

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: December 6, 2021

FROM: Scott F. Eaton
Administrative Rules Director

AT (OFFICE): Legislative Services

SUBJECT: Final Proposal 2021-55 Choices for Independence Program

To: File

Attached are Mike Morrell comments on Final Proposal 2021-55 from the Department of Health and Human Services (DHHS) relative to the adoption of He-E 801 on the Choices for Independence Program.

The substantive comments are on pages 1, 14, 18, 22, 30, 32, and 39. Most of the substantive comments relate to the public interest due to lack of clarity and to legislative intent due to potential oral rulemaking in violation of RSA 541-A:22, I. The comment on page 1 is a “Note to JLCAR” about whether expired rules have been enforced. On page 18 there is a comment regarding lack of authority and conflict with legislative intent relative to requiring liability insurance and on page 22 relative to requiring automobile insurance. Finally, there is a substantive comment on page 38 that relates to the public hearing, which was in-person but with a remote attendance option.

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