

STATE OF NEW HAMPSHIRE

Inter-Department Communication

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AT (OFFICE): Legislative Services

SUBJECT: RSA 541-A Amendments in the 2021 Legislative Session

To: All State Agencies

NOTICE OF AMENDMENTS TO RSA 541-A IN THE 2021 SESSION

Two pieces of legislation were adopted in the 2021 legislative session that amend RSA 541-A, and the changes are summarized below. The first piece of legislation that went into effect impacts only the Department of Health and Human Services (DHHS), but the second piece may potentially affect all agencies, as follows:

- HB 2 (Chapter 91), Section 405, effective 7-1-21, amends RSA 541-A:21 to add a new paragraph III-b relative to an exemption from RSA 541-A for the cost of living adjustment in Social Security benefits contained within the Social Services Block Grant program implemented by DHHS; and
- HB 630 (Chapter 59), Sections 1 and 2, effective 7-24-21, amends RSA 541-A:1 relative to definitions by amending RSA 541-A:1, V-a defining “electronic document” and inserting a new definition of “signature” in RSA 541-A:1, XV-a.

Proposed amendments to the *Manual* to address changes required by legislation in the 2017 through 2021 legislative sessions will be submitted for JLCAR review and approval pursuant to RSA 541-A:8. Agencies should call the Office of Legislative Services, Administrative Rules (OLS) at 271-3680 if they have any questions, although OLS cannot provide legal advice.

In the meantime, memos summarizing the changes are linked on the OLS website main page at <http://gencourt.state.nh.us/rules/default.htm>. **Effective amendments to RSA 541-A supersede any contrary statements in the *Manual*.** Additions to RSA 541-A are shown below by *bold italic*, and deletions by strike-through.

HB 2 (Chapter 91), Section 405. Effective 7-1-21.

COST OF LIVING ADJUSTMENT

91:405. New Paragraph; Rulemaking; Exception Added; Cost-of-Living Adjustment.
Amends RSA 541-A:21 by inserting after paragraph III-a the following new paragraph:

III-b. Rules adopted relative to the cost of living adjustment in social security benefits contained within the Social Services Block Grant program shall be exempt from the provisions of RSA 541-A:5 through RSA 541-A:14, provided that recipients receive proper notice that the income level has been adjusted.

NOTE:

This amendment adds a new exemption to the regular rulemaking requirements in RSA 541-A:5 through RSA 541-A:14 for rules relative to the cost of living adjustment in Social Security benefits contained within the Social Services Block Grant program implemented by DHHS and which is currently located in rule He-E 501 titled "Social Services Block Grant (Title XX)".

HB 630 (Chapter 59), Sections 1 and 2. Effective 7-24-21.

CERTAIN PROCEDURES FOR RULEMAKING; ELECTRONIC DOCUMENTS AND SIGNATURES

59:1 Amends Administrative Procedure Act; Definitions. Amends RSA 541-A:1, V-a to read as follows:

V-a. "Electronic document" means a document which complies with requirements prescribed by the director for filing under paragraph VI and established in the drafting and procedure manual under RSA 541-A:8. ~~[For electronic documents, a requirement during the rulemaking process for a signature accompanying the filing of an electronic document shall be met if such signature complies with the requirements of RSA 294-E.]~~

59:2 Amends Administrative Procedure Act; Definitions; Signature. Amends RSA 541-A:1 by inserting after paragraph XV the following new paragraph:

XV-a. "Signature" means a person's written name used as a form of identification, whether in original, photocopied, or scanned form.

NOTE:

Section 1 amends the definition of "electronic document" in RSA 541-A:1, V-a to eliminate the statement that compliance with RSA 294-E on signatures for electronic documents also complies with RSA 541-A for a signature accompanying the filing of an electronic document. Now an "electronic document" will simply be a document that complies with the requirements prescribed by the Director of the Office of Legislative Services and contained in the *Drafting and Procedure Manual (Manual)*.

The amendment in Section 2 defines "signature" under RSA 541-A to be either original, a photocopy, or a scan. Although RSA 541-A does not otherwise use the term "signature", it does require that certain documents be "signed", and the *Manual* requires signatures as well. So the legislative intent of Section 2 is that the new definition apply to signatures on documents filed pursuant to RSA 541-A. However, Section 2 may not have an immediate impact for most agencies, because the current filing protocols require that all rulemaking documents or declaratory rulings be filed electronically. Signed, original documents, such as adoption cover letters or emergency rule cover sheets, must be submitted as PDFs, to be followed as soon as possible by an inter-office mailing of the original, signed document. The change from current practice by Section 2 is to permit a photocopied signature to be just as valid for filing purposes as if the photocopy were original, which was not true before.

Please note, however, that "photocopied" in RSA 541-A:1, XV-a indicates that an original, signed document exists. In that case, the current filing protocol requiring a follow-up, inter-office mailing of the original, signed document would apply.