

MAY 14 2021

APPENDIX II-K
COVER SHEET FOR EMERGENCY RULE

ADOPTED RULE	
DOCUMENT #	13206
FILED	5-14-21 @ 4:24 PM
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EXPIRES	11-17-21
He P-802 (various)	

Document Number 13206

Rule Number _____

1. Agency Name & Address:

**Dept. of Health and Human Services
Health Facilities Administration
129 Pleasant Street, Brown Bldg.
Concord, NH 03301**

2. RSA Authority: RSA 151:2, I(a) and RSA 151:9, I(a) and (b)

3. Federal Authority: _____

4. Type of Action:

- Adoption _____
- Amendment X
- Repeal _____
- Readoption _____

5. Date of Filing: May 14, 2021

6. Short Title: Rules for Hospitals

7. Contact person for copies and questions:

Name: Allyson Zinno
 Address: Dept. of Health & Human Services
Administrative Rules Unit
129 Pleasant Street
Concord, NH 03301

Title: Administrator- Administrative Rules Unit
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****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

9. A summary of the effect if the rule were not adopted.

10. A description of those affected.

***PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: 5/14/2021

Signature: Lori Shibinette

Name: Lori A. Shibinette

Title: Commissioner

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

He-P 802 sets forth the requirements necessary to establish, operate, and maintain a licensed hospital. As required by RSA 151:9, I(a), the proposed rule establishes specific provisions and criteria for such facilities in the areas of sanitation, organization, administration, physical environment, health and safety, nursing units, resident environment, dietary needs, medical records, medication, infection control, personnel, and management of clinical records.

On May 13, 2021, the Governor of the State of New Hampshire issued Executive Order 2021-09, an order directing additional actions to address the mental health crisis in the State of New Hampshire. Specifically, the Governor directed “[t]he Department of Health and Human Services ... to create emergency administrative rules to immediately increase access to services in order to address the mental health crisis in the State of New Hampshire, including requirements for policies and standards by which a hospital must treat patients with mental health concerns. The Department of Health and Human Services is hereby authorized and directed to implement through their licensing rules, emergency administrative rules to clarify the roles New Hampshire hospitals have in caring for those patients who present at a hospital with mental health concerns, including a requirement for hospitals to be in compliance with RSA 135-C.”

The Department of Health and Human Services (Department) is proposing to amend various provisions in He-P 802.03 on definitions, He-P 802.14 on duties and responsibilities of all licensees, He-P 802.18 on required services, and He-P 802.34 on emergency services utilizing emergency rulemaking authorized under Governor Sununu’s Executive Order 2021-09 of May 13, 2021. By entering into emergency rulemaking and complying with Executive Order 2021-09, the Department will prevent the imminent peril to the public health or safety by immediately addressing the mental health crisis in the State of New Hampshire.

While there is no public hearing for emergency rulemaking, the Department will enter into regular rulemaking to permanently amend He-P 802.

9. A summary of the effect if the rule were not adopted.

If the proposed provisions of He-P 802 were not adopted, the State of New Hampshire would be unable to immediately begin addressing the mental health crisis through administrative rules, policies, and procedures. The COVID-19 pandemic has created a mental health crisis across the country, leading to substantial documented increases in depression or anxiety in adults, and increases in the number of adults and children going to emergency departments for mental health services. During the height of the COVID-19 pandemic, treatment options were limited, including a limitation on the number of emergency psychiatric beds and community-based services, which further exacerbated the growing mental health crisis. The negative repercussions of the COVID-19 pandemic have led to an increase in the number of individuals seeking treatment and with fewer community-based options available, there has been an increase in the number of individuals in need of an emergency psychiatric bed. Early on during the COVID-19 pandemic, there was no waitlist for patients in need of a bed at any state facility for those citizens necessitating mental health treatment. Given the present circumstances there is an urgent need for all partners in the mental health community to accelerate their work.

10. A description of those affected.

The proposed provisions of He-P 802 affect owners and operators of hospitals, individuals in mental health crisis, and families of these individuals.

Doc. # 13206 (6 pp, 5-14-21)
Expires: 11-10-21

PART He-P 802 RULES FOR HOSPITALS AND SPECIAL HEALTH CARE SERVICES

Amend He-P 802.03, effective 1-28-21 (Document #13166), by inserting new paragraph (af), and renumbering the existing paragraphs (af) through (ch) as (ag) through (ci), and amending paragraph (bf), formerly (be), so that He-P 802.03(af) and He-P 802.03(bf) read as follows:

He-P 802.03 Definitions.

(af) "Emergency Services" means those services rendered in accordance with RSA 151:2-g and includes emergency medical treatment of both physical and behavioral health concerns.

(bfe) "Neglect" means an act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional, or physical health and safety of any patient. For the purposes of this definition, minimum means to provide such medical treatment of a condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the individual's condition is likely to result until, and during, discharge or transfer from a facility.

Amend He-P 802.14, effective 1-28-21 (Document #13166), by amending paragraph (p) and inserting new paragraph (ad), so that He-P 802.14(p) and He-P 802.14(ad) read as follows:

He-P 802.14 Duties and Responsibilities of All Licensees.

(p) The licensee shall implement measures to ensure the safety and stabilizing treatment of patients who are assessed as an elopement risk or danger to self or others.

(ad) The licensee shall have written policies on the proper completion of an involuntary emergency admission certificate for those in need of mental health treatment that:

(1) Are in compliance with RSA 135-C and He-M 613; and

(2) Detail the medical screening examination and stabilizing treatment provided to patients with mental health needs.

Amend He-P 802.18, effective 1-28-21 (Document #13166), by amending paragraph (a) and (d), so that He-P 802.18(a) and (d) read as follows:

He-P 802.18 Required Services.

(a) Each licensee shall provide the services that have been disclosed on its application and have been approved for by the department, or are required by state or federal law.

(d) Each licensee shall ensure the availability of competent and sufficient personnel, with the required skills and experience, to provide the services in (a) and (b) above, ~~including personnel able to provide services for both physical and behavioral health concerns.~~

Amend He-P 802.34, effective 1-28-21 (Document #13166), by inserting new paragraph (d) and renumbering the existing paragraphs (d) through (h) as (e) through (i), so that He-P 802.34(d) reads as follows:

He-P 802.34 Emergency Services.

(d) An emergency department shall employ or contract with licensed practitioners in the field of psychiatry or psychology to meet the mental health needs of individuals who present in the emergency department for treatment.

Appendix

Rule	Specific State or Federal Statutes the Rule Implements
He-P 802.03(af) and (bf)	RSA 151:9,I(a) and (b)
He-P 802.14(p) and (ad)	RSA 151:9,I(a)
He-P 802.18(a) and (d)	RSA 151:9,I(a)
He-P 802.34(d)	RSA 151:9,I(a)