



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

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NOTICE

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**PURSUANT TO NH RSA 541-A, STATE AGENCIES, LEGISLATORS, AND MUNICIPALITIES
ARE EXEMPT AND RECEIVE THE RULEMAKING REGISTER FREE OF CHARGE.**

NEW HAMPSHIRE RULEMAKING REGISTER

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2010-70	Med 100-600 various sections	Board of Medicine Definitions and Access to Public Records, Practice and Procedures, Fees, Licensure Requirements, Renewal, Continuing Medical Education and Ongoing Requirements, and Ethical Standards for Physicians. Supervision of Physician Assistants, Initial and Renewal Procedures, and Fees for Physician Assistants.	1
2010-71	He-E 804	Department of Health and Human Services Division of Elderly and Adult Services Nursing Assistant Training Reimbursement.	4
2010-72	He-C 6910.06, 6910.10(o) & (p), 6910.12, 6910.18, 6910.19, 6910.20(a)(5), & 6910.22	Department of Health and Human Services, Commissioner Child Care Family Cost Share and Improper Billing.	6

Notice of Proposed Interim Rule

<u>Interim Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
(INT 2010-6)	Env-Ws 381	Department of Environmental Services Division of Water Lead and Copper Corrosion Control.	9

**JLCAR MEETING DATES AND RELATED FILING DEADLINES
JULY-DECEMBER, 2010**

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2010 on the third Thursdays listed below. The minimum 14-day “deadline” prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules* for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

***Note:** *Register* publication, and notice filing deadlines, will still occur on Fridays, except as noted. RSA 541-A:19, V requires that an agency’s interim rulemaking notice, whether in a newspaper or in the *Register*, must be published at least 7 days prior to the JLCAR meeting. Therefore, the deadline for filing a proposed interim rule with a *Register* notice will be earlier as listed below.

*Filing Deadline for Interim Rules w/ <i>Register</i> Notice	Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
June 25	July 1	July 15	July 29
July 30	August 5	August 19	September 2
August 27	September 2	September 16	October 7
October 1	October 7	October 21	November 4
October 29	November 4	November 18	December 2
November 24 (Wednesday)	December 2	December 16	None

Notice Number 2010-70

Rule Number

Med 100, 200, 300, 400, 500 and 600
(various sections)

<p>1. Agency Name & Address:</p> <p>Board of Medicine 2 Industrial Park Drive Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 329:9 and 328-D:10</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Amendment <u>X</u></p> <p>Repeal <u>X</u></p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Definitions and access to public records, practice and procedures, fees, licensure requirements, renewal, continuing medical education and ongoing requirements and ethical standards for physicians. Supervision of physician assistants, initial and renewal procedures and fees for physician assistants.**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

These rules describe the application process for initial licenses for physicians and physician assistants, the educational requirements, qualifications for licensure and examination requirements. These rules describe the process for renewal and reinstatement of licenses. These rules set out the requirements for the continuing education needed to renew a license. These rules describe the process by which the Board commences adjudicatory proceedings, imposes discipline, the investigation process and the process for filing complaints. These rules describe the standard of conduct by which licensees shall adhere to. These rules describe the responsibility of supervision for physician assistants.

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

These rules affect Board of Medicine licensees and applicants for licensure in New Hampshire; consumers wishing to file complaints; consumers wishing to purchase lists.

NN 2010-70 Continued

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

Rule	Statute Implemented
Med 102.08, 104.01, 105.03	RSA 541-A:16, I(a)
Med 201.02, 202.01, 202.02, 204.01, 205.01, 205.02, 206.01, 206.02, 206.08, 208.01(a); Med 210 (repealed)	RSA 329:9, V, VI, XV
Med 301.01(a)-(f)	RSA 329:9, XVI
Med 301.01(g)-(k)	RSA 329:9, I, 329:9, II; 329:12; 329:14, III
Med 301.02	RSA 329:12, I(b), 329:14, II
Med 301.03 intro to (a), (a)(1), (a)(3)-(a)(27) and (b)	RSA 329:12, I(a), (c)(4), (5) and (6), 329:14, II, 161-B:11, VI-a
Med 301.03(a)(2)	RSA 329:9, I, 329:9, II and 329:12
Med 301.03(a)(28)	RSA 329:9, I and RSA 329:14, I
Med 301.03(c) & (d)(1)-(3)	RSA 329:14, II; 329:14, III
Med 302.01	RSA 329:9, II, 329:12
Med 303.01(a)(1), (4) and (5)	RSA 329:9, III, 329:10, 329:11, 329:12(c)(6)
Med 303.01(a)(3), (b)-(c)	RSA 329:9, II, III; 329:10; 329:12, I(c)(6)
Med 303.02(a) and (b)	RSA 329:9, III, 329:12, (c)(6)
Med 303.02(c)(1)-(3)	RSA 329:9, II, III; 329:14, V(a)
Med 305.01(a) - (d)	RSA 329:9, I, II, 329:14, VII
Med 305.02	RSA 329:9, I, II, 329:14, VI
Med 305.03	RSA 329:9, I and II; 329:14, VIII
Med 305.04	RSA 329:9, I, II, 329:14, V(a)-(c)
Med 306.01	RSA 329:9, VII; 329:12, I(a); 329:16-a; 329:16-h; 329:14, III, V; VI & VII
Med 401.03(a)	RSA 329:9, VII; 329:12, I(a); 329:16-a; 329:16-h
Med 401.03(b)(1)	RSA 329:9, I, 329:9, II and 329:16-a
Med 401.03(b)(2)-(6), (b)(14)&(15), (c) and (d)	RSA 329:9, II, VII, 329:16-a, 329:16-c, 329:16-g
Med 401.03(b)(7) & (b)(8)-(13)	RSA 329:9, I, II & V; 329:16-a
Med 402.01	RSA 329:9, II, 329:16-g
Med 402.02	RSA 329:9, II, 329:16-g
Med 402.03	RSA 329:9, XVI
Med 403.02, 403.03 and 403.04	RSA 329:16-f, 329:16-g
Med 407	RSA 329:13-b
Med 408.01, 408.02, 408.03, 409.01, 410.01, 412.03, 413	RSA 329:17
Med 501.02(a) & (b)	RSA 329:9, I, II & V
Med 501.02(c)-(j)	RSA 329:9, V
Med 601.01 (repealed)	RSA 328-D:9 was repealed
Med 602.01, 602.02	RSA 328-D:10, I(f)
Med 604.01	RSA 328-D:3, 328-D:10, I(b) and (c)
Med 608.01	RSA 328-D:5, RSA 328-D:10, I(c)
Med 609.02	RSA 328-D:6, RSA 328-D:7, RSA 328-D:10, I(d)
Med 611.01	RSA 328-D:2, III, RSA 328-D:5, RSA 328-D:5-a, I; RSA 329:10(c)

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

Name: Penny Taylor

Title: Administrator

Address: Board of Medicine
2 Industrial Park Drive
Concord, NH 03301

Phone #: 271-1205

Fax#: 271-6702

E-mail: ptaylor@nhsa.state.nh.us

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

NN 2010-70 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: August 4, 2010 @ conclusion of hearing.

 Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **August 4, 2010 at 10:00 A.M.**

Place: **2 Industrial Park Drive, Concord, NH**

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

FIS # 10:077, dated 06/16/10

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

When compared to the existing rules, the proposed rules will increase state general fund revenue by \$37,975, state restricted revenue by \$172,395, and increase costs to state citizens to the extent they are required to pay fees.

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):**

- A. **To State general or State special funds:**

The proposed rules make various changes to the fee schedule for physician and physician assistant licenses, renewals, reinstatements, duplicate postcards, and wall certificates, and fees for verification of licenses and a list of physicians or physician assistants. The Board estimates state general fund revenue will increase by approximately \$37,975 as a result of the proposed fee changes. In addition, some of the proposed fees will be directed to the Physician's Health Program established in RSA 329:13-b, V. The Board estimates state restricted revenue for this program will increase by approximately \$172,395.

- B. **To State citizens and political subdivisions:**

To the extent state citizens are required to pay fees stated in A above, they will experience increased costs. There will be no impact on political subdivisions.

- C. **To independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **These rules modify existing rules but do not mandate or assign any program or responsibility to any political subdivision and therefore does not have a fiscal burden on any political subdivision. These rules do not violate the constitutional provision, Part I, Art. 28-a.**

Notice Number

2010-71

Rule Number

He-E 804

1. Agency Name & Address:

NH Dept. of Health & Human Services
Bureau of Elderly and Adult Services
129 Pleasant Street
Concord, NH 03301

2. RSA Authority:

RSA 161:4-a, IX

3. Federal Authority:

42 USC 1396r

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

X

5. Short Title: NURSING ASSISTANT TRAINING REIMBURSEMENT

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

He-E 804 establishes the requirements for how and when the department of health and human services reimburses licensed nursing assistants employed by licensed nursing facilities for the cost of training programs approved by the NH Board of Nursing. The proposed rules are being readopted with amendment because they are due to expire on 8/17/10. No program or policy changes are being made to the rule; all changes are to update the rule for clarity and to improve program integrity.

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

The groups affected by this rule are: the NH Board of Nursing, nursing assistants registered with the NH Board of Nursing, and nursing facilities licensed by the department.

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

RULE	STATUTE IMPLEMENTED
He-E 804.01	RSA 161:4-a, IX
He-E 804.02	RSA 161:4-a, IX and 42 USC 1396r
He-E 804.03	RSA 161:4-a, IX and 42 USC 1396r
He-E 804.04	RSA 161:4-a, IX

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

Name: Michael Holt

Title: Rules Coordinator

Address: Dept. Health and Human Services
Administrative Rules Unit
129 Pleasant Street
Concord, NH 03301

Phone #: 271-4966

Fax#: 271-5590

E-mail: michael.holt@dhhs.state.nh.us

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/DHHS/ADMINRULEMAKING/default.htm>

NN 2010-71 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Monday August 2, 2010**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, July 23, 2010 at 9:30 AM**

Place: **129 Pleasant St., Brown Building, Room 232, Concord, NH 03301**

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

FIS # 10:075, dated 06/16/10

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

There is no difference in cost when comparing the proposed rules with the existing rules.

2. **Cite the Federal mandate. Identify the impact of state funds:**

No federal mandate, no impact on state funds.

3. **Cost and benefits of the proposed rule(s):**

- 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 rule does not create a new program or responsibility. The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Notice Number 2010-72

Rule Number He-C 6910.06, .10 (o) & (p), 6910.12,
6910.18, 6910.19, 6910.20(a)(5), & 6910.22

1. Agency Name & Address:

Department of Health and Human Services
Division of Children, Youth, & Families
109 Pleasant St, Thayer Bldg
Concord, NH 03301

2. RSA Authority:

RSA 167:83, II

3. Federal Authority:

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/amendment

XX**5. Short Title: Child Care Family Cost Share and Improper Billing**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

He-C 6910 establishes the eligibility criteria for families to receive Child Care Scholarships and child care providers to bill on behalf of families for child care services rendered. The initial proposal of these rules:

- Proposes to make permanent the emergency rules He-C 6910.06(b)(4) and He-C 6910.18(d) and (e) and Table 6910-1 that went into effect on March 1, 2010 (Document #9665). The emergency rules increased the cost share determination which is the amount of the cost for child care that families pay and limits child care scholarship payments to one provider per child;
- He-C 6910.10 removes children from the wait list when a guardian is appointed by a single parent who is placed on orders or deployed by the military for longer than 30 days, and applies and is determined eligible for child care scholarship. Further, when the parent returns from the deployment and reapplies and is found eligible, their child(ren) will be removed from the wait list.
- Limits families not receiving FANF, to no more than 30 hours per week of Child Care Scholarship benefits in He-C 6910.12 while participating in job search activities;
- Clarifies the requirements for providers related to recordkeeping and billing timeframes, as described in He-C 6910.19; and
- He-C 6910.20(a) is amended to clarify the standard for which families are required to classify who resides in their residence.
- Describes the enforcement of the billing requirements for providers in He-C 6910.22, meaning:
 - A provider that consistently submits invoices with billing errors is required to attend training on billing; and
 - The department shall disqualify a provider that refuses to attend required billing training to mitigate those errors; or if a provider refuses provide records to support billing documentation.

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

Eligible families applying for and receiving child care scholarship from DCYF. Child care providers who are enrolled to provide services to eligible families receiving child care scholarship.

NN 2010-72 Continued

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

<u>Rule Number</u>	<u>Implemented Statute</u>
He-C 6910.06	RSA 167:83, II(c) and (o)
He-C 6910.12	RSA 161:2, XII; RSA 167:83, II
He-C 6910.18	RSA 161:2, XII; RSA 167:83, II
He-C 6910.19	RSA 167:83, II(o)
He-C 6910.20(a)(5)	RSA 161:2, XII; RSA 167:83, II(o); III(g), RSA 170-E:4,II; RSA 170-E:7; RSA 170-E:12
He-C 6910.22	RSA 161:2,XV; RSA 167:17-b, I(a); RSA 167:17-c; RSA 167:58, IV; RSA 167:61-a,I(a)-(c) and (e); RSA 167:83, II (k); RSA 170-E:7; RSA 170-E:12, V

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

Name: **Maya Glover** Title: **Rules Coordinator**
 Address: **Office of Program Support** Phone #: **271-4190**
Brown Building Fax#: **271-5590**
129 Pleasant Street E-mail: **maya.glover@dhhs.state.nh.us**
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.state.nh.us/DHHS/ADMINRULEMAKING/default.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, July 29, 2010**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, July 19, 2010, at 1PM**

Place: **Auditorium, DHHS, 129 Pleasant St., Brown Bldg Concord, NH 03301**

NN 2010-72 Continued

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

FIS # 10:074, dated 6/17/10**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

He-C 6910.06(b)(4), 6910.18(d) and (e) Table 6910-1 are emergency rules that went into effect on March 1, 2010. The proposed rules will make these emergency rules permanent, and make other changes to existing rules. When compared to the existing rules, the proposed rules will decrease state general fund expenditures and have an indeterminable impact on the costs to state citizens, political subdivisions, and independently owned businesses.

Cite the Federal mandate. Identify the impact of state funds:

No federal mandate, no impact on state funds.

2. Cost and benefits of the proposed rule(s):**A. To State general or State special funds:**

The Department proposed to make permanent emergency rules relative to increasing the cost share determination which is the percentage of cost for child care that families pay (He-C 6910.06(b)(4) and 6910.18(d) and (e), and Table 6910-1) that went into effect on March 1, 2010. By making such emergency rules permanent, the Department estimates state general funds savings of approximately \$3.6 million. The proposed rules also make changes relative to limiting families not receiving FANF to no more than 30 hours per week of child care scholarship benefits while participating in job search activities (He-C 6910.12) which is estimated to save approximately \$3,800 through a reduction of services to an estimated 110 individual clients. The proposed rules make changes to requirements for providers related to recordkeeping and billing timeframes (He-C 6910.19), the standard for which families are required to classify who resides in their residence (He-C 6910.20(a)), and enforcement of billing requirements (He-C 6910.22) which will result in indeterminable savings. The Department anticipates there will be no fiscal impact relative to changes to rules removing children from the wait list when a guardian is appointed by a single parent who is deployed by the military for longer than 30 days and applies and is determined eligible for child care scholarship (He-C 6910.10).

B. To State citizens and political subdivisions:

The provisions of the emergency rules currently in effect, which are being proposed as permanent rules, resulted in an estimated 589 former recipients of child care scholarship no longer receiving scholarship funding for child care, and former recipients who continued to receive child care scholarship contributing more to the cost of their child care. Political subdivision may experience increased costs if recipients request assistance from municipalities to compensate for the increase in cost share determination and a possible reduction in the number of child care providers that may bill the Department for child care scholarships.

C. To Independently owned businesses:

Child care providers, especially those with 10 or fewer employees, may not be able to sustain their business if a sufficient number of families seek alternative child care arrangements. The proposed rules relative to billing requirements may result in indeterminable costs to the providers since they will be required to attend training to mitigate additional errors from occurring.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rule does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

Proposed Interim Rule Number	2010-6	Rule Number	Env-Ws 381
1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095		2. RSA Authority:	RSA 485:3, I and VII
		3. Federal Authority:	40 CFR 141 Subpart I (§§80-91)
		4. Type of Action:	
		Adoption	_____
		Amendment	_____
		Repeal	_____
		Readoption	<u> X </u>
		Readoption w/amendment	_____
5. Filing Date:	June 18, 2010		

6. Short Title: Lead and Copper Corrosion Control

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

Name:	Holly Green	Title:	Environmentalist III
Address:	Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #:	271-3114
		Fax #:	271-0656
		E-mail:	holly.green@des.nh.gov

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TYY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Summary explaining the effect of the rule:

The rules in Env-Ws 381 establish the action levels and sampling and monitoring requirements for lead and copper in drinking water provided by community and non-transient, non-community public water systems. The rules also establish requirements for corrosion control treatment and public education if an action level is exceeded. The rules are equivalent to the federal lead and copper requirements. Interim rules are necessary because the Department's efforts to readopt these rules is taking longer than originally anticipated, and most of the existing rules are due to expire on August 2, 2010.

9. Listing of people, enterprises, and government agencies affected by the rule:

Owners and operators of community and non-transient, non-community public drinking water systems.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

Rule Section(s)	State Statute(s) Implemented	Federal Regulation(s) Implemented
Env-Ws 381	RSA 485:3, I & VII; RSA 485:3, VII	40 CFR 141 Subpart I (§§80-§91)

11. Summary of the effect upon the state if the rule were not adopted:

If interim rules are not adopted, the state would not have lead and copper corrosion control requirements for public drinking water systems until the readoption of these rules is accomplished through the regular rulemaking process. This would be contrary to the Department's agreement with the U.S. Environmental Protection Agency relative to this program. The interim rules will continue rules that would otherwise expire prior to the completion of the readoption of the rules, as expressly allowed by RSA 541-A:19, I(d).

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules: **July 15, 2010**

13. The fiscal impact statement prepared by the Legislative Budget Assistant: Not Applicable

Certified Final Objection No. 143 of the

Joint Legislative Committee on Administrative Rules

At its meeting on May 7, 2010, the Joint Legislative Committee on Administrative Rules (Committee) voted, pursuant to RSA 541-A:13, IV, to enter a preliminary objection to Final Proposal 2009-130 containing He-M 522 of the Department of Health and Human Services (Department) relative to eligibility determination and service planning for individuals with an acquired brain disorder. The objection was based on the Committee's determination that inclusion of a wait list in the proposal was contrary to legislative intent by conflicting with RSA 171-A:1-a, and contrary to the public interest. The Department responded pursuant to RSA 541-A:13, V(c) with a cover letter and amended rule from the Commissioner dated June 14, 2010.

At its meeting on June 18, 2010, the Committee voted, pursuant to RSA 541-A:13, V(f), to enter a final objection to Final Proposal 2009-130. The final objection has been filed with the Director of the Office of Legislative Services for publication in the *New Hampshire Rulemaking Register*. The effect of a final objection is stated in RSA 541-A:13, VI:

After a final objection by the committee to a provision of a rule is filed with the director under subparagraph V(f), the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the provision to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is in the public interest, or does not have a substantial economic impact not recognized in the fiscal impact statement. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule shall not be an implied legislative authorization of its substantive or procedural lawfulness.

The following summarizes the basis for the Committee's final objection:

He-M 522

The Committee objected that He-M 522 is contrary to legislative intent as follows:

1. Under Committee Rule 402.01(c) by violating the overall purpose of RSA 171-A:1-a, as indicated by the Statement of Purpose of SB 138 (Chapter 363:1 of the Laws of 2007);
2. Under Committee Rule 402.02(a), by violating or otherwise conflicting with RSA 171-A:1-a, I; and
3. Under Committee rule 402.02(a), by attempting to implement a bill which the Legislature defeated, as indicated by the unanimous vote of the Senate in the 2010 session to defeat SB 519, which would have allowed for wait lists.

Certified Final Objection No. 143 of the
Joint Legislative Committee on Administrative Rules

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He-M 522 relates to eligibility determinations and service planning for individuals with an acquired brain disorder. The proposed rules (e.g. He-M 522.08(c) and 522.15(a)) state that services will be provided only "to the extent that funds for this purpose are available and appropriated to the bureau by the Legislature." In the absence of such funding, He-M 522 would permit the Department to require the placement of individuals who are eligible for services on a wait list.

The Committee noted that it was the finding of the Legislature, as contained in the Statement of Purpose of SB 138 (Chapter 363:1 of the Laws of 2007) which adopted RSA 171-A:1-a, that "undue delays in providing services to eligible individuals with developmental disabilities and acquired brain disorders are contrary to the welfare of such individuals, their families, and the citizens of New Hampshire." The Committee determined that the use of wait lists would conflict with this finding. Therefore, the Committee concluded that He-M 522 is contrary to legislative intent by violating the overall purpose of RSA 171-A:1-a.

RSA 171-A:1-a, I specifically requires the Department to allocate funds for services for eligible individuals within 90 days. Because He-M 522 would allow the 90-day period to be exceeded, the Committee determined that He-M 522 conflicts with RSA 171-A:1-a, I.

SB 519 from the 2010 session would have made the obligation of the Department under RSA 171-A:1-a, I contingent upon the availability and continued appropriation of funds by the Legislature, thereby allowing wait lists. On March 24, 2010, the Senate unanimously defeated SB 519. Therefore, in the view of the Committee, He-M 522 would have implemented a bill which the Legislature had defeated.

 OFFICE OF LEGISLATIVE SERVICES
 Administrative Rules
 25 Capitol Street, Room 219
 Concord, New Hampshire 03301-6312

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