

MAY 28 2021

APPENDIX II-K
COVER SHEET FOR EMERGENCY RULE

ADOPTED RULE	
DOCUMENT #	13212
FILED	5-28-21 @ 11:53 AM
EFFECTIVE	5-28-21 @ 11:53 AM
EXPIRES	He-M 405 various Expires: 11-24-21

Document Number 13212

Rule Number _____

1. Agency Name & Address:
Dept. of Health and Human Services
Office of Client and Legal Services
105 Pleasant Street, Main Building
Concord, NH 03301

2. RSA Authority: RSA 135-C:26

3. Federal Authority: _____

4. Type of Action:

Adoption _____

Amendment X

Repeal _____

Readoption _____

Readopt with Amendment X

5. Date of Filing: **May 28, 2021**

6. Short Title: **Designation of Receiving Facilities**

7. Contact person for copies and questions:

Name: **Allyson Zinno**
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Administrative Rules Unit
129 Pleasant Street
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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: 5/28/2021

Signature: Lori Shubinette

Name: Lori A. Shubinette

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-M 405 outlines the standards and procedures for the designation and operation of designated receiving facilities (DRFs) for involuntary treatment for minors and adults with mental illness.

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.” Additionally, the Governor authorized and directed “[t]he Department of Health and Human Services to expand the number of Designated Receiving Facility (“DRF”) beds on an expedited basis. The Department of Health and Human Services is hereby authorized and directed to take lawful steps to ensure increased access and availability of community-based mental health services.”

The Department of Health and Human Services (Department) is proposing to amend and readopt with amendment various provisions in He-M 405 including He-M 405.03 on designation requirements, He-M 405.04 on application procedure and designation/redesignation criteria, He-M 405.05 on collaboration with community mental health program, He-M 405.06 on admission procedures, He-M 405.08 on discharge pursuant to voluntary admission, He-M 405.09 on discharge pursuant to involuntary emergency admission, He-M 405.10 on discharge pursuant to non-emergency involuntary admission, and He-M 405.14 on annual reporting. The Department is utilizing emergency rulemaking under the authorization of the Governor’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-M 405.

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

If the proposed provisions of He-M 405 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 youth, leading to increases in the number of adults and youth 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 a very small 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 and increase the number of psychiatric beds and options for care.

10. A description of those affected.

The proposed provisions of He-M 405 affect owners and operators of mental health facilities, individuals in mental health crisis, and families of these individuals.

Doc. #13212 (exp. 5-28-21)
Emergency Rule Expires: 11-24-21

PART He-M 405 DESIGNATION OF RECEIVING FACILITIES

Statutory Authority: RSA 135-C:26

Amend He-M 405.03, effective 1-28-14 (Document #10516), by amending paragraph (e), so that He-M 405.03(e) reads as follows:

He-M 405.03 Designation Requirements.

(e) A DRF shall maintain the inpatient capacity applied for and approved by the department at all times, except as provided in He-M 405.14(c).

Amend He-M 405.04, effective 1-28-14 (Document #10516), by amending paragraph (g), so that He-M 405.04(g) reads as follows:

He-M 405.04 Application Procedure and Designation/Redesignation Criteria.

(g) Upon completion of a review and site visit, the commissioner shall:

- (1) Designate or redesignate as a DRF those facilities which have been determined, pursuant to (f) above, to be in compliance with He-M 405 and all other applicable rules;
- (2) Conditionally designate or redesignate as a DRF for a period of up to 180 days, those facilities which have been determined, after considering the information gathered pursuant to (f) above, to be substantially in compliance with He-M 405 and all other applicable rules, provided that there is no indication the health or safety of clients is at risk; or
- (3) Deny designation or redesignation as a DRF to those facilities which have been determined, pursuant to (f) above, not to comply with He-M 405 and all other applicable rules.

Readopt with amendment He-M 405.05, effective 1-28-14 (Document #10516), to read as follows:

He-M 405.05 Collaboration with Community Mental Health Programs and non-CMHP Providers.

(a) For individuals engaged with a community mental health program (CMHP), a DRF shall:

- (1) Jointly develop with the CMHP all treatment plans, discharge plans, and referrals for clients whom they both serve;
- (2) Maintain consistent contact with the CMHP to ensure the CMHP is informed of the individual's progress while in the DRF;
- (3) Schedule an appointment for the individual with the CMHP to occur within 7 days after discharge;
- (4) Give notice to the CMHP of the individual's discharge prior to, or within no more than one hour after discharge; and
- (5) If an individual was previously receiving Assertive Community Treatment (ACT) services at a CMHP, a DRF shall ensure that an appointment with the CMHP is scheduled to occur within 48 hours after discharge.

(b) If an individual was not previously engaged with a CMHP, but is agreeable to engagement, a DRF shall inform the appropriate regional CMHP and facilitate the scheduling of an intake appointment to occur within 7 days after discharge.

(c) If an individual is engaged with non-CMHP providers, a DRF shall:

(1) Jointly develop with the non-CMHP providers all treatment plans, discharge plans, and referrals for the individual they both serve;

(2) Maintain consistent contact with the non-CMHP providers to ensure the providers are informed of the individual's progress while in the DRF; and

(3) Schedule appointments with the non-CMHP providers to occur within 7 days after discharge.

Amend He-M 405.06, effective 1-28-14 (Document #10516), by inserting new paragraph (c), so that He-M 405.06(c) reads as follows:

He-M 405.06 Admission Procedures.

(c) A DRF shall admit an individual waiting for IEA placement pursuant to RSA 135-C:28 or RSA 135-C:36-45 prior to admitting an individual waiting to be admitted voluntarily.

Amend He-M 405.08, effective 1-28-14 (Document #10516), by inserting new paragraph (g), so that He-M 405.08(g) reads as follows:

He-M 405.08 Discharge Pursuant to Voluntary Admission.

(g) A client's discharge plan shall include information about community supports such as peer support agencies and the availability of family support and education.

Amend He-M 405.09, effective 1-28-14 (Document #10516), by inserting new paragraph (d), so that He-M 405.09(d) reads as follows:

He-M 405.09 Discharge Pursuant to Involuntary Emergency Admission.

(d) A client's discharge plan shall include information about community supports such as peer support agencies and the availability of family support and education.

Amend He-M 405.10, effective 1-28-14 (Document #10516), by inserting new paragraph (e), so that He-M 405.10(e) reads as follows:

He-M 405.10 Discharge Pursuant to Non-emergency Involuntary Admission.

(e) A client's discharge plan shall include information about community supports such as peer support agencies and the availability of family support and education.

Readopt with amendment He-M 405.14, effective 1-28-14 (Document #10516), to read as follows:

He-M 405.14 Reporting Requirements.

(a) A DRF shall submit monthly client-level reporting to the department's bureau of mental health services, on or before the 15th day of the following month that includes the following client-level data:

- (1) Demographic information for all DRF admissions during the reporting period;
 - (2) Insurance information, inclusive of Medicaid ID numbers, as applicable;
 - (3) Admission and discharge data;
 - (4) Whether an individual was involuntary during any part of the admission period;
 - (5) Whether the individual was engaged with a CMHP upon admission; and
 - (6) Discharge disposition.
- (b) A DRF shall submit an aggregated annual report to the department's BMHS on or before July 31st of each year that includes the following information:
- (1) Total Medicaid funds received for DRF services;
 - (2) Average length of stay;
 - (3) Average monthly census;
 - (4) Total number of voluntary admissions; and
 - (5) Total number of involuntary admissions.
- (c) If a DRF is unable to maintain its designated inpatient capacity, the DRF shall notify the department, explain the reasons why the capacity cannot be met, and submit to the department for approval a plan of action as to how the DRF will obtain and maintain the capacity required by He-M 405.03(e).

APPENDIX

RULE	STATE OR FEDERAL STATUTES THE RULE IMPLEMENTS
He-M 405.03(e)	RSA 135-C:26, III
He-M 405.04(g)	RSA 135-C:26, III
He-M 405.05	RSA 135-C:26, III
He-M 405.06(c)	RSA 135-C:31, V; 48
He-M 405.08	RSA 135-C:17
He-M 405.09(d)	RSA 135-C:49-54
He-M 405.10(e)	RSA 135-C:26, III
He-M 405.14	RSA 135-C:26, III