family support services:

- (a) Any covered service listed in He-W 549.05, or component thereof, which duplicates a service already being provided, including, but not limited to:
 - (1) Services provided through other Title XIX-funded department programs; and
 - (2) Services provided as a benefit of a commercial health insurance product;
- (b) Travel;
- (c) Phone calls or video conferences, other than those in lieu of a visit, as described in He-W 549.05(a)(4) and 549.05(b)(5);
- (d) Administrative services; and
- (e) Services that do not meet the documentation requirements in He-W 549.07.

Readopt with amendment He-W 549.07, effective 3-1-12 (Document #10092), as amended effective 6-22-16 (Document #11124), to read as follows:

He-W 549.07 Required Documentation. Participating providers shall develop and maintain on file the following documentation for each recipient:

- (a) For those providers under contract with the division of public health services or the division of economic and housing stability, a plan of care shall be developed following the initial assessment, in accordance with the following:
 - (1) The plan of care shall include:
 - a. The recipient's name, date of birth, and Title XIX identification number;
 - b. The recipient's identified needs or risk factors;
 - c. The recommended home visiting for prenatal, child, and family support services; and

d. The frequency of the recommended home visiting for prenatal, child, and family support services;

(2) The plan of care shall be approved, dated, and signed by a licensed:

a. Physician, physician assistant, or advanced practice registered nurse, when the plan of care contains a nursing or bureau for family centered services specialty nutrition component; or

b. Physician, physician assistant, advanced practice registered nurse, psychologist, or mental health practitioner, when the plan of care does not contain a nursing or bureau for family centered services specialty nutrition component;

(3) The plan of care shall be reviewed and updated at least annually and as necessary, including being approved, dated, and signed in accordance with (a)(2) above; and

(4) A plan of care shall:

a. Be developed in conjunction with the family based on initial assessment;

b. Be updated at least quarterly, in conjunction with the family, based on the health care provider's assessment of progress, or lack of progress, towards the goals in (a)(4)c. below; and

c. Specify family-specific goal information, including, but not limited to:

1. The date each family-specific goal is identified;

2. Action steps to achieve each family-specific goal;

3. Frequency of services required to achieve each family-specific goal;

4. Sources of support resources for the family to utilize to achieve each family-specific goal;

5. Name and goal-related role of each anticipated and involved health care provider;

6. Dates on which progress toward each family-specific goal is to be reviewed, which shall be at least quarterly; and

7. Status of goal at review date;

(b) For those providers under contract with the division of public health services or the division of economic and housing stability, progress notes shall be prepared at the time of each visit, or at the time of the telephone call, or video conference conducted in lieu of a face-to-face visit, to include, but not be limited to:

(1) The date of each visit, telephone call, or video conference;

(2) The location of each visit, if other than the recipient's home or the participating provider or health care provider agency, and the reason therefor;

(3) The reason for a telephone call or video conference if in lieu of a visit;

(4) The individuals present at the time of the visit;

(5) The start time and end time of each visit, telephone call, or video conference;

(6) Documentation of the service(s) provided at each visit, or via telephone call or video conferencing, and how the service(s) provided relates to a specific goal; and

(7) The dated signature and credentials of the health care provider;

(c) For those providers under contract with the division of public health services or the division of economic and housing stability, documentation in the recipient's chart shall include:

(1) Family information, including, but not limited to:

- a. Names of family members;
- b. Dates of birth of family members; and
- c. Relationship of family members to recipient;

(2) Family support team information, including, but not limited to, the name and role of each health care provider providing services; and

(3) The names and types of other sources of support being received by the recipient, including, but not limited to:

- a. Primary care, dental, and mental health providers; and
- b. Support from such programs as women, infants and children nutrition services and the division for children, youth and families; and

(d) Providers under contract with the bureau for family centered services to provide Special Medical Services (SMS) nutrition services as indicated in He-M 520.04(a)(2) shall develop and maintain on file the following:

(1) An evaluation plan, which shall be developed following the initial assessment and include:

- a. The recipient's name, date of birth, and Title XIX identification number;
- b. The recipient's identified specialty nutrition needs or risk factors; and
- c. The recommended schedule for subsequent follow up visits;

(2) The evaluation plan shall be updated at least quarterly, in conjunction with the family, based on the health care provider's assessment of progress or lack of progress towards the goals in (d)(3) below;

(3) Specialty nutrition goals shall include, but not be limited to:

- a. Family-specific goals, including the date each goal is identified;
- b. Action steps to achieve each family-specific goal;
- c. Frequency of services required to achieve each family-specific goal;
- d. Sources of support resources for the family to utilize to achieve each family-specific goal;
- e. Name and goal-related role of each anticipated and involved health care provider;

- f. Dates on which progress toward each family-specific goal is to be reviewed, which shall be at least quarterly; and
 - g. Status of goal at review date;
- (4) Progress notes, which shall be prepared at the time of each visit, or at the time of telephone call or video conference conducted in lieu of a face-to-face visit, by the dietician, to include, but not be limited to:
- a. The date of each visit, telephone call, or video conference;
 - b. The location of each visit, if other than the recipient's home or the participating provider or health care provider agency, and the reason therefor;
 - c. The reason for a telephone call or video conference if in lieu of a visit;
 - d. The individuals present at the time of the visit;
 - e. The start time and end time of each visit, telephone call, or video conference;
 - f. Documentation of the service(s) provided at each visit, or via telephone call or video conferencing, and how the service(s) provided relates to a specific goal; and
 - g. The dated signature and credentials of the dietician;
- (5) The child's health team information, including, but not limited to, the name and role of each health care provider providing services; and
- (6) The names and types of other sources of support being received by the recipient, including, but not limited to:
- a. Primary care, dental, and mental health providers; and
 - b. Programs such as women, infants and children nutrition services, partners in health, family-centered early supports and services, and other services for children with chronic conditions.

Readopt with amendment He-W 549.08, effective 3-1-12 (Document #10092), to read as follows:

He-W 549.08 Utilization Review and Control.

(a) The department's program integrity unit shall monitor utilization of home visiting for prenatal, child, and family support services and specialty nutrition services to identify, prevent, and correct potential occurrences of fraud, waste, and abuse, in accordance with 42 CFR 455, 42 CFR 456, 42 CFR 1001, and He-W 520.

(b) The department shall recoup state and federal medicaid payments as permitted by 42 CFR 455, 42 CFR 447, and 42 CFR 456 for a provider's failure to maintain supporting records in accordance with He-W 520 and He-W 536.

Readopt He-W 549.09, effective 3-1-12 (Document #10092), to read as follows:

He-W 549.09 Third Party Liability.

(a) All third party obligations shall be exhausted before Title XIX shall be billed, in accordance with 42 CFR 433.139, with the exception of the following:

- (1) Pregnant women and children who are covered by third party liability, enforced by the New Hampshire division of child support services, shall be exempt from third party billing practices; and
- (2) All preventive pediatric and prenatal care services shall be exempt from third party billing practices.

(b) Participating providers may bill medicaid directly for (a)(1) and (a)(2) above, and medicaid shall then seek reimbursement from the third party.

Readopt with amendment He-W 549.10, effective 3-1-12 (Document #10092), to read as follows:

He-W 549.10 Payment for Services.

(a) Payment for home visiting for prenatal, child, and family support services shall be made, per 15-minute unit of service, in accordance with rates established by the department in accordance with RSA 161:4, VI(a).

(b) For billing purposes, the number of units shall be calculated in accordance with (b)(1) and (2) and Table 549.1 entitled Calculations for Payment for Services below:

- (1) Any period of time that consists of 8 minutes or less shall not be billed; and
- (2) Any period of time that consists of more than 8 minutes shall be billed as one unit.

Table 549.1 Calculations for Payment for Services

Number of minutes	Number of 15-minute units that can be billed
Fewer than 8 minutes	No units can be billed
8 minutes up to 22 minutes	1 unit
23 minutes up to 37 minutes	2 units
38 minutes up to 52 minutes	3 units
53 minutes up to 67 minutes	4 units
68 minutes up to 82 minutes	5 units
83 minutes up to 97 minutes	6 units
98 minutes up to 112 minutes	7 units
113 minutes up 127 minutes	8 units

(c) The participating provider shall submit claims for payment to the department’s fiscal agent.

(d) The participating provider shall maintain supporting records, in accordance with He-W 520.

APPENDIX

Rule	Specific State or Federal Statute or Regulation the Rule Implements
He-W 549.01	42 USC 1396d; 42 USC 702
He-W 549.02	42 CFR 440.210; 42 CFR 440.220; 42 CFR 440.225; 42 CFR 440.250(p); 42 CFR 440.240

He-W 549.03	42 CFR 440.230(d)
He-W 549.04	RSA 326-B; RSA 326-H; RSA 328-D; RSA 329; RSA 329-B; RSA 330-A; 42 CFR 440.166; 42 CFR 440.60(a)
He-W 549.05	42 CFR 440.210(a)(2); 42 CFR 440.250(p); 42 CFR 440.220; 42 CFR 440.225; 42 CFR 440.130; 42 CFR 441.20; 42 CFR 440.240
He-W 549.06	42 CFR 440.230(d)
He-W 549.07	RSA 132:12
He-W 549.08	42 CFR 447; 42 CFR 455; 42 CFR 456; 42 CFR 1001
He-W 549.09	42 CFR 433.139
He-W 549.10	42 CFR 447.15