Implementing Senate Bill 134 Medicaid Work Requirements within the Federal Rule and Policy

The Department requests that the Health and Human Services Oversight Committee **vote to approve** policy that complies with the federal rule, and approve certain available exceptions as described under SB 134. Each vote is described below, followed by the rationale.

Brief Background: New Hampshire, and all states with Medicaid programs covering the expanded adult population, is required under Section 71119 of the One Big Beautiful Bill Act (also known as the Working Families Tax Cut Act) to introduce work and community engagement requirements for applicable individuals starting January 1, 2027.

New Hampshire enacted into law **Senate Bill 134** which establishes community engagement and work requirements under the New Hampshire granite advantage health care program **largely in alignment with Section 71119**; since the final rulemaking from the federal government was yet to occur, some key details of the federal requirements were unavailable at the time of passage. The Legislature included the following to address the limitation of no federal rule being in place:

> *Page 2, Line 7 of SB 134 reads: "In the event of a conflict between this section and the requirements of Public Law 119-21, Section 71119 (2025), the requirements of the federal statute or regulation shall control."*

1) Approve: the allowance of available short-term hardship exceptions included in the federal rule.

States must choose under the rule to allow all or none of the four of the optional exceptions, which include: **(1)** individuals receiving inpatient or other institutional services, **(2)** residing in a county in which an emergency is declared by the President, **(3)** an unemployment rate persists above 8% or 1.5 times the national unemployment rate, and **(4)** individuals traveling extensively to receive serious or complex medical care unavailable in their community.

> ***Rationale****: The Department requests that the Committee vote to adopt the optional exceptions in order to allow a person to have a good faith opportunity to comply at a subsequent redetermination when they are fairly able to complete the qualifying activities. All but the Presidential emergency designation were covered in the State's prior law on work requirements.*

2) Approve: Assess compliance with community engagement requirements for one month within every six-month eligibility period and align verification with the six-month redetermination process.

States, under the federal rule, may elect to assess compliance based on one to three months of an enrollee's six-month eligibility period. **The federal rule does not permit more than three months to assess, because it makes it impossible to complete the redetermination process with noticing timeframes within the general federal six-month eligibility period completion requirement.**

> ***Rationale:*** *As stated in the final rule, "if a State conducts the more frequent verification of community engagement in month 3 of a 6-month eligibility period, it is possible the State is **still processing the verification**, including following applicable noncompliance procedures, into month 4 of an individual's eligibility period, **while at the same time** the State's system is initiating the individual's renewal that must be completed by the end of the 6-month eligibility period."*

As in SB 134, there is a 30-day notice requirement which is functionally a 35-day period with mailing. There is additionally a 10-day notice requirement under federal rule. Indiana and Montana are planning to do more than one month with additions of 400 and 60 eligibility staff respectively. DHHS vacancy in eligibility is over 20%. The Department's proposed approach would have cases evaluated for at least one month at the quarter mark in each eligibility period. This would ensure that at the current resourcing levels, the Department is able to timely close cases where individuals are not compliant and maintain progress in long-term care eligibility processing.

3) Approve: Align the review of medical frailty in the first year (2027) to the allowed approach in the federal rule, while concurrently running an algorithm of diagnoses to assess the degree to which resources are needed to address the expanded assessment of frailty.

Rationale: *The federal rule introduces a new definition of medical frailty that alters materially the early state expectations from how this exemption would be defined.* ***The federal rule ties medical frailty specifically to a degree of acuity that functionally impairs the ability to comply with the community engagement requirement and not just diagnosis in many instances****.*

The degree to which ex-parte determinations of frailty will be available will possibly be more limited than planned by the Department. CMS implicitly acknowledged in the rule that states will need time to establish systems upgrades, to access new data sources and other resources like staff or contracts to implement the medical frailty exemption.

The rule allows states to accept a statement under penalty of perjury to verify medical frailty when reliable data are not available through 2027. Starting January 2028, except for verifying medical frailty, NHs must request documentation from individuals when the state does not have data on file. In the case of medical frailty, states are permitted to accept self-declaration only once during the enrollment period.