CHAPTER He-C 200 RULES OF PRACTICE AND PROCEDURE

Statutory Authority: RSA 541-A:16, I, RSA 541-A:30-a, and 126-A:5, VIII

PART He-C 201 PURPOSE, DEFINITIONS AND PRELIMINARY MATTERS

He-C 201.01 Purpose. The purpose of this chapter is to provide uniform practices and procedures to implement the provisions of RSA 541-A:16, I, and RSA 126-A:5, VIII concerning appeals of decisions made by the department. The provisions of these rules concerning hearings are intended to supplement the procedures established by RSA 541-A and any procedure established under any statute implemented by the department.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.02 Definitions.

(a) "Administrative appeals unit (AAU)" means the unit of the department that receives appeal requests, schedules proceedings, conducts prehearing conferences and hearings and issues decisions for the department.

(b) "Appeal" means a request by a person adversely affected by a department decision or action to review that decision or action in accordance with the provisions of RSA 126-A:5, VIII.

(c) "Appellant" means any person requesting an appeal under RSA 126-A:5, VIII.

(d) "Commissioner" means the commissioner of the department of health and human services.

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

(f) "Exhibit" means an item of physical evidence that is submitted for entry into the record of an appeal, including, but not limited to, a document, photograph, computer printout, diagram, audio or video recording or other object.

(g) File" means to provide an appeal, petition, motion, exhibit, memorandum, e-mail or other thing to the department so that it is in the department's physical possession.

(h) "Good cause" means any circumstance beyond a person's control that prevents that person from attending a hearing, complying with an order or taking some required action, including:

(1) A death in the person's immediate family;

(2) Personal injury or serious illness of the person or an immediate family member; or

(3) Another compelling reason or justification.

(i) "Hearing" means "adjudicative proceeding" as defined by RSA 541-A:1, I, namely "the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36."

(j) "Independent review" means the non-adjudicatory process leading to a decision on an administrative appeal provided for by RSA 126-A:5, VIII.

(k) "Motion" means any request by a party to a proceeding for an order relating to that proceeding.

(l) "Non-adjudicatory public hearing" means hearings held by the department to receive public comment on proposed rules.

(m) "Party" means "party" as defined in RSA 541-A:1, XII, namely "each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party."

(n) "Person" means "person" as defined in RSA 541-A:1, XIII, namely "any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency."

(o) "Presiding officer" means "presiding officer" as defined by RSA 541-A:1, XIV, namely "that individual to whom the agency has delegated the authority to preside over a proceeding, if any otherwise it shall mean the head of the agency."

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.03 Time Limit for Appeals.

(a) Unless otherwise specifically provided in applicable federal or state law, or other department administrative rules which set a different time limit, appeals shall be submitted within 30 days after the date:

(1) The department's notice of decision was issued, if applicable; or

(2) Of the department's notice to the appellant of its action if a notice of decision was not issued.

(b) The time limits for filing appeals shall not be waived unless the appellant establishes good cause for the non-compliance.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.04 Failure to Comply with Rules or Orders.

(a) When a party fails to comply with the rules in this chapter or with an order from a presiding officer, the presiding officer shall take one or more of the following actions, as appropriate:

(1) Allow additional time for compliance if no other party is prejudiced by this action;

(2) Refuse to accept a non-compliant document for filing;

(3) Deny or conditionally deny the non-compliant application, petition, appeal or motion;

(4) Issue an order or decision adverse to a non-compliant party;

(5) Terminate the hearing, if the non-compliance disrupts the hearing;

(6) Continue with the appeal process, after issuing a warning of the potential consequences under this rule to the non-compliant party; or

(7) Issue a "show cause" order requiring a non-compliant party to demonstrate good cause for the non-compliance.

(b) If good cause is not established after a show cause order was issued, the presiding officer shall:

(1) Issue a decision or order adverse to the non-compliant party; or
(2) Take other action as justice and equity require.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.05 Appointment and Authority of Presiding Officer.

(a) All hearings and independent reviews shall be conducted by a presiding officer appointed by the commissioner to implement the appeals process under RSA 126-A:5, VIII.

(b) Presiding officers shall make final decisions on behalf of the commissioner in any administrative appeal under RSA 126-A:5, VIII, unless the commissioner orders otherwise in a particular matter.

(c) A presiding officer shall, as necessary:

(1) Facilitate an informal resolution of an appeal;

(2) Regulate and control the course of a hearing;

(3) Administer oaths and affirmations;

(4) Receive relevant exhibits and testimony, and exclude irrelevant, immaterial or unduly repetitious evidence;

(5) Dispose of procedural requests, including adjournments or continuances, at the request of a party or on the presiding officer's own motion;

(6) Question any person who testifies;

(7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI;

(8) Take official notice as specified in RSA 541-A:33, V; and

(9) Take any other action consistent with applicable statutes and rules necessary to conduct a proceeding and complete the record in a fair and timely manner.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.06 Withdrawal of Presiding Officer.

(a) Upon a presiding officer's own motion, or upon the motion or request of any party, a presiding officer shall, for good cause or to avoid the appearance of impropriety or lack of impartiality, withdraw from any appeal governed by this chapter.

(b) For purposes of this section, good cause shall include, but not be limited to, the following:

(1) Submission of documents or sworn statements which establish that the presiding officer has previously participated in any department decision affecting any party to the appeal, other than by presiding over any prior appeal by the same party;

(2) Submission of documents or sworn statements which establish that the presiding officer has served as the supervisor of department staff participating in the decision or action under appeal within the immediately preceding 2 calendar years; or

(3) Submission of documents or sworn statements which establish any other fact which would cause a reasonable person to conclude that the presiding officer's impartiality can be questioned.

(c) The mere fact that the presiding officer is an employee of the department shall not be considered grounds for withdrawal from any appeal.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.07 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in effect, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.08 Waiver or Suspension of Procedural Rules.

(a) Upon the presiding officer's own motion or based upon a motion from a party, the presiding officer shall waive any requirement or limitation imposed by this chapter when:

(1) The affected parties have been notified of the proposed waiver and given an opportunity to object;

(2) The waiver would likely promote the fair, accurate and efficient resolution of issues pending before the department; and

(3) The waiver does not conflict with any statute.

(b) If any provision of this chapter is determined by the presiding officer to conflict with any federal procedural requirement with which the department has agreed to comply:

(1) That provision shall be deemed to be waived in favor of the applicable federal procedural requirement for purposes of each hearing involving questions subject to that federal procedural requirement; and

(2) The presiding officer shall note such waiver in the record of the hearing.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.09 Role of Department Staff in Hearings, Including Enforcement or Disciplinary Hearings. Department staff responsible for presenting the department's case in any hearing, including enforcement or disciplinary hearings, except for those who are attorneys serving solely as department counsel in the hearing, shall be considered parties to the hearing.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 201.10 Role of Complainants in Enforcement or Disciplinary Hearings.

(a) For the purposes of this section, "complainant" means a person who prompted an investigation or filed a complaint that resulted in a department decision adverse to a second person.

(b) Unless called as witnesses or granted intervenor status under He-C 203.06, complainants shall have no role in enforcement or disciplinary hearings.

Source. *#8866-A, eff 4-13-07*

He-C 201.11 Ex Parte Communication.

(a) For purposes of this section, "ex parte communication" shall mean any communication prohibited by RSA 541-A:36.

(b) Parties are prohibited from all forms of ex parte communication with presiding officers while an appeal is pending, including, but not limited to, written, telephonic, voice-mail, facsimile, e-mail, and face-to-face communications.

Source. *#8866-A, eff 4-13-07*

He-C 201.12 Cooperation Required.

(a) Agents of the department, and persons other than department employees paid in whole or in part with funds which come from the department shall cooperate with a presiding officer conducting an independent review, prehearing conference, or hearing.

(b) Agents of the department who fail to cooperate or comply with orders issued by presiding officers shall be subject to disciplinary action in accordance with applicable internal policies of the department or rules of the division of personnel, department of administrative services.

Source. *#8866-A, eff 4-13-07*

He-C 201.13 Applicability in Certain Hearings.

(a) References to the department in He-C 200 shall include the department's contract service providers when they are participating in appeal proceedings affecting any individual applying for or receiving services, as described in RSA 126-A:5, III.

(b) This section shall not be interpreted to apply in any proceeding under He-C 200 where such contract service provider is involved as a party or intervenor adverse to the department.

Source. *#8866-A, eff 4-13-07*

PART He-C 202 ISSUANCE, FILING AND SERVICE OF DOCUMENTS

He-C 202.01 Date of Issuance or Filing.

(a) All decisions, orders, notices or other correspondence or documents issued by or at the direction of the department shall be deemed to have been issued on the date noted on the document, except that any party or intervenor shall be given an opportunity to prove otherwise at the hearing.

(b) All applications, notices, orders, petitions, correspondence, motions, requests for findings or conclusions, requests for reconsideration and any other written documents governed by He-C 200 rules shall be deemed to have been filed with or received by the department on the actual date of receipt by the department, as evidenced by a date stamp placed on the document by the department in the normal course of business, except that any party or intervenor shall be given an opportunity to prove otherwise at the hearing.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 202.02 Content and Veracity of Documents.

(a) All petitions, motions, memoranda, replies or similar documents filed under this chapter shall:

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on durable 8 ½ x 11 inch paper, except that any party submitting non-complying documents shall be given one opportunity to resubmit the documents, with the date of receipt continuing to be the same as for the original filing; and

(3) Be signed by the party or proponent of the document, or if the party appears by a representative, by the representative.

(b) The signature on a document filed with the department shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file it;

(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it;

(4) To the best of the signer's knowledge, information and belief the document contains no falsehoods, material inaccuracies, or misleading information; and

(5) The document has not been filed for purposes of delay, except that this subparagraph shall not apply if the document is a motion to continue.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 202.03 Service of Documents.

(a) All petitions, motions, exhibits, memoranda, or other documents filed with the AAU by any party or intervenor to a proceeding governed by this chapter shall be served by that party or intervenor upon all other parties to the proceeding.

(b) Service of all petitions, motions, exhibits, memoranda or other documents, shall be executed as follows:

(1) By pre-paid first class mail to the most recent address on file; or

(2) By any other means, provided that the same method is used to file with the AAU and serve the parties, so that the AAU receives the filing on or about the same date as the parties or intervenors.

(c) All notices, orders, decisions or other documents issued by the presiding officer pursuant to this chapter shall be served by the presiding officer upon all parties and intervenors to the proceeding.

(d) When a party or intervenor appears by a representative, service shall be upon the representative.

(e) All parties, intervenors and representatives associated with an appeal shall maintain a current contact address and telephone number, if any, on file with the AAU and with each other, until the final decision is issued.

(f) Receipt of documents by the party, any intervenor or representative shall be presumed if service complied with the requirements of this section, except that any party shall be given an opportunity to prove otherwise.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

PART He-C 203 HEARINGS

He-C 203.01 Applicability.

(a) The rules in this part shall apply to all department adjudicative hearings, and shall be supplemented by other department rules, as applicable.

(b) In the event that the rules in this part conflict with other department rules, the rules in this part shall control unless otherwise specifically provided by a reference in the conflicting rule stating that it supersedes He-C 200.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 203.02 Notification of Appeal Rights. When a written notice of decision or action is issued by the department, the department shall notify any person aggrieved by the decision or action that the person is entitled to request a hearing, in accordance with the statutes or rules which govern the decision or action which is being appealed.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 203.03 Appeal Requests.

(a) Appeals shall be filed in writing with the department.

(b) All appeals shall identify the specific decision or action by the department that forms the basis for the appeal.

(c) A copy of the notice of decision being appealed, if applicable and available, shall be filed with the appeal.

(d) If an appeal is filed in one of the department's district offices or a state office, it shall be promptly forwarded to the AAU.

(e) Appeals received by the department beyond the time limits specified in He-C 201.03 shall be denied, except as otherwise provided by He-C 201.03.

(f) The appealing party shall identify, in the appeal, any known specific needs or circumstances that relate to appellant's ability to attend or participate in a hearing, including, but not limited to, the need for interpreters, signers, or locations accessible by the disabled.

(g) An appeal request shall be denied, or the appeal dismissed, without a hearing on the merits for the following reasons:

(1) Lack of jurisdiction;

(2) Lack of available relief;

(3) Lack of standing;

(4) The appeal request is untimely;

(5) The issue is not ripe for an appeal; or

(6) As a result of the AAU's repeated inability to communicate with appellant, as evidenced by returned mail, disconnected phone line, blocked phone number or repeated, unreturned telephone messages.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 203.04 Notice of Hearing.

(a) The initial notice of a hearing or prehearing conference shall be issued by the AAU and contain:

(1) The information required by RSA 541-A:31, III; and

(2) A list of the organizations in New Hampshire which provide free or reduced cost legal services.

(b) Subsequent notices of hearings shall be included in an order issued by a presiding officer, or as a separate hearing notice issued by the AAU.

(c) The initial and any subsequent notices of a hearing shall be sent to all parties in accordance with the service requirements of He-C 202.03.

(d) If a party or intervenor has a representative who has filed an appearance in accordance with He-C 203.05, the hearing notice shall be sent to the representative as well as the party.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 203.05 Appearance and Representation.

(a) Any party or intervenor to a hearing may be represented by any competent individual who has filed an appearance in accordance with (b) below.

(b) The appearance filed by a party's or intervenor's representative shall be copied to all other parties and include the following information:

(1) A brief identification of the matter in which the representative will appear;

(2) A statement as to whether the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and

(3) The representative's daytime address and telephone number.

(c) Nothing in this chapter shall be construed to allow or encourage the unauthorized practice of law.

Source. *#8866-A, eff 4-13-07*

He-C 203.06 Intervention.

(a) Intervention in a hearing shall be governed by the provisions of RSA 541-A:32, I.

(b) Petitions for intervention filed in accordance with RSA 541-A:32, II shall:

(1) Be granted if:

a. The petitioner provides information which explains why the petition could not be filed in accordance with the time limits of RSA 541-A:32, I; and

b. The presiding officer determines that the criteria contained in RSA 541-A:32, I (b) and (c) have been met by the petitioner; and

(2) Be subject to the condition that no portion of the proceeding shall be repeated for the benefit of the intervenor.

Source. *#8866-A, eff 4-13-07*

He-C 203.07 Prehearing Conference.

(a) Any party or intervenor may request, or the presiding officer may schedule on individual initiative, a prehearing conference in accordance with RSA 541-A:31, V.

(b) Failure to attend a prehearing conference shall be considered a failure to attend a hearing under He-C 203.12

Source. *#8866-A, eff 4-13-07*

He-C 203.08 Prehearing Exchange of Information; Identifying Exhibits.

(a) Each party shall respond to another party's requests for information completely and in a timely manner.

(b) Where a dispute between the parties arises with respect to production of documents pertinent to the hearing, any party may file a motion to compel discovery under He-C 203.09.

(c) The parties shall file the following information and documents with the AAU, and provide copies to each other so that they are received no later than 5 days before the scheduled hearing date:

(1) A list of all witnesses to be called at the hearing with a brief summary of their testimony;

(2) A list of all exhibits to be presented at the hearing;

(3) A clear and legible copy of each exhibit to be presented at the hearing, which shall be sequentially marked and identified as follows:

a. Exhibits from the department shall be marked with the words "DHHS Exhibit" followed by a sequential cardinal number, so that the first exhibit is labeled "DHHS Exhibit 1" and the second is "DHHS Exhibit 2," and so on;

b. Exhibits submitted by other parties shall be labeled in the same manner as the department's, except they shall be identified by the words "Appellant Exhibit" or "Intervenor Exhibit" as appropriate; and

c. Exhibits submitted by any person not covered by a. or b. above shall be marked as directed by the presiding officer; and

(4) Any requests for changes to standard procedure or other matters concerning conduct of the hearing.

Source. *#8866-A, eff 4-13-07*

He-C 203.09 Motions to Compel Production of Information.

(a) Except as provided in this section, prehearing production of information shall be limited to the procedures set forth in He-C 203.08 because all department files supporting the decision are available in accordance with the provisions of RSA 91-A, unless they meet one of the exceptions to disclosure under RSA 91-A:5.

(b) Any party seeking to compel production of information shall make a motion in writing requesting that the presiding officer order compliance with the parties' request for information.

(c) The requesting party's motion shall:

(1) Set forth in detail those factors which it believes support its request to compel compliance with the parties' request for information;

(2) List with specificity, the information it is seeking; and

(3) State the good faith actions that have been taken by the requesting party to obtain the facts or documents on an informal basis.

(d) The presiding officer shall not accept any motion to compel production of information filed less than 30 calendar days before the date scheduled for a hearing unless the requesting party establishes good cause for not submitting the motion sooner.

(e) Where a party recites in the motion that the party has tried in good faith to gather information under He-C 203.08, and that the party will be unable to thoroughly and completely prepare the case unless its motion to compel is granted, the presiding officer shall order the production of such information as justice and equity require.

Source. *#8866-A, eff 4-13-07*

He-C 203.10 Motions; Objections.

(a) All motions shall:

(1) Be filed with the AAU;

(2) Be in writing;

(3) Be filed in a timely manner;

(4) Be copied to all parties or representatives; and

(5) Comply with He-C 202.02 and 202.03.

(b) The only exception to the requirements in (a) above shall be for an oral motion made in response to a matter asserted for the first time at a prehearing conference or hearing, or on the basis of information which was not received in time to prepare a written motion.

(c) In addition to the requirements in (a) above, motions shall clearly and concisely state:

(1) The purpose of the motion;

(2) The action or outcome sought by the motion;

(3) The statutes, rules, orders, other authority or grounds authorizing the action or outcome sought by the motion;

(4) The facts claimed to constitute grounds for the presiding officer to take the action or order the outcome sought by the motion; and

(5) That a good faith attempt was made to obtain concurrence from all other parties, and whether the other parties concur or object to the relief being sought.

(d) Compliance with (c)(5) above shall not be necessary on dispositive motions or on oral motions made during a hearing.

(e) Oral motions and any contemporaneous objection to such motions shall be recorded in full in the record of the hearing.

(f) If the presiding officer finds that an oral motion requires additional information in order to be fully and fairly considered, the presiding officer shall direct the moving party to submit the motion in writing, with supporting information, within a time certain established by the presiding officer.

(g) Objections to written motions shall comply with He-C 202.02 and 202.03 and be filed within 10 days of the date of the motion, unless the presiding officer prescribes a different time period for a particular motion.

(h) Objections shall clearly and concisely state:

(1) The basis for the objection;

(2) The action that the objecting party or intervenor wishes the presiding officer to take on the motion;

(3) The statutes, rules, orders, other authority or grounds authorizing the action sought by the objecting party or intervenor; and

(4) Any facts in addition to or claimed to be different from those stated in the motion to which the objection is being made.

(i) Motions and objections to motions shall not be filed solely for purposes of delay.

(j) The presiding officer may reject any motion or objection determined to violate (i) above.

(k) Failure by an opposing party or intervenor to object to a motion shall not in and of itself constitute grounds for granting the motion.

(l) Copies of all written motions shall be sent to all other parties, their counsel or representatives.

(m) The presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Source. *#8866-A, eff 4-13-07*

He-C 203.11 Continuances.

(a) Any party to a hearing may make an oral or written motion that the hearing be continued to a later date and/or time.

(b) All motions to continue shall clearly state:

(1) The reason for the motion;

(2) If able to contact the other parties:

a. Whether the other parties concur in the motion; and

b. Proposed dates for the rescheduled hearing when all parties and witnesses will be available;

(3) If unable to contact the other parties, the efforts made to contact them; and

(4) If it is a written motion, that a copy has been sent to all other parties, their counsel or representatives.

(c) If a party requests a continuance it shall be granted if the presiding officer determines that good cause exists.

(d) If a continuance is granted in accordance with (c) above:

(1) If the later date, time and place are known at the time of the hearing that is being continued, the date, time and place shall be stated on the record; or

(2) If the later date, time and place are not known at the time of the hearing that is being continued, the presiding officer shall issue a written scheduling order stating the date, time and place of the continued hearing as soon as practicable.

Source. *#8866-A, eff 4-13-07*

He-C 203.12 Failure to Attend a Hearing.

(a) The physical presence of parties and witnesses at a hearing shall be required, unless excused by the presiding officer under He-C 203.13.

(b) If the appellant fails to attend the hearing, the appellant shall be in default.

(c) If an appellant is in default the presiding officer shall issue a written order allowing appellant 10 days from the date of the order to establish good cause for failing to attend the hearing.

(d) If an appellant establishes good cause, the hearing shall be rescheduled.

(e) If an appellant fails to establish good cause, the presiding officer shall find that the appellant has abandoned the appeal process and dismiss the appeal without further notice to the parties.

(f) If the department fails to attend the hearing, and is the party with the burden of proof, the department shall be in default.

(g) If the department is in default, the presiding officer shall issue a written order allowing the department 10 days from the date of the hearing to establish either:

(1) Good cause for failing to attend the hearing; or

(2) A compelling reason for not reversing the department’s decision automatically.

(h) If the department establishes good cause, or a compelling reason is found to go forward with a hearing, the hearing shall be rescheduled.

(i) If the department fails to establish good cause or other compelling reason, the presiding officer shall find that the department has decided not to defend its decision and that decision shall be reversed automatically, without a hearing.

(j) If the department fails to attend the hearing and does not have the burden of proof, the presiding officer shall either proceed with the hearing as scheduled without the department, or continue the hearing as fairness and justice dictate.

Source. *#8866-A, eff 4-13-07*

He-C 203.13 Hearing Participation by Telephone or Other Electronic Media.

(a) Upon the request of any party, or on the presiding officer's own motion, a hearing, or a portion of any hearing, may be conducted by telephone, video conference, or other electronic media in lieu of a hearing held in the physical presence of all parties and witnesses.

(b) If the presiding officer determines that the hearing process would be compromised or a party’s rights infringed by such electronic participation, the physical presence of all parties and witnesses shall be required at the hearing.

(c) The presiding officer shall consider the following criteria in deciding whether to conduct a hearing by telephone, videoconference or other electronic media:

(1) The inability of a party or witness to travel due to economic hardship, illness, medical restrictions, incarceration, or other limitations, making it unreasonable for the party or witness to be physically present at the hearing;

(2) A concern that a person's safety is jeopardized by the physical presence of all parties or witnesses; or

(3) Other reasons that would make it unjust, unsafe, or otherwise inappropriate to conduct a hearing in the physical presence of all parties.

(d) If the hearing is conducted telephonically, by videoconference or using other electronic media, the presiding officer shall ensure the ability of all parties to hear and question all witnesses, to confer with their counsel, and to be heard by the presiding officer and each other.

Source. *#8866-A, eff 4-13-07*

He-C 203.14 Standards and Burden of Proof.

(a) Standards of proof applied by a presiding officer in a hearing shall include:

(1) "Probable cause," which means there is sufficient evidence to establish a reasonable basis for a belief that a certain fact or conclusion could be true.;

(2) "Preponderance of the evidence," which means there is sufficient evidence to prove that a fact or conclusion is not only possible, but also probable; and

(3) "Clear and convincing evidence," which means there is sufficient evidence to prove that a fact or conclusion is highly probable.

(b) To meet the probable cause burden of proof defined in (a)(1) above, the evidence shall prove that the alleged fact or conclusion is possible, but does not have to prove that it is probable.

(c) To meet the preponderance of evidence standard defined in (a)(2) above, the evidence shall be sufficient to prove that a fact or conclusion is more likely than not to be true.

(d) To meet the clear and convincing evidence standard defined in (a)(3) above, the evidence shall exceed that necessary for a preponderance of the evidence, but shall be less than that needed to prove something beyond a reasonable doubt.

(e) The department shall have the burden to present sufficient evidence to establish probable cause in any hearing held to determine if a juvenile should remain in a secure facility pending a hearing before the parole board under RSA 170-H:8.

(f) The department shall prove its case by a preponderance of the evidence in hearings that address the following:

(1) A department decision to reduce or terminate benefits or services under any program administered by the department;

(2) A department decision to suspend, revoke or not to renew a certification, license, permit or other approval;

(3) Any action taken by the department to recoup benefits, impose a lien, impose an administrative fine, or invoke a sanction;

(4) The department's decision to place an individual's name in the central registry pursuant to RSA 169-C:35; and

(5) Complaint investigations under department rules He-M 202, as provided in He-M 202.08 (e) concerning programs or facilities.

(g) The department shall prove its case, by clear and convincing evidence, in hearings that address the following:

(1) A transfer decision under RSA 135-C:48;

(2) The revocation of a conditional discharge under RSA 135-C:52;

(3) Emergency treatment, authorized as provided for by RSA 135-C:57, III or V; and

(4) Food stamp disqualification for intentional violations under 7 C.F.R. 273.16.

(h) An appellant shall prove his or her case, by a preponderance of the evidence, in hearings that address the department's denial of an initial application for benefits, services or licenses or in any case in which an appellant seeks to overturn a department decision not otherwise addressed by statute or this section.

(i) In all hearings, the party asserting a proposition shall bear the burden of proving the truth of that proposition by a preponderance of the evidence, unless otherwise specifically provided by statute or other department rule.

(j) On a motion to reconsider, filed in accordance with He-C 204, the party seeking to overturn the decision shall prove its case by a preponderance of the evidence at any hearing held.

Source. *#8866-A, eff 4-13-07*

He-C 203.15 Record of the Hearing.

(a) A record of the hearing shall be kept by electronic recording or other method which will provide a verbatim record.

(b) If any party requests a transcript of the recording, the AAU shall arrange for a transcript to be prepared, provided the cost of the transcription is paid by the person(s) requesting the transcript, who shall be billed directly by the person preparing the transcript.

(c) Any party or intervenor to a hearing may record the hearing within the restrictions of RSA 541-A:31, VII, provided that:

(1) The party notifies the presiding officer and other parties prior to the hearing, so that confidentiality concerns can be addressed; and

(2) The recording shall not interfere with the conduct of the proceeding.

Source. *#8866-A, eff 4-13-07*

He-C 203.16 Order of Proceeding; Testimony

(a) All testimony shall be made under oath or affirmation in accordance with RSA 541-A:33.

(b) All parties, intervenors, representatives and witnesses shall state their names and roles in the proceeding on the record.

(c) All parties and intervenors shall have an opportunity to present evidence, cross-examine adverse witnesses, and make opening and closing statements, if desired.

(d) Unless otherwise ordered by the presiding officer, testimony shall be offered in the following order:

(1) The party bearing the overall burden of proof and such witnesses as the party calls;

(2) The party or parties opposing the party who bears the overall burden of proof and such witnesses as the party calls; and

(3) Persons granted intervenor status in accordance with He-C 203.06.

Source. *#8866-A, eff 4-13-07*

He-C 203.17 Conduct During Hearing.

(a) Parties, intervenors, counsel, representatives and witnesses shall be respectful and courteous to others at all times.

(b) During the hearing, one person shall speak at a time, without interruption by other parties, intervenors, counsel, representatives or witnesses.

(c) The sole exception to (b) above shall be when a party, intervenor, counsel or representative objects to a question being asked.

(d) Parties, counsel, representatives and witnesses shall not engage in angry exchanges, use obscenities, intentionally antagonize others, or make abusive or insulting comments or gestures.

(e) If unacceptable behavior continues after one warning of the possible consequences under this rule, and the offender is not a party, the presiding officer shall bar the offender from the proceeding.

(f) If the unacceptable behavior continues after one warning of the possible consequences under this rule, and the offender is a party, the presiding officer shall take appropriate action in accordance with He-C 201.04.

(g) If the hearing is reconvened at a later date as a result of a party's unacceptable behavior, and the unacceptable behavior continues, the presiding officer shall terminate the proceeding and issue a decision based on the existing record, except as provided in (h) below.

(h) A party's unacceptable behavior shall not be the basis for an adverse decision.

(i) The exception to (h) above shall be where a party's behavior interfered with the hearing process to the extent that a full and complete record sufficient to render a decision could not be obtained. In such a case, the presiding officer shall find that the non-compliant party has abandoned the appeal process and issue a decision adverse to the non-compliant party.

Source. *#8866-A, eff 4-13-07*

He-C 203.18 Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) The presiding officer shall take official notice only in accordance with RSA 541-A:33, V.

(c) All documents, materials and objects offered in evidence as exhibits and which were disclosed prior to the hearing in accordance with He-C 203.08 shall, absent objection, be included in the record of the hearing.

(d) Any documents, material or objects offered in evidence that were not disclosed in accordance with He-C 203.08 shall be included in the record of the hearing if the presiding officer determines that such evidence, exhibits or arguments are necessary to a full consideration of the issues raised in the appeal**.**

(e) All written testimony and documents, materials, and objects admitted into evidence shall be made available after and during the course of the hearing for public examination unless considered confidential under state or federal statute or regulation, or ordered sealed because the presiding officer determines such testimony or documents to be exempt from disclosure under RSA 91-A:5.

(f) In any proceeding involving an application, the application filed with the department, including exhibits and amendments thereto, shall be placed into evidence by the department.

(g) All objections to rulings made by the presiding officer during the course of the hearing regarding evidence or procedure, and the grounds for such objections, shall be stated at the time the ruling is made.

Source. *#8866-A, eff 4-13-07*

He-C 203.19 Proposed Findings of Fact and Conclusions of Law.

(a) Any party or intervenor may submit separately stated proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.

(b) The total number of proposed findings of fact and conclusions of law submitted by a party or intervenor shall be limited to a combined total of 40, unless otherwise permitted by the presiding officer.

(c) In any case where proposed findings of fact and conclusions of law are submitted, the decision shall include rulings on the proposals.

Source. *#8866-A, eff 4-13-07*

He-C 203.20 Closing the Record.

(a) After the conclusion of the hearing, no other evidence, testimony, exhibits, or arguments shall be allowed into the record, except as allowed under (b) below.

(b) Prior to the conclusion of the hearing, a party or intervenor may request that the record be left open for a specified period of time to accommodate the filing of evidence, exhibits or arguments concerning matters which occurred prior to the date of the department decision being appealed, but which were not available at the time of the hearing.

(c) If the other parties or intervenors to the hearing do not object to leaving the record open in accordance with (b) above, or if the presiding officer determines that such evidence, exhibits or arguments are necessary to a full consideration of the issues raised in the appeal, the presiding officer shall designate a specific time period for the record to remain open to receive the evidence, exhibits or arguments.

(d) The party or intervenor filing such additional evidence, exhibits or arguments shall also deliver or send copies of all items filed to all other parties and intervenors of record.

(e) If any other party or intervenor to the hearing requests time to respond to the evidence, exhibits or arguments submitted, the presiding officer shall set a specific time period following filing of the material for the filing of a response.

(f) If any other party to the hearing requests the opportunity to cross-examine on the additional evidence or exhibits submitted, the presiding officer shall set a date and time for a hearing at which cross-examination on the additional evidence or exhibits submitted shall be allowed, if the presiding officer determines that cross-examination on the additional material is required for a full and true disclosure of the facts.

Source. *#8866-A, eff 4-13-07*

He-C 203.21 Reopening the Record.

(a) At any time prior to the issuance of the decision on the merits, the presiding officer, on the presiding officer's own motion or on the motion of any party or intervenor, shall reopen the record to receive relevant, non-duplicative testimony, evidence, arguments or exhibits not previously received, if the presiding officer determines that such testimony, evidence, arguments or exhibits are necessary to a full consideration of the issues being considered in the hearing.

(b) Motions to reopen the record made after one or more parties or intervenors have left the hearing shall be made in writing and comply with the requirements of He-C 202.03 and 203.10.

(c) The presiding officer shall give written notice of such further proceedings if the parties and intervenors are no longer present.

(d) The presiding officer shall set a time within which other parties or intervenors may respond to or rebut the items made part of the record under this section.

Source. *#8866-A, eff 4-13-07*

He-C 203.22 Decisions.

(a) A decision shall be made only after full consideration of the record, except that a decision may be made on a motion to dismiss based upon the documents and affidavits submitted with such motion and any objection thereto.

(b) A decision shall be issued in writing or stated in the record in accordance with RSA 541-A:35.

(c) A decision shall be effective upon issuance unless otherwise specified in the decision or required by law.

(d) If the commissioner has decided in accordance with He-C 201.05 (b) not to delegate final decision-making authority to the presiding officer, the presiding officer shall submit a written proposed decision to the commissioner containing the following:

(1) The subject of the hearing, including identification of the relevant statute(s) and rule(s);

(2) The names and addresses of all parties to the proceeding;

(3) The names and addresses of all persons who testified at the hearing either orally or in writing and a summary of each witness's testimony;

(4) The items listed in RSA 126-A:5, VIII (d); and

(5) Recommended rulings on motions to dismiss.

(e) Following receipt of the proposed decision under (d) above, the commissioner shall proceed in accordance with RSA 126-A:5, VIII (e), and:

(1) Within 10 days, provide the appellant and the department representative involved in the appeal with a copy of the proposed decision and a notice which:

a. Offers the appellant an opportunity to present a brief and oral argument, provided the request to do so is made within 10 days of the date of the notice;

b. Specifies that if such a request is made, the brief shall be submitted within 30 days of the date of the notice;

c. Specifies that any brief submitted shall be limited to a length of 5 pages on 8 ½ by 11 inch paper, with a copy sent to the department representative involved in the appeal; and

d. Specifies that any oral argument shall be limited to no more than 30 minutes; and

(2) Offer the department representative involved in the appeal:

a. An opportunity to file a responsive brief, limited to a length of 5 pages on 8 ½ by 11 inch paper, within 10 days of the date the appellant's brief is submitted, with a copy to the appellant; and

b. An opportunity to present oral argument in response to the appellant's oral argument, which shall be limited to no more than 30 minutes.

(f) The commissioner shall issue a final decision in accordance with RSA 126-A:5, VIII (f).

(g) Written decisions issued under this section shall be retained for the period specified in RSA 5:38.

Source. *#8866-A, eff 4-13-07*

PART He-C 204 MOTION FOR RECONSIDERATION

He-C 204.01 Purpose. The rules in this part are intended to supplement any statutory provisions, including but not limited to RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to or in lieu of appealing the decision.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 204.02 Applicability. The rules in this part shall apply whenever any person requests reconsideration of a decision made under He-C 200.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 204.03 Filing. A motion for reconsideration of a decision shall be filed with the department's administrative appeals unit not later than 30 days after the date of the decision for which reconsideration is being sought, unless otherwise provided by law.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 204.04 Format and Content of Motion.

(a) A motion for reconsideration shall include the following:

(1) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;

(2) A clear and concise statement of the reason(s) why the person believes the decision to be in error; and

(3) A concise and explicit statement of the facts upon which the AAU is expected to rely in granting relief.

(b) A motion for reconsideration may also include such other information as the party filing the motion deems relevant and reliable, and there may be attached to said motion exhibits, illustrations and sworn written statements.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 204.05 Standard for Granting Motion for Reconsideration. A motion for reconsideration shall be granted only if:

(a) Evidence is presented with the motion for reconsideration that was not available at the time of the hearing and which the presiding officer determines would change the decision rendered under He-C 203.22;

(b) The party making the motion for reconsideration demonstrates that the presiding officer was in error concerning the interpretation or application of applicable state statute or administrative rule or federal statute or regulation; or

(c) The party making the motion for reconsideration demonstrates that the decision made under He-C 203.22 is contrary to controlling law.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

PART He-C 205 NON-ADJUDICATORY PUBLIC HEARINGS

He-C 205.01 Applicability. This part shall apply to the conduct of non-adjudicatory public hearings held by the department.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 205.02 Non-Adjudicatory Public Hearings. A non-adjudicatory public hearing shall be held by the department when proposing to adopt, amend or repeal a rule or rules.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 205.03 Notice. Notice of the date, time and place of the non-adjudicatory public hearing for a rulemaking proceeding held pursuant to RSA 541-A shall be given by publication in the rulemaking register pursuant to RSA 541-A.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 205.04 Record. A record of the non-adjudicatory public hearing shall be kept by electronic recording or other method that will provide a verbatim record.

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

He-C 205.05 Presiding Officer. The presiding officer at a non-adjudicatory public hearing in a rulemaking proceeding shall be the commissioner or the individual designated by the commissioner to preside at the hearing.

Source. *#8866-A, eff 4-13-07*

He-C 205.06 Opening the Hearing.

(a) The presiding officer shall open a non-adjudicatory public hearing by describing in general terms the purpose of the hearing and procedures governing its conduct.

(b) After the opening statement the presiding officer shall receive comments from the persons attending the hearing.

Source. *#8866-A, eff 4-13-07*

He-C 205.07 Testimony.

(a) Anyone wishing to submit written testimony or exhibits at a non-adjudicatory public hearing shall submit them to the presiding officer, provided such testimony or exhibit is signed and dated by the individual submitting it.

(b) Anyone wishing to testify at a non-adjudicatory public hearing shall submit in writing to the presiding offer the person's name, address, and whom, if anyone, that person represents.

(c) The presiding officer shall call each person to present testimony.

(d) The presiding officer shall rule any comments, questions or discussions that the presiding officer determines not to be relevant to the subject of the non-adjudicatory public hearing out of order, and proceed to the next speaker.

Source. *#8866-A, eff 4-13-07*

He-C 205.08 Closing the Hearing. When the presiding officer determines that no person has further questions or comments that are relevant to the subject of the hearing, the presiding officer shall close the hearing.

Source. *#8866-A, eff 4-13-07*

He-C 205.09 Postponements; Relocation.

(a) A hearing shall be postponed in accordance with RSA 541-A:11, IV when:

(1) The weather is so inclement that it is reasonable to conclude that people wishing to attend the hearing will be unable to do so; or

(2) Postponement will facilitate greater participation by the public.

(b) A hearing shall be moved to another location in accordance with RSA 541-A:11, V when the original location is not able to accommodate the number of people who wish to attend.

(c) A hearing shall be continued past the scheduled time or to another date in accordance with RSA 541-A:11, III when:

(1) The time available is insufficient to give each person who wishes to speak a reasonable opportunity to do so; or

(2) The capacity of the room in which the hearing is to be held does not accommodate the number of people who wish to attend; and it is not possible to move the hearing to another location.

Source. *#8866-A, eff 4-13-07*

PART He-C 206 RULEMAKING PETITIONS

He-C 206.01 Applicability. The rules in this part shall apply to any petition submitted pursuant to RSA 541-A:4.

Source. #6986, eff 4-24-99; ss by *#8186, eff 10-2-04;* ss by *#8866-A, eff 4-13-07*

He-C 206.02 Filing. The original and one copy of a rulemaking petition shall be filed with the commissioner.

Source. #6986, eff 4-24-99; *ss by #8186, eff 10-2-04;* ss by *#8866-A, eff 4-13-07*

He-C 206.03 Format and Content of Petition.

(a) A petition to adopt, amend or repeal a rule shall comply with the requirements of He-C 202.02.

(b) A petition to adopt, amend or repeal a rule shall include the following:

(1) The exact legal name of each person requesting the adoption, amendment or repeal of the rule, with a residence address or principal place of business of the person;

(2) Whether the person is asking the department to adopt, amend or repeal a rule;

(3) A concise and explicit statement of why the petitioner wants the department to change or repeal the rule(s);

(4) If the petition is to adopt a rule:

a. The chapter, part and/or section, by alphanumeric code, where the person proposes the rule to be inserted; and

b. The language that the person wants to have adopted as a rule;

(5) If the petition is to amend a rule:

a. The specific rule, by alphanumeric code, that is the subject of the petition; and

b. The language that the person wants to have adopted as a rule; and

(6) If the petition is to repeal a rule, the specific rule, by alphanumeric code, that is the subject of the petition.

(c) A petition to adopt, amend or repeal a rule may also include such other information as the person filing the petition deems pertinent and relevant, and the person may attach exhibits, illustrations and sworn written information to the petition.

Source. #6986, eff 4-24-99*;* ss by *#8866-A, eff 4-13-07*

He-C 206.04 Processing of Rulemaking Petitions.

(a) Upon receipt of a petition to adopt, amend or repeal a rule, the commissioner shall proceed in accordance with RSA 541-A: 4.

(b) The commissioner shall grant the petition and initiate a rulemaking proceeding in accordance with RSA 541-A: 4 if the commissioner determines that the department has authority to take the proposed action and the proposed action is:

(1) Consistent with state and federal law and policy; and

(2) Necessary to the efficient and effective implementation of the rules that are the subject of the action or other programs implemented by the department.

Source. #6986, eff 4-24-99*;* ss by *#8866-A, eff 4-13-07*

PART He-C 207 DECLARATORY RULINGS

He-C 207.01 Applicability. The rules in this part shall apply to any petition for a declaratory ruling, as defined by RSA 541-A:1, V.

Source. #6986, eff 4-24-99*;* ss by *#8866-A, eff 4-13-07*

He-C 207.02 Filing. The original and one copy of a petition for declaratory ruling shall be filed with the commissioner.

Source. #6986, eff 4-24-99*;* ss by *#8866-A, eff 4-13-07*

He-C 207.03 Format and Content of Petition.

(a) A petition for a declaratory ruling shall comply with the requirements of He-C 202.02.

(b) A petition for a declaratory ruling shall include the following:

(1) The name, address and telephone number of each person requesting the declaratory ruling;

(2) A precise and complete citation to the statute or administrative rule, or identifying information concerning the order, which the petitioner seeks a ruling upon; and

(3) A concise and explicit statement explaining the background, facts and considerations which led to the petition in order for the department to understand the nature and specific reasons for the petition and why the ruling is being requested.

(c) A petition for a declaratory ruling may also include such other information as the person filing the petition deems pertinent and relevant, and the person may attach exhibits, illustrations and sworn written information to the petition.

Source. #6986, eff 4-24-99*;* ss by *#8866-A, eff 4-13-07*

He-C 207.04 Processing of Petitions for Declaratory Rulings.

(a) Within 30 days of receiving a petition for a declaratory ruling the department shall:

(1) Advise the petitioner if additional information or explanation shall be required; or

(2) Advise the petitioner that there shall be a delay in issuing the ruling due to the complexity of the petition, or as a result of the involvement of the department of justice regarding issues of legality.

(b) The department shall issue a written response to the person filing the petition for declaratory ruling as soon as practicable.

(c) Declaratory rulings issued by the department shall be filed with the director of legislative services in accordance with RSA 541-A:16, II (b).

Source. #6986, eff 4-24-99; ss by *#8866-A, eff 4-13-07*

PART He-C 208 INDEPENDENT REVIEWS - REPEALED

He-C 208.01 Commencing an Independent Review.

Source. #6986, eff 4-24-99; ss by #8866-B, eff 4-13-07; rpld by 2012, 156:2, eff 6-7-12

He-C 208.02 Elements of an Independent Review.

Source. #6986, eff 4-24-99; ss by #8866-B, eff 4-13-07; rpld by 2012, 156:2, eff 6-7-12

He-C 208.03 Decisions.

Source. #6986, eff 4-24-99; ss by #8866-B, eff 4-13-07; rpld by 2012, 156:2, eff 6-7-12

PART He-C 209 EXPLANATION OF ADOPTED RULES

He-C 209.01 Requests for Explanation of Adopted Rules. Any interested person may, within 30 days of the final adoption of a rule, request a written explanation of that rule by making a written request to the commissioner including:

(a) The name and address of the individual making the request; or

(b) If the request is that of an organization or other entity, the name and address of such organization or entity and the name and address of the representative authorized by the organization or entity to make the request.

Source. #6986, eff 4-24-99; ss by #8866-B, eff 4-13-07

He-C 209.02 Contents of Explanation. The commissioner shall provide a written response, which complies with the requirements of RSA 541-A: 11, VII.

Source. #6986, eff 4-24-99; ss by #8866-B, eff 4-13-07

PART He-C 210 WAIVER OF PROCUREMENT PROVISIONS

Statutory Authority: RSA 21-G:37, V

He-C 210.01 Scope. Unless otherwise specified, He-C 210 shall apply to the procurement of goods and services by the New Hampshire department of health and human services through a request for bid (RFB), request for application (RFA), or a request for proposal (RFP), or through a similar invitation.

Source. *#12051, eff 11-19-16*

He-C 210.02 Purpose. These rules implement RSA 21-G:37, V, by:

(a) Setting forth the circumstances under which the provisions of RSA 21-G:37 II – IV shall be waived by the department; and

(b) Establishing the circumstances constituting an emergency or loss of funding under RSA 21-G:37, V.

Source. *#12051, eff 11-19-16*

He-C 210.03 Definitions.

(a) "Commissioner" means the commissioner of the department of health and human services or his or her designee.

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

(c) "Emergency situation" means a situation, condition, or set of circumstances, the source of which is natural, technological, or human made, that has caused or is determined by the commissioner likely to cause the health or safety of individuals served by the department to be at risk by:

(1) Impeding or diminishing the department's ability to provide materials or services to an individual or group;

(2) Inhibiting or interrupting the continuity of services provided by the department; or

(3) Preventing the department from complying with the law.

(d) "Request for application (RFA)" means an invitation to submit an offer to provide identified services to an agency where the amount of funding available and the particulars of how the services are to be provided are defined by the agency and where the selection of qualifying vendors will be according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

(e) "Request for bid (RFB)" means an invitation to submit an offer to provide specified commodities or services to an agency at a price proposed by the bidder where selection is based on the lowest price meeting or exceeding specifications as stated in the bid.

(f) "Request for proposal (RFP)" means an invitation to submit a proposal to provide specified goods or services, where the particulars of the goods or services and the price are proposed by the vendor and, for proposals meeting or exceeding specifications, selection is according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

Source. *#12051, eff 11-19-16*

He-C 210.04 Waiver of Requirements.

(a) The commissioner shall waive any or all of the provisions of RSA 21-G:37, II – IV for any RFA, RFB, RFP, or similar invitations in order to prevent the loss of federal or other funds subject to recapture or if the commissioner determines that there is an emergency situation as defined in He-C 210.03(c) and such waiver would prevent or mitigate the emergency situation.

(b) The department shall post the information required by RSA 21-G:37, II and III as soon as practicable after the circumstances which gave rise to the waiver have been mitigated.

Source. *#12051, eff 11-19-16*

**Appendix**

| **Rule** | **Specific State Statute the Rule Implements** |
|---|---|
| | |
| He-C 201.01 – 203.22 | RSA 126-A:5, VIII; RSA 541-A:16, I(b)(2); RSA 541-A:30-a, II |
| He-C 204.01 – 207.04 | RSA 126-A:5, VIII; RSA 541-A:16, I(b)(3), (c) and (d) |
| He-C 205.01 | RSA 126-A:5, VIII; RSA 541-A:16, I(b)(3), (c) and (d) |
| He-C 206.01 | RSA 541-A:30-a; 126-A:5, VIII |
| He-C 206.02 | RSA 541-A:30-a; 126-A:5, VIII |
| He-C 208 (Repealed) | RSA 541-A:11, VII; Repealed by 2012, 156:2 |
| He-C 209 | RSA 541-A:11, VII |
| He-C 210 | RSA 21-G:37, V |