

Readopt with amendment He-M 527, effective 7-1-16 (Document #11125), to read as follows:

PART He-M 527 ADMISSION TO AND DISCHARGE FROM A DEVELOPMENTAL SERVICES DESIGNATED RECEIVING FACILITY

Statutory Authority: New Hampshire RSA 171-A:3, RSA 171-A:8-a

He-M 527.01 Purpose. The purpose of these rules is to establish criteria and procedures for admission to and discharge from a developmental services designated receiving facility (DRF).

He-M 527.02 Definitions.

(a) “Bureau administrator” means the chief administrator of the bureau of developmental services.

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

(c) “Conditional discharge” means the release of ~~an individual a person~~ from a designated receiving facility (DRF) during a period of court-ordered involuntary admission on the condition that the ~~individual person~~ complies with specific provisions of community-based treatment or is subject to readmission to the DRF.

(d) “Department” means the New Hampshire department of health and human services.

(e) “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 ~~individuals persons~~ voluntarily and involuntarily admitted to the state developmental services system.

(f) “DRF administrator” means the staff member responsible for the overall operation of a designated receiving facility, or his or her designee.

(g) “Individual” means a person who is receiving the services of a DRF and:

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

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

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

(i) “Least restrictive alternative” means the program or service which least inhibits ~~an individual’s a person’s~~ freedom of movement and participation in the community and accommodates the ~~individual’s person’s~~ informed decision-making while achieving the purposes of treatment.

(j) “Physician” means a medical doctor licensed to practice in New Hampshire.

(k) “Probate court” means the state court which has authority to preside over civil commitment and guardianship proceedings.

(l) “Voluntary admission” means admission to a DRF subsequent to the documented consent of the ~~individual person~~ being admitted or ~~their his or her~~ legal guardian.

He-M 527.03 Admission to a DRF.

- (a) Pursuant to RSA 171-B:2, ~~an individual~~~~a person~~ shall be involuntarily admitted when:
- (1) The ~~individual~~~~person~~ has been charged with a felony involving serious bodily injury or the use of a deadly weapon, or with aggravated felonious sexual assault other than pursuant to RSA 632-A:2, I(h), or with felonious sexual assault, or with arson pursuant to RSA 634:1, II or III;
 - (2) A district court, superior court, or grand jury has found that probable cause exists that the ~~individual~~~~person~~ committed a felony as set forth in (1) above;
 - (3) The ~~individual~~~~person~~ is determined to be not competent to stand trial;
 - (4) The ~~individual~~~~person~~ has an intellectual disability, as defined in the most current edition of the Diagnostic Manual-Intellectual Disability developed by the National Association for the Dually Diagnosed in association with the American Psychiatric Association; and
 - (5) The ~~individual~~~~person~~ has a condition or behavior as a result of which the ~~individual~~~~person~~ poses a potentially serious likelihood of danger to others or a potentially serious threat of engaging in acts which would constitute arson as evidenced by a specific act or actions which may include such act or actions giving rise to the felony charge according to RSA 171-B:2, I.
- (b) Involuntary admissions shall not occur unless ordered by a probate court pursuant to RSA 171-B:12.
- (c) A DRF shall not refuse admission of ~~an individual~~~~a person~~ sent to such DRF pursuant to RSA 171-B.
- (d) ~~An individual~~~~A person~~ may be admitted to a DRF on a voluntary basis provided that:
- (1) The ~~individual~~~~person~~ ~~is eligible for services in accordance with He-M 503; receives services through an area agency;~~
 - (2) The ~~individual~~~~person~~ or ~~their~~ ~~his or her~~ guardian has provided a written document agreeing to the ~~individual's~~~~person's~~ placement at the DRF;
 - (3) The DRF has the capacity to meet the ~~individual's~~~~person's~~ needs; and
 - (4) The DRF is the least restrictive, most appropriate setting to meet the ~~individual's~~~~person's~~ needs and the placement has been approved by the individual's area agency human rights committee.

He-M 527.04 Transfers to or from a DRF.

- (a) A DRF may accept the transfer of ~~an individual~~~~a person~~ who is admitted to the secure psychiatric unit pursuant to RSA 171-B, in accordance with RSA 622:48, I(b).
- (b) A DRF may transfer ~~an individual~~~~a person~~ admitted to the DRF pursuant to RSA 171-B, to the secure psychiatric unit pursuant to RSA 171-B:15, I, RSA 622:45, and He-M 611.
- (c) Transfers from one DRF to another shall be conducted in accordance with He-M 529.
- (d) Transfers from a DRF for medical treatment or security reasons shall be conducted in accordance with He-M 529.

He-M 527.05 Discharge of an Individual Involuntarily Admitted.

(a) If an individual is admitted to a DRF subsequent to an involuntary admission, such involuntary admission shall not continue beyond the time allowed by the probate court order.

(b) Pursuant to RSA 171-A:21, any individual involuntarily admitted to a DRF pursuant to RSA 171-B, or conditionally discharged pursuant to RSA 171-B, may be granted absolute discharge by the DRF administrator most recently providing services if the bureau administrator, or their designee:

(1) After reviewing the individual's situation, has consented to the discharge; and

(2) Has determined that an absolute discharge will not create a potentially serious likelihood of danger to others or substantial damage to real property.

(c) Upon the absolute discharge of any individual from a DRF pursuant to He-M 527.06(b), the DRF administrator shall immediately, and in writing, notify the individual's legal guardian, if applicable, the probate court entering the original order of commitment, and the attorney general that an absolute discharge has been granted to the individual.

(d) Any individual who has been involuntarily admitted to a DRF may be conditionally discharged under the conditions specified in He-M 528.

He-M 527.06~~5~~ Discharge of an Individual~~a Person~~ Voluntarily Admitted.

(a) If ~~an individual~~~~a person~~ is at a DRF on a voluntary basis, ~~they~~~~he or she~~, or ~~their~~~~his or her~~ legal guardian may request withdrawal from the DRF whether or not such withdrawal is made against the advice of the DRF treatment staff.

(b) ~~An individual~~~~A person~~ or legal guardian of ~~an individual~~~~a person~~ who wishes to withdraw shall state such intent in writing to ~~staff of~~ the DRF.

(c) The time and date of receipt of a notice of intent to withdraw shall be indicated on the notice, if applicable, and in the ~~individual's~~~~person's~~ medical record.

~~— (d) A person who has requested withdrawal or whose legal guardian has requested withdrawal shall be discharged by a DRF within 24 hours of receipt of such request, excluding weekends and holidays.~~

~~(de)~~ ~~A person~~~~An individual~~ admitted to the DRF on a voluntary basis may be discharged without requesting it if the staff of the DRF determine that the ~~individual's~~~~person's~~ needs can be met in a less restrictive setting ~~and in accordance with He-M 310.10(c).~~

~~He-M 527.06 Discharge of a Person Involuntarily Admitted.~~

~~— (a) If a person is admitted to a DRF subsequent to an involuntary admission, such involuntary admission shall not continue beyond the time allowed by the probate court order.~~

~~— (b) Pursuant to RSA 171-A:21, any person involuntarily admitted to a DRF pursuant to RSA 171-B, or conditionally discharged pursuant to RSA 171-B, may be granted absolute discharge by the DRF administrator most recently providing services if the bureau administrator, or his or her designee:~~

~~(1) After reviewing the person's situation, has consented to the discharge; and~~

~~(2) Has determined that an absolute discharge will not create a potentially serious likelihood of danger to others or substantial damage to real property.~~

~~— (c) Upon the absolute discharge of any person from a DRF pursuant to He-M 527.06(b), the DRF administrator shall immediately, and in writing, notify the person's legal guardian, if any, the probate court entering the original order of commitment, and the attorney general that an absolute discharge has been granted to the person.~~

~~— (d) Any person who has been involuntarily admitted to a DRF may be conditionally discharged under the conditions specified in He-M 528.~~

He-M 527.07 Waivers.

(a) A DRF may request a waiver of specific procedures outlined in He-M 527 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;

(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 within 30 days if the alternative proposed by the requesting entity ~~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 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.

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

(~~ij~~) A 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 527.01	RSA 171-A:3
He-M 527.02	RSA 171-A:3
He-M 527.03	RSA 171-B:2
He-M 527.04	RSA 171-A:8-a
He-M 527.05 (formerly He-M 527.06)	RSA 171-A:21
He-M 527.06 (formerly He-M 527.05)	RSA 171-A:3
He-M 527.07	RSA 171-A:3; RSA 541-A:22, IV