

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2022-22 Rule Number He-C 1000

<p>1. Agency Name & Address: Dept. of Health & Human Services Office of the Commissioner 129 Pleasant Street, Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 126-A:84, V</u> 3. Federal Authority: _____ 4. Type of Action: <input checked="" type="checkbox"/> Adopt <input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.) <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **OpioiD Abatement Trust Fund and Advisory Commission**

6. Contact person for copies and questions:
 Name: **Allyson Zinno** Title: **Administrator-Administrative Rules Unit**
 Address: **Dept. of Health & Human Services** Phone #: **(603) 271-9604**
Administrative Rules Unit
129 Pleasant Street, Brown Bldg.
Concord, NH 03301

7. The rulemaking notice appeared in the Rulemaking Register on **February 17, 2022**.

SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING: (optional to number correspondingly)

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.
9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.
10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).
11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number 2022-22

Rule Number He-C 1000

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**Dept. of Health & Human Services
Office of the Commissioner
129 Pleasant Street, Brown Bldg.
Concord, NH 03301**

2. RSA Authority: RSA 126-A:84, V
3. Federal Authority: _____
4. Type of Action:
Adoption X
Repeal _____
Readoption _____
Readoption w/amendment _____

5. Short Title: **Opioid Abatement Trust Fund and Advisory Commission**

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 He-C 1000 entitled “Opioid Abatement Trust Fund and Advisory Commission”. He-C 1000 contains He-C 1001, entitled “Opioid Abatement Advisory Commission” which describes the Opioid Abatement Advisory Commission (Commission) established under RSA 126-A:85 and their duties. He-C 1000 also contains He-C 1002, entitled “Opioid Abatement Trust Fund” which describes the duties of the Department and the Opioid Abatement Advisory Commission (Commission) relating to the management and distribution of funds from the Opioid Abatement Trust Fund (trust fund) established in RSA 126-A:83. He-C 1002 also establishes the procedure and criteria applicable to all applicants that apply for funding for qualifying opioid abatement projects, as enumerated in RSA 126-A:86, the reporting requirements for funded projects, and the appeals process through which the department and commission accepts and reviews appeals regarding the selection of applicants and disbursement of funds.

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

Groups affected by these rules include the Opioid Advisory Commission, applicants that apply for funding through the Opioid Abatement Trust Fund, specifically not-for-profit entities and charitable organizations, and citizens of the state who are impacted and need substance use disorder treatment services or mental health treatment services.

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

Rule	Specific State or Federal Statute the Rule Implements
He-C 1001.01	RSA 126-A:85
He-C 1001.02	RSA 126-A:83; RSA 126-A:84; RSA 126-A:85
He-C 1001.03	RSA 126-A:85
He-C 1001.04	RSA 126-A:86
He-C 1001.05	RSA 126-A:83-:86; RSA 91-A
He-C 1001.06	RSA 126-A:85; RSA 126-A:86
He-C 1002.01	RSA 126-A:83-:86
He-C 1002.02	RSA 126-A:84
He-C 1002.03	RSA 126-A:83; RSA 126-A:84; RSA 126-A:85; RSA 21-G:36
He-C 1002.04	RSA 126-A:86
He-C 1002.05	RSA 126-A:86; RSA 21-G:36-:38; RSA 91-A:5
He-C 1002.06	RSA 126-A:86
He-C 1002.07	RSA 126-A:84; RSA 126-A:86

He-C 1002.08	RSA 126-A:86
He-C 1002.09	RSA 126-A:86
He-C 1002.10	RSA 21-G:37, VII
He-C 1002.11	RSA 126-A:84
He-C 1002.12	RSA 541-A:31-:36

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

Name: **Allyson Zinno** Title: **Administrator- Administrative Rules Unit**
Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**
Administrative Rules Unit Fax#: **(603) 271-5590**
129 Pleasant Street, 2nd Floor E-mail: Allyson.E.Zinno@dhhs.nh.gov
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: **Thursday, March 22, 2022**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, March 15, 2022 at 2:00pm**

Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

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

FIS # 22:010, dated February 3, 2022

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

Not applicable, as these are new rules.

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):

The proposed rules describe the workings of the Opioid Abatement Trust Fund and Advisory Commission, including the management and distribution of funds. Also addressed are the procedures and criteria for applications for funding for qualifying opioid abatement projects. Any costs or benefits associated with the proposed rules are attributable to RSA 126-A:83-86 and not the rules.

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 proposed rules modify an existing program or responsibility, but do not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Substantive comments pages
1, 2, 5-7.

Note to the JLCAR. The statute's effective date is 7-1-2020. The Committee may have questions about the timing of the adoption of the rule since it is 2022.

Adopt He-C 1000 to read as follows:

CHAPTER He-C 1000 OPIOID ABATEMENT TRUST FUND AND ADVISORY COMMISSION

Statutory Authority: RSA 126-A:83-86

PART He-C 1001 OPIOID ABATEMENT ADVISORY COMMISSION

He-C 1001.01 Purpose. The purpose of this part is to describe the opioid abatement advisory commission established under RSA 126-A:85.

He-C 1001.02 Definitions.

- (a) "Commission" means the opioid abatement trust fund advisory commission.
- (b) "Commissioner" means the commissioner of the department of health and human services.
- (c) "Department" means the department of health and human services.
- (d) "Trust fund" means the opioid abatement trust fund established in the state treasury pursuant to RSA 126-A:83, I.

He-C 1001.03 Membership of the Commission.

- (a) All members appointed to the commission shall serve in accordance with RSA 126-A:85.
- (b) In accordance with RSA 126-A:85, III, a staggered 2-year term means that half of the members are reappointed in the first year of reappointment, while the other half of the members are reappointed in the second year of reappointment so that the commission maintains half of its members each year for consistency and continuity.

He-C 1001.04 Duties of the Commission.

- (a) The commission shall consult with and advise the commissioner on the administration and management of the trust fund, and approve the selection of eligible fund recipients under RSA 126-A:83, II(b).
- (b) The commissioner shall approve funding awards, revolving loan funds, and matching funds for qualifying projects from the trust fund under RSA 126-A:83, I, in a manner compliant with RSA 126-A:83-86.

He-C 1001.05 Meetings of the Commission.

- (a) All meetings conducted by the commission shall be in accordance with RSA 126:83-86 and RSA 91-A.
- (b) Notice of the time and place of each meeting shall be posted on the commission's internet webpage, in the department's brown building lobby, and in the legislative office building.

He-C 1001.06 Records of the Commission.

(a) Minutes shall be kept of all commission meetings and of all official actions taken by the commission, including records of all funding requests received and funding awards granted.

(b) Meeting minutes shall record those members who participate in each vote and separately record the position of any members who choose to dissent, abstain, or concur.

(c) Commission minutes shall be public records and be available for inspection no later than 5 business days after a commission meeting.

(d) All meeting minutes, attendance rolls and votes, including records of all votes on funding requests and awards, and reports of funding by recipients shall be published on the commission's website.

(e) The department shall be the custodian of the commission's records and respond to requests to examine those portions of the commission's records which are subject to public inspection in accordance with RSA 91-A.

(f) Persons desiring copies of commission records that are not available on the commission's website shall submit a request in writing to the commission which identifies as particularly as possible the information being sought and pay to cover the costs of the photocopying and mailing of the requested records.

(g) Written requests shall be sent to:

Opioid Abatement Advisory Commission
Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301.

Unclear. It is unclear whether there is a set cost per copy and what that amount is.

PART He-C 1002 OPIOID ABATEMENT TRUST FUND

He-C 1002.01 Purpose. The purpose of this part is to implement RSA 126-A:83-86 by establishing:

(a) The procedure and criteria applicable to all applicants that apply to the department and the commission for funding for qualifying opioid abatement projects through the trust fund established pursuant to RSA 126-A:83-86; and

(b) The requirements for completing and reporting on projects financed through the trust fund.

He-C 1002.02 Scope. This part shall apply to all funds disbursed through the trust fund and all applicants receiving funding through the trust fund.

He-C 1002.03 Definitions.

(a) "Applicant" means a New Hampshire governmental entity or non-profit or charitable organization registered with the attorney general's charitable trusts unit that applies for funding from the trust fund.

(b) "Application" means a request for funding submitted to the department in response to a request for grant application or request for proposals issued by the department for opioid abatement trust funds.

(c) "Commission" means the opioid abatement trust fund advisory commission.

(d) "Commissioner" means the commissioner of the New Hampshire department of health and human services, or designee.

(e) "Department" means the New Hampshire department of health and human services.

(f) "Eligible entity" means:

(1) A state agency, board, or commission or any political subdivision of the state; or

(2) Any non-profit or charitable organization registered with the attorney general's charitable trusts unit.

(g) "Grant contract" means a written agreement between the state and an applicant setting forth the obligations of the parties under the agreement, including, but not limited to, the performance of the work and the basis of payment, reporting requirements, and any supplemental documents identified in the agreement or incorporated into the agreement.

(h) "Project" means any approved project outlined in He-C 1002.04(a).

(i) "Public interest" means protecting the health and safety of the citizens of the state, curtailing negative financial impact to the state, assisting in investigations, or promoting a competitive application process.

(j) "Request for grant application (RFGA)" means an invitation to submit an application by an eligible entity for qualified projects to the department and the commission.

(k) "Request for Proposal (RFP)" means "Request for proposal" as defined in RSA 21-G:36.

(l) "State" means the state of New Hampshire.

(m) "Trust fund" means the opioid abatement trust fund established in the state treasury pursuant to RSA 126-A:83, I.

He-C 1002.04 Trust Fund Eligibility Criteria.

(a) In order to be eligible for a funding award from the trust fund, the applicant shall ensure that the proposed project meets one or more of the criteria identified in RSA 126-A:86, I(b).

(b) The applicant shall comply with the application process, as outlined in He-C 1002.05, and supply all required information to be considered for an award.

He-C 1002.05 Qualified Applicants and Application Requirements.

(a) Applicants shall complete, sign, and submit an application in response to an RFGA, available from the department, containing the following information:

(1) The applicant's name, address, and telephone number;

(2) Project name;

- (3) The eligibility criteria listed in RSA 126-A:86, I(b) for which a request is being made;
 - (4) A description of the proposed project and how, specifically, it meets the eligibility criteria of approved uses under RSA 126-A:86, I (b);
 - (5) A description of the need for the proposed project;
 - (6) A description of prior or current relevant opioid abatement projects;
 - (7) An estimate of project costs;
 - (8) An estimate of the number of people projected to be served by the project;
 - (9) Anticipated start and end date for the proposed project; and
 - (10) Any other information required by the RFGA.
- (b) The department shall post an RFGA in the same manner it would post a request for application in accordance with RSA 21-G:36-38.
- (c) If the commission, due to the complexity of the procurement, chooses to contract through the RFP process rather than submit an RFGA, the RFP process shall follow the requirements of RSA 21-G:36-38.
- (d) All information furnished shall be used to determine an applicant's ability to perform the proposed project and include analysis of:
- (1) The current work capacity of the applicant and whether it exceeds the estimated value of the proposed project;
 - (2) Whether the applicant possesses sufficient equipment and human resources to perform the work under the proposed project; and
 - (3) Whether the applicant has in the past met or exceeded project performance expectations under a state agreement:
 - a. In the same area of expertise; and
 - b. For work of similar or greater complexity as the proposed project for which the applicant has requested an application.
- (e) All financial information supplied to the department shall be held in strict confidence, and treated as confidential, commercial, and financial information pursuant to RSA 91-A:5.

He-C 1002.06 Solicitation and Submission of the Application.

- (a) The department shall solicit applications for qualifying projects on each occasion that the balance in the trust fund exceeds \$500,000.
- (b) The department shall post an RFGA for a minimum of 30 calendar days on the webpage of the department's bureau of contracts and procurements and on the commission's webpage.

(c) The deadline for submitting an application to the department in response to an RFGA shall be stated in the RFGA.

(d) By applying for funding through the trust fund, the applicant shall be deemed to have agreed to, from the time of first application for funding for a project throughout all stages of implementation, and at any other time while any funding from the trust fund to the applicant is outstanding, providing to the department and the commission for inspection any information requested by the department or the commission to include:

(1). The project and any and all incidental works, areas, facilities, and premises otherwise pertaining to the project for which application is made; and

(2). Any and all books, accounts, records, contracts, or other instruments, documents, and other information possessed by the applicant or its contractors, agents, employees, or representatives which relate in any respect to the receipt, deposit, or expenditure of funds from the trust fund.

He-C 1002.07 Department Action on Application.

(a) The department shall determine that the applicant's project is eligible for funding from the trust fund if:

(1) The application is complete;

(2) The applicant is an eligible entity; and

(3) The application meets the requirements specified in the RFGA.

(b) The department shall notify the applicant and the commission in writing within 14 days of determining that the application is complete or incomplete.

(c) If the department determines that the applicant's project is eligible in accordance with (a) above, the department shall compile all information identified in (d) below and submit all information to the commission.

(d) The information submitted to the commission in accordance with (c) above shall include:

(1) The application along with any and all attachments to the application;

(2) The department's assessment and scoring of the application as required through the RFGA process and as requested by the commission which shall be:

(a) Specific to each RFGA depending upon what criteria, outlined in RSA 126-A:86, I(b), the department is soliciting applications for; and

(b) Outlined in each RFGA that is posted on the webpages outlined in He-C 1002.06 (b) above so that applicants know the scoring criteria before they apply;

(3) Information on any current grants or financial assistance the applicant is currently receiving from the department apart from the trust funds that relates to opioid abatement and the applicant's request for funding;

Unclear/Public Interest. RSA 126-A:86, I(b) provides a list of project types that if met could be approved for funding; however, the statute does not describe how proposals will be scored. Here, the rule states that the scoring for the project type will be included in the RFGA itself. It is unclear why general scoring criteria like that found at Env-Wg 1306.05 is not being included in the rule so that potential applicants understand generally how applications will be scored.

Unclear/Legis. Intent. Paragraphs (h)-(j) appear to be inconsistent with RSA 541-A:29, I and II. That statute allows an applicant to correct errors or omissions noted by the agency. It does not require a new application.

(4) Information on any audits, investigations, or adverse action taken against the applicant over the previous 3 years related to any type of fraudulent activity or misuse of funds; and

(5) The department's input regarding grant award dollars based on the response to the RFGA along with the additional information included in this section.

(e) Information in (d) above shall be submitted to the commission within 10 days from completion of all tasks required by (d) above.

(f) If the department determines that the application is incomplete, the department shall state the reason(s) for the determination in the notice sent pursuant to (b) above.

(g) A copy of the notice in (b) above shall be sent to the commission.

(h) In response to being notified that an application is incomplete, the applicant may modify or supplement any information and submit a new application to the department.

(i) A new submission of the application in (h) above shall not occur more than 10 days following the notification of that the application was incomplete.

(j) If a modified or supplemented application is submitted, it shall be treated as a new application and follow the same review process as a new application.

Edit. Insert a return after "denied."

(k) If a modified or supplemented application is again found incomplete after review, the application shall be denied. He-C 1002.08 Commission Review and Approval of Selected Projects.

(a) The commission shall meet no later than 30 days after the department's submission of qualifying projects to review the selected projects.

(b) The commission shall vote to recommend to governor and executive council or deny each selected project by majority vote.

(c) All projects not recommended by a majority vote of the commission shall be denied.

(d) Upon the close of the commission's meeting, the commission shall notify the department of all recommended and denied projects.

(e) For any projects that the commission votes to deny, the commission shall, in writing, specify the reason(s) for denial **Edit.** Insert a period.

(f) The department shall notify each applicant in writing within 30 days of the commission's meeting of whether the commission has voted to recommend the project to the governor and executive council.

(g) A list of recommended and denied projects shall be posted on the commission's website.

He-C 1002.09 Grant Contracts.

(a) Following commission approval, the department and grant recipients shall execute grant contracts for governor and executive council approval.

(b) All grant contracts shall contain the statutory procurement and trust fund requirements including:

- (1) Services required as part of the trust fund award;
- (2) Compliance with federal and state law including anti-fraud and anti-kickback laws; and
- (3) Actions and remedies for breach of grant contract.

(c) No money shall be distributed from the trust fund without a signed grant contract between the grant recipient and the department.

He-C 1002.10 Confidentiality of Applications. The confidentiality of grant applications shall be governed by RSA 21-G:37, VII.

He-C 1002.11 Reporting Requirements.

Unclear. what shall the report contain?

(a) Applicants shall submit an annual report to the department, by August 1st of each year, unless the department, its rules, or grant contracts require a more frequent submission.

(b) Reports received by the department shall, in turn, be forwarded to the commission.

(c) All reports submitted to the department shall be separately and clearly labeled with:

- (1) The name, mailing address, and physical address of the applicant covered by the report;
- (2) The time period covered by the report;
- (3) The reporting section in the grant contract that requires the report submittal;
- (4) The type of report, using the name of the report as specified in the reporting condition in the grant contract, that is being submitted; and
- (5) The date the report was prepared.

(d) An applicant who submits a report that is a revision to a previously-submitted report shall clearly identify the previously-submitted report with the information specified in (c), above, and indicate which portions of the report have been revised.

(e) Each report submitted by or on behalf of an applicant shall be signed by an authorized official.

(f) The department's reporting requirements are governed by RSA 126-A:84, subject to receipt of reporting information from the commission and from counties, cities, towns, or programs that receive funds from the trust fund.

He-C 1002.12 Administrative Appeals.

(a) An applicant shall have 30 days, after receipt of the department's decision on his or her application, to appeal that decision.

(b) If an appeal is not filed pursuant to (a) above, the applicant shall be deemed to have waived his or her right to appeal the decision.

(c) The appeal shall be heard under RSA 541-A:31-36 and He-C 200 by the commissioner or his or her designee.

APPENDIX

Rule	Specific State or Federal Statute the Rule Implements
He-C 1001.01	RSA 126-A:85
He-C 1001.02	RSA 126-A:83; RSA 126-A:84; RSA 126-A:85
He-C 1001.03	RSA 126-A:85
He-C 1001.04	RSA 126-A:86
He-C 1001.05	RSA 126-A:83-:86; RSA 91-A
He-C 1001.06	RSA 126-A:85; RSA 126-A:86
He-C 1002.01	RSA 126-A:83-:86
He-C 1002.02	RSA 126-A:84
He-C 1002.03	RSA 126-A:83; RSA 126-A:84; RSA 126-A:85; RSA 21-G:36
He-C 1002.04	RSA 126-A:86
He-C 1002.05	RSA 126-A:86; RSA 21-G:36-:38; RSA 91-A:5
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