

Note to JLCAR. The Committee may have questions about enforcement of the expired rules.

CHAPTER He-E 800 MEDICAL ASSISTANCE

Adopt He-E 801, previously effective 8-7-19 (Document #12830, Interim), and expired 2-3-20, to read as follows:

Edit: Since 801.01 was deleted, this is inaccurate. The deletion is required to be shown.

PART He-E 801 CHOICES FOR INDEPENDENCE PROGRAM

He-E 801.02 Definitions.

Edit: "pursuant to"

(a) "Activities of daily living (ADLs)" means the primary activities necessary to carry out daily self-care activities that include but are not limited to involve eating, toileting, transferring, bathing, dressing, and continence.

(g) "Authorized representative" means "authorized representative" as defined in He-W 803.01, any adult other than a department staff member or provider representative who is 18 years of age or older, and who, with the applicant's or participant's permission, acts on behalf of the individual for CFI waiver services.

(o) "Conflict of interest" means a conflict between the private interests and the official or professional responsibilities of a person, entity, agency, or organization, such as providing other direct services to the participant, being the guardian of the participant, or having a familial or financial relationship with the participant.

Edit: delete

(z) "Instrumental Activities of Daily Living" (IADL) means basic tasks that are essential to the ability to live independently, such as light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management. IADLS also include other supportive activities as specified in the comprehensive care plan which promote and support health, wellness, dignity, and autonomy within a community setting.

Edit: "includes"

(a~~o~~) "Skilled nursing services" means services listed in the comprehensive plan of care that are within the scope of RSA 326-B and are provided by a registered professional nurse, or licensed practical nurse under the supervision of a registered nurse licensed to practice in New Hampshire that are within the scope of RSA 326-B. This service provides intermittent skilled nursing services for the purpose of administering injections, medical monitoring of wounds that are not healing, providing wound care, physical therapy, monitoring vital signs, obtaining laboratory specimens when a chronic condition exacerbates, or overseeing a bowel program.

Edit: "who"

He-E 801.03 Eligibility.

(e) For those CFI participants who are receiving short-term inpatient care in a hospital or nursing facility, the following shall apply:

- (1) Services described in He-E 801.12(d) shall not be provided while the participant is in the facility, except for services that have been prior authorized for the purpose of enabling the participant to transition back to his or her community and targeted case management in accordance with RSA 151-E:17; and

He-E 801.04 Initial Clinical Eligibility Determination.

(b) For each applicant who meets the clinical eligibility requirements, a skilled professional medical personnel shall estimate the costs of the provision of home-based services by identifying the LTSS needed, including units, frequencies, and costs, with consideration of the applicant's expressed needs as identified in the assessment in (a)(1).

(cb) The applicant shall be determined eligible for the CFI waiver program if it is determined that the applicant meets the financial eligibility requirements described in He-W 600 and He-W 800, the clinical eligibility requirements of He-E 801.03(a)(4), and the other eligibility requirements pursuant to He-E 801.03.

(de) Upon a determination of eligibility, the applicant or his or her legal representative shall be sent an approval notice, including:

- (1) The name and contact information of the case management agency chosen by the applicant or assigned to the applicant by the department, if available at the time of the notice; and
- (2) The eligibility start date.

(ed) Upon a determination of ineligibility, because the applicant does not meet the eligibility requirements of He-E 801.03 or because required information is not received pursuant to (a)(6) above, the applicant or his or her legal representative shall be sent a notice of denial, including:

- (1) A statement regarding the reason and legal basis for the denial;
- (2) Information concerning the applicant's right of appeal pursuant to He-C 200, including the requirement that the applicant has 30 calendar days from the date of the notice of denial to file such an appeal;
- (3) An explanation that an applicant who is denied services and who chooses to appeal this denial pursuant to He-C 200 shall not be entitled to medicaid payments for CFI waiver services pending the appeal hearing decision; and
- (4) The medical credentials of the skilled professional medical personnel making the determination of ineligibility.

#### He-E 801.05 Development of the Comprehensive Care Plan.

(b) The participant shall review the identified needs section of the comprehensive assessment, as defined in He-E 805.02(f), indicating his or her agreement or disagreement with the identified needs.

Edit: delete

#### He-E 801.10 Post-Eligibility Computation of Cost of Care for CFI Waiver Services.

(a) ~~Except for participants who reside in residential care facilities,~~ The amount of income that an participant is liable to contribute toward the cost of his or her CFI waiver services shall be computed as follows:

~~(b) For participants who reside in residential care facilities, the amount of income that the participant is liable to contribute toward the cost of his or her CFI waiver services shall be computed as follows:~~

- ~~(1) The amount of the participant's gross earned income as defined in He-W 601.04(e) shall be determined;~~
- ~~(2) The employment expense disregard, as specified in He-W 854.18 for OAA or ANB recipients or the earned income disregard, as specified in He-W 854.15 for APTD recipients, shall be subtracted from the participant's gross earned income to obtain the participant's net earned income;~~
- ~~(3) The total amount of the participant's unearned income, as defined in He-W 601.08(k), shall be added to the net earned income to determine the participant's net income;~~

~~(4) The allowable deductions, as defined in He-W 854.20 and He-W 654.21, shall be subtracted from the participant's net income;~~

~~(5) The personal needs allowance as defined in He-W 854.17(b) shall be subtracted from the amount in (4) above;~~

~~(6) The cost of the following medical expenses incurred by the participant that are not subject to third party payment shall be subtracted from the amount in (5) above:~~

~~a. Health insurance premiums, including Medicare Part A, Part B, Part C, and Part D, coinsurance payments, and deductibles;~~

~~b. Necessary and remedial care that would be covered by medical assistance except that allowable payment limits have been exceeded;~~

~~c. Necessary and remedial care that is recognized by state law, but not covered by medical assistance; and~~

~~d. Currently obligated, unpaid prior medical debt;~~

~~(7) The amount of any continuing SSI benefits, under section 1611 (e) (1) (E) and (G) of the Social Security Act, shall be subtracted from the amount in (6) above;~~

~~(8) The veterans affairs aid and attendance allowance shall be added to the amount in (6) or (7) above as required by 42 CFR 435.733 (e); and~~

~~(9) The result in (8) above shall be the amount of income for which the participant is liable to remit as payment toward the cost of his or her CFI waiver services.~~

He-E 801.15 Adult Day Services.

(a) Adult day services, as defined in He-E 801.02(b) shall be covered for non-acute needs when provided by an adult day program licensed in accordance with RSA 151:2 and He-P 818.

He-E 801.17 Environmental Accessibility Services.

(a) EAS, for a participant's home or vehicle, as defined in He-E 801.02(~~rq~~) shall be a covered service when:

**Edit: delete** (5) **Edit: Capitalize**

~~When the services are prior authorized and do not exceed the limit specified in the HCBS-CFI waiver approved by CMS.~~

He-E 801.20 Home Health Aide Services.

(a) Home health aide services, as defined in He-E 801.02(~~wv~~) shall be covered for non-acute needs when provided by a licensed nursing assistant (LNA) licensed in accordance with RSA 326-B ~~and Nur 700~~ and employed by a home health care agency licensed in accordance with RSA 151:2 and He-P 809.

He-E 801.24 Personal Care Services.

(a) PCS shall be documented in the provider care plan and covered when provided for non-acute needs by employees of:

He-E 801.28 Skilled Nursing Services.

(b) Skilled nursing services shall be covered for non-acute needs for the provision of chronic long-term care and not short-term care.

He-E 801.29 Specialized Medical Equipment Services.

(a) Specialized medical equipment for non-acute needs shall be a covered service when:

(d) Specialized medical equipment services shall not be covered separately for participants receiving residential care facility services if the facility is otherwise required to provide the equipment pursuant to He-P 804, He-P 805, a residential services agreement, or the specialized medical equipment is included in the residential care facility service rate.

He-E 801.30 Supportive Housing Services.

(c) The following supportive housing services shall be covered:

- (1) Personal care services, as described in He-E 801.2~~4~~5;
- (4) Home health aide services as described in He-E 801.2~~0~~4;
- (5) Homemaker services, as described in He-E 801.2~~1~~2;

**Note to JLCAR on Legis. Intent:** The rulemaking public hearing for this proposal was to be held on 6/17/21 as an in-person public hearing with an MS Teams option. RSA 541-A:11 appears to presume in-person hearings. While the Governor's E.O. #12 amended RSA 91-A to allow for remote hearings, that did not apply to departments, and the E.O. expired on 6-11-21 in any case. The JLCAR may wish to ask the Department how the remote access option for the hearing proceeded and the public's access to it, since RSA 541-A:11, l(a) requires that an agency "shall afford all interested persons reasonable opportunity to testify...in accordance with the terms of the notice." In other words, if there are problems with the remote access option, then the principle in RSA 541-A cannot be met. A legislative fix may be needed in RSA 541-A:11, along with changes to all Chapter 200 rules, to clearly allow for remote rulemaking hearings. Please note that SB 95 in the previous legislative session would have amended RSA 91-A to include the protocols for remote meetings of public bodies which are in the Governor's E.O. #12, but it did not pass.