

**Readopt with amendment He-M 526.01 through He-M 526.07, effective 7-1-16 (Document #11125), to read as follows:**

PART He-M 526 DESIGNATION OF RECEIVING FACILITIES FOR DEVELOPMENTAL SERVICES

Statutory Authority: RSA 171-A:20

He-M 526.01 Purpose. The purpose of these rules is to outline standards and procedures for the designation and operation of receiving facilities for voluntary and involuntary treatment of ~~individual's persons~~ with ~~intellectual developmental~~ disabilities.

He-M 526.02 Definitions.

(a) "Applicant" means ~~any that~~ legal entity which requests designation as a receiving facility.

(b) "Commissioner" means the commissioner of the department of health and human services, or ~~their his or her~~ designee.

~~(c)~~ "Comprehensive risk assessment" means an evaluation administered pursuant to He-M 503.09 (m)(11), using evidence-based tools to evaluate an individual's behaviors and determine the potential risks to the individual or others posed by said behaviors.

~~(d)~~ "Days" means calendar days unless otherwise specified.

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

~~(f)~~ "Designated receiving facility (DRF)" means a residential treatment program designated by the commissioner pursuant to RSA 171-A:20 and He-M 526 to provide care, custody, and treatment to ~~individual's persons~~ voluntarily and involuntarily admitted to the state developmental services system.

~~(g)~~ "Designation" means a decision by the commissioner that a facility that has not been operating as a DRF immediately prior to its application is approved to operate as a DRF pursuant to He-M 526.

~~(h)~~ "Individual" means a person who is receiving the services of a DRF and:

(1) ~~Receives services from a department-funded developmental services program~~ Is eligible for services pursuant to RSA 171-A; or

(2) Receives the services of a DRF pursuant to involuntary admission.

~~(i)~~ "Individual treatment plan" means a plan developed by the individual's treatment team to address the individual's clinical needs and the behavior or condition that creates a potential danger for others.

~~(j)~~ "Involuntary admission" means admission of ~~an individual a person~~ to a DRF on an involuntary basis per order of a probate court pursuant to RSA 171-B:12.

~~(k)~~ "Provider agency" means an agency or an independent provider that is established to provide services to individuals.

~~(l)~~ "Redesignation" means a decision by the commissioner that a DRF whose designation is effective and that has applied for redesignation is approved to continue to operate as a DRF pursuant to He-M 526.

(m) “Region” means a geographic area designated pursuant to He-M 505.054 for the purpose of providing services to individuals with developmental disabilities.

~~(k) “Risk assessment” means an evaluation administered pursuant to He-M 503.09 (d)(13) using evidence-based tools to evaluate an individual’s behaviors and determine the potential risks to the individual or others posed by said behaviors.~~

(n) “Risk management plan” means a person-centered document that describes the services, supports, approaches and guidelines to be utilized to meet the individual’s needs and mitigate risks to community safety and which is consistent with the service guarantees and protections articulated in He-M 503.

(o) “Service coordination agency” means a provider agency providing service coordination services to individuals and licensed pursuant to He-P 819.

#### He-M 526.03 Designation Requirements.

(a) Pursuant to RSA 171-A:20, a DRF shall be designated for one or more of the following purposes:

- (1) To receive individuals~~persons~~ for involuntary admission directly pursuant to a court order; and
- (2) To receive involuntarily admitted individuals~~persons~~ by transfer with the approval of the commissioner.

(b) In addition to the purposes identified in (a) above, a DRF may receive individuals~~persons~~ by voluntary admission if the DRF has the capacity to meet those individuals~~persons~~’ needs.

(c) A DRF shall comply with all requirements of these rules and He-M 310, He-M 503, He-M 504, He-M 506, He-M 507, ~~He-M 522~~, He-M 1001, He-M 1201 and any other applicable rules adopted by the commissioner.

(d) A DRF shall:

- (1) Provide services to individuals ~~clients~~ regardless of their ability to pay; and
- (2) Assure that all services are provided in the same manner and are of the same quality as services provided to other individuals ~~clients~~ pursuant to He-M 526.07.

He-M 526.04 Establishment of a State DRF. If the commissioner establishes a state-operated program as a DRF that has the administrative supports, clinical services, and security measures to meet the needs of individuals served in the facility, such DRF shall comply with the applicable provisions of He-M 526 through He-M 529.

#### He-M 526.05 Designation and Redesignation Process for a ~~Community~~ DRF.

(a) Application for designation or redesignation as a ~~community~~ DRF shall be made in writing to the commissioner by ~~an area agency or a provider agency~~subcontractor of an area agency, or through a request for proposals process established by the department, and include the following:

- (1) The name and address of the applicant;

- (2) The physical location of the DRF;
- (3) A statement describing the capacity of the applicant to provide services pursuant to this chapter;
- (4) A description of staffing patterns and staff qualifications, including clinical staff, that demonstrates compliance with He-M 526.06;
- (5) A description of all programs and services operated by the applicant, including services to be available through the proposed DRF; and
- (6) A description of unmet service needs that the proposed DRF would address.

(b) An application for designation or redesignation shall include documentation demonstrating that the DRF is eligible for licensure by the department in accordance with RSA 151 and certification as a community residence pursuant to He-M 1001, as applicable.

(c) Application for redesignation shall be submitted by a ~~community~~ DRF to request redesignation or to alter the service capacity or type of services a DRF is designated to provide.

(d) Application to request redesignation shall be submitted to the commissioner at least 2 months prior to the expiration date of the DRF's designation.

(e) Submission of an application pursuant to (d) above shall cause the DRF's current designation to be effective until the commissioner issues a decision pursuant to (h) below.

~~—(f) The commissioner shall assign staff to review the application materials and conduct a site visit of a program proposed for designation or redesignation.~~

~~(fg) The department shall review application materials, and complete a site visit, pursuant to (f) above shall be completed within 60 days of the date of receipt of application and shall make result in a determination of the compliance or non-compliance of the DRF with He-M 526, He-M 310, He-M 503, He-M 504, He-M 506, He-M 507, He-M 522, He-M 1001, He-M 1201, and all other applicable department rules, within 60 days of the date of receipt of application.~~

~~—(h) Within 10 days of completion of a review and site visit pursuant to (f) and (g) above, the commissioner shall:~~

~~(1) Designate or redesignate as a DRF those facilities that have been determined to be in compliance with He M 526 and all other applicable rules; or~~

~~(2) Deny designation or redesignation as a DRF to those facilities that have been determined not to comply with He-M 526 or any other applicable rules.~~

~~(g)~~ The commissioner shall notify an applicant in writing upon approval or denial of application for designation or redesignation.

~~(h)~~ Designation or redesignation shall be effective for one year from the date that notification is sent.

~~(i)~~ A DRF shall be designated or redesignated to provide only those services described by the applicant pursuant to (a) above and those required pursuant to He-M 526.07.

~~(j)~~ Notification of a decision to deny designation or redesignation shall occur pursuant to He-M 526.09(a).

He-M 526.06 Staffing.

- (a) Staff of a DRF shall include:
- (1) A DRF administrator who shall be responsible for the overall operation of the DRF;
  - (2) A clinical director who shall be responsible for all services provided to individuals admitted to the DRF; and
  - (3) Such clinicians as are necessary to meet the treatment needs of the individuals served.
- (b) Clinicians working at a DRF may be employed on a full-time, part-time, or consultant basis.
- (c) Professional staff of a DRF who provide psychotherapy shall meet the requirements of He-M 426.08.

He-M 526.07 Services to be Provided.

- (a) The following shall be basic services available to all individuals served at a DRF:
- (1) Psychological and other clinical evaluations, including alcohol or substance abuse evaluations, as determined necessary by an individual's licensed treating clinicians;
  - (2) Medical monitoring and medication administration in accordance with He-M 1201;
  - (3) Individual and group therapeutic services directed toward addressing each individual's presenting behaviors of concern and treatment goals~~problem behaviors~~;
  - (4) Case coordination provided by DRF staff, including individual evaluation, individual treatment planning, discharge planning, and linkage with appropriate community services;
  - ~~(5) Case management provided by area agency staff;~~
  - ~~(56)~~ A functional assessment of each individual's community and independent living skills; and
  - ~~(67)~~ Instruction in community and independent living skills to prepare each individual for discharge, as specified in the individual's treatment plan.
- (b) A DRF shall have adequate facilities to:
- (1) Meet the treatment needs of the individuals served, including provision of specialized evaluation and treatment;
  - (2) Afford all individuals access to all programs, services, and physical facilities of the DRF in accordance with the Americans with Disabilities Act; and
  - (3) Provide services such that language barriers are overcome.
- (c) A DRF shall have an interagency agreement with the service coordination agency or area agency in the individual's region of origin or other area agency as agreed to in the person-centered service planning process. Such an agreement shall address the responsibilities of the DRF and the service coordination agency or area agency including, at a minimum:
- (1) Service~~Treatment~~ planning in accordance with He-M 503;

- (2) Comprehensive ~~R~~risk assessment administration;
- (3) Risk management plan development; and
- (4) Discharge planning responsibilities of the service coordinator or area agency and DRF.

(d) A comprehensive risk assessment shall be administered for each individual immediately prior to, or no more than within 30 days after, admission to a DRF, and a risk management plan shall be developed by the area agency or the service coordination agency based on the risk assessment.

(e) A DRF shall adopt policies and procedures governing seclusion and restraint that shall be consistent with He-M 310.

(f) A DRF shall adopt policies and procedures for a multi-level review for the development of recommendations for absolute and conditional discharges. Such policies and procedures shall specify the nature and extent of participation by clinical staff in the multi-level reviews.

(g) A DRF shall provide ongoing contact with individuals on conditional discharge status from the DRF and assist the area agency or service coordination agency responsible for supporting the individual on conditional discharge to facilitate the success of the discharge plan.

**Repeal He-M 526.08, effective 7-1-16 (Document #11125), as follows:**

~~He M 526.08 Safety Procedures.~~

~~(a) A DRF shall have written procedures:~~

- ~~(1) Regarding supervision levels and the monitoring of individuals, including the use of electronic or other security devices;~~
- ~~(2) For accessing police and fire department and emergency medical technician (EMT) services; and~~
- ~~(3) For the investigation, review, and remediation of accidents, injuries, and safety hazards.~~

~~(b) A DRF shall have an emergency evacuation plan that ensures the rapid evacuation of the facility in the event of fire or other life threatening emergencies.~~

~~(c) A DRF shall house non-ambulatory individuals in wheelchair accessible areas only, consistent with the Americans with Disabilities Act.~~

~~(d) A community DRF shall have comprehensive liability insurance against all claims of bodily injury, death, or property damage in amounts not less than \$250,000 per claim and \$2,000,000 per incident.~~

**Readopt with amendment and renumber He-M 526.09 through He-M 526.12, effective 7-1-16 (Document #11125), as He-M 526.08 through He-M 526.11 to read as follows:**

He-M 526.08<sup>9</sup> Denial and Revocation of Designation.

(a) Application for designation shall be denied or designation shall be revoked, following written notice and opportunity for a hearing pursuant to He-M 526.11, due to:

- (1) Failure to maintain the necessary license or certification pursuant to RSA 151 or He-M 1001;

- (2) Failure to comply with these rules or any applicable department rule;
  - (3) The DRF administrator or applicant failing to provide information requested by the department or knowingly giving false or misleading information to the department;
  - (4) Refusal by DRF staff to admit any employee of the department of health and human services authorized to monitor or inspect the facility in accordance with He-M 1001.14;
  - (5) Any reported abuse, neglect, or exploitation of an individuals by DRF personnel, if:
    - a. Such abuse, neglect, or exploitation is reported on the state registry of abuse, neglect, and exploitation in accordance with RSA 161-F:49 or RSA 169-C:35;
    - ba. Such personnel ~~continues to have contact with the~~ have not been prevented from having individual contact; and
    - cb. Such ~~finding has not been overturned on appeal, been annulled, or received a waiver pursuant to He-M 526. 12; abuse, neglect, or exploitation is founded based on a protective investigation performed by the department in accordance with He E 700 and an administrative hearing held pursuant to He C 200, if such a hearing is requested;~~
  - (6) Felony conviction of any staff member of the DRF;
  - (7) Misdemeanor conviction of any staff member of the DRF involving:
    - a. Physical or sexual assault;
    - b. Violence;
    - c. Exploitation;
    - d. Child pornography;
    - e. Threatening or reckless conduct;
    - f. Driving under the influence of drugs or alcohol;
    - g. Theft; or
    - h. Any other conduct that represents evidence of behavior that could endanger the well-being of an individual; or
  - (8) Any illness or behavior of an applicant or program staff member that, as evidenced by the documentation obtained or and the observations made by the department, would endanger the individuals' well-being or prohibit the DRF from complying with He-M 526 or other applicable rules, except in cases where such program staff have been re-assigned and the individuals' well-being and the DRF's ability to comply with these rules are no longer at risk.
- (b) Revocation shall only occur following:
- (1) Provision of 30 days' written notice by the commissioner to the DRF of the specific rule(s) with which that DRF does not comply; and
  - (2) Opportunity, pursuant to He-M 526.10~~1~~<sup>+</sup>, for the DRF to show compliance.

(c) If, after notice and opportunity for hearing, the commissioner determines that a DRF meets any of the criteria for revocation listed in (a)(1)-(8) above, the commissioner shall revoke the designation of that program.

(d) The commissioner shall withdraw a notice of revocation if, within the notice period, the DRF complies with the specified rule(s).

(e) Pending compliance with all requirements for designation specified in written notice made pursuant to (b)(1) above, a DRF shall not accept additional individuals if a notice of revocation has been issued concerning a violation that poses potential danger to the health or safety of the individuals.

#### He-M 526.09+0 Emergency Suspension of Designation.

(a) If the commissioner finds at any time that the health, safety, or welfare of individuals or the public is endangered by the continued operation of a ~~community~~ DRF, the commissioner shall suspend that facility's designation immediately upon written notice specifying the reasons for the action.

(b) A suspension shall be effective upon issuance.

(c) At the time that the commissioner suspends the designation of a DRF, the commissioner shall schedule, and give the DRF written notice of, a hearing to be held within 10 ~~business working~~ days.

(d) The written notice in (c) above shall include if the provider agency is permitted to continue to provide services during a suspension period.

~~(e)~~ The purpose of the hearing referenced in (c) above shall be to determine whether the DRF in fact posed an immediate and serious threat to the health and safety of the individuals residing in the DRF or the public at the time its designation was suspended.

~~(f)~~ The DRF shall also be afforded the opportunity to show that since the time that its designation was suspended it has come into compliance with all applicable rules adopted by the commissioner and no longer poses an immediate and serious threat to the health or safety of the individuals residing in the DRF or the public.

#### He-M 526.10+ Hearings.

(a) An applicant or DRF shall have the right to request a hearing regarding a proposed revocation or denial of designation, ~~except that hearings on emergency suspension of designation shall be mandatory.~~

(b) Hearings shall be held in accordance with RSA 541-A and He-C 200.

#### He-M 526.11~~2~~ Waivers.

(a) An applicant or DRF may request a waiver of specific procedures outlined in He-M 526 by ~~applying via working with the area agency to complete and submit~~ the form titled "NH Bureau of Developmental Services Waiver Request" (~~October 2023~~September 2013 ~~edition~~).

(b) A completed waiver request form submitted by an applicant or DRF shall be signed by the provider agency's executive director or designee recommending approval of the waiver, when the waiver is requested by a provider agency.;

~~(1) The individual, guardian, or representative indicating agreement with the request; and~~

~~(2) The area agency's executive director or designee recommending approval of the waiver.~~

(c) A waiver request shall be submitted to the department via:

(1) Email at [bds@dhhs.nh.gov](mailto:bds@dhhs.nh.gov);

(2) Fax to (603) 271-5166; or

(3) By Mail to:

Bureau of Developmental Services  
Hugh J. Gallen State Office Park  
105 Pleasant Street, Main Building  
Concord, NH 03301

Office of Client and Legal Services  
State Office Park South  
105 Pleasant Street, Main Building  
Concord, NH 03301

(d) No provision or procedure prescribed by statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or within 30 days if the alternative proposed by the requesting entity-applicant or DRF meets the objective or intent of the rule and it:

(1) Does not negatively impact the health or safety of the individual(s); and

(2) Does not negatively affect the quality of services to individuals.

~~—(f) The determination on the request for a waiver shall be made within 30 days of the receipt of the request.~~

~~(fg)~~ Upon receipt of approval of a waiver request, the applicant's or DRF's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered in compliance with the rule for which waiver was sought.

~~(gh)~~ Waivers shall be granted in writing for a specific duration not to exceed 5 years except as in ~~(ih)~~ below.

~~(hj)~~ Any waiver shall end with the closure of the related program or service.

~~(ij)~~ An applicant or DRF may request a renewal of a waiver from the department in accordance with (a) through (c) above. Such request shall be made at least 90 days prior to the expiration of a current waiver.

## APPENDIX B

| RULE                      | SPECIFIC STATE STATUTES WHICH THE RULE IMPLEMENTS |
|---------------------------|---------------------------------------------------|
| He-M 526.01 – He-M 526.11 | RSA 171-A:3; RSA 171-A:20; RSA 541-A:11, IV       |