

Readopt with amendment He-M 528, effective 7-1-16 (Document #11125), to read as follows:

PART He-M 528 CONDITIONAL DISCHARGE FROM A DESIGNATED RECEIVING FACILITY FOR DEVELOPMENTAL SERVICES

Statutory Authority: RSA 171-A:21-24; 171-B:16

He-M 528.01 Purpose. The purpose of these rules is to define the criteria and procedures for conditional discharge of an individual~~a person~~ involuntarily admitted to a designated receiving facility (DRF) and for the revision and revocation of the conditional discharge.

He-M 528.02 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 a person~~an individual~~ from a designated receiving facility (DRF) during a period of court ordered involuntary admission on the condition that the ~~person~~ individual comply with specific provisions of community-based treatment or be 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 as a receiving facility by the commissioner pursuant to RSA 171-A:20 and He-M 526 to provide care, custody, and treatment to ~~persons~~individuals 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 their~~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) “Informed decision” means a choice made voluntarily by a resident of a DRF or, where appropriate, such ~~person’s~~individual’s legal guardian, after all relevant information necessary to making the choice has been provided, when:

(1) The individual~~person~~ understands that they are~~he or she is~~ free to choose or refuse any available alternative;

(2) The individual~~person~~ clearly indicates or expresses their~~his or her~~ choice; and

(3) The choice is free from all coercion.

(i) “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.

(j) “Law enforcement officer” means “officer” as defined in RSA 594:1, III.

(k) “Treatment team ~~member~~” means the a persons who shares ongoing responsibility for the care and treatment of an individual.

He-M 528.03 Grant of Conditional Discharge.

(a) A recommendation for conditional discharge of ~~a person~~ an individual shall be made by the DRF administrator to the bureau administrator only after the following actions have been taken:

(1) A multi-level review has occurred that:

a. Incorporates:

1. Clinical input; and

2. ~~Individual~~ Input from the individual and people chosen by the individual, if applicable; and

~~3. With the consent of the individual or his or her guardian, the individual's family's input; and~~

b. Involves DRF staff and the staff of the accepting area agency or provider agency; and

(2) The DRF staff and accepting area agency ~~concur~~ that the supervision, treatment, and other services that the individual needs can be provided by the accepting area agency; ~~and~~

~~(3) The executive director of the area agency where the individual will reside following conditional discharge has certified that the supervision, treatment, and other services that the individual requires will be provided.~~

(b) The DRF administrator shall, with the prior approval of the bureau administrator, grant a conditional discharge to an individual ~~person~~ who has been involuntarily admitted to the DRF pursuant to RSA 171-B:12 when the following criteria have been met:

(1) The ~~individual's~~ person's potential for danger to others can be adequately mitigated through provision of ongoing care including environmental modifications and staff supervision;

(2) A recommendation for conditional discharge of the individual ~~person~~ has been made in accordance with the procedures in (a) above; and

(3) The individual ~~person~~ makes an informed decision to agree to the conditions and terms of conditional discharge, including any requirement for participation in continuing treatment in the community, and agrees to be subject to the provisions of RSA 171-A:23 and He-M 528.

(c) Prior approval shall be given verbally or in writing, after consideration of the facts upon which the conditional discharge was based, if the bureau administrator determines that the criteria identified in (b) above have been met.

(d) The DRF administrator shall:

(1) Inform the ~~person~~ individual and ~~his or her~~ their guardian, if any, orally and in writing, in clear and understandable language, of:

a. The terms and conditions of discharge; and

b. The criteria and process for revocation of conditional discharge; and

- (2) Document the ~~person's~~ individual's consent to the elements discussed pursuant to (1) above.
- (e) The term of conditional discharge of ~~aan individual person~~ from a DRF granted under He-M 528 shall not exceed the period of time remaining on the individual's ~~person's~~ order of involuntary admission made pursuant to RSA 171-B:12.
- (f) A conditional discharge may be:
 - (1) Made absolute in accordance with He-M 528.04;
 - (2) Revised in accordance with the provisions of He-M 528.06; or
 - (3) Revoked in accordance with He-M 528.07.

He-M 528.04 Grant of Absolute Discharge.

(a) The administrator of a DRF from which ~~an individual a person~~ has been conditionally discharged shall grant to such ~~person individual~~ an absolute discharge:

~~(1) At the end of the term of the conditional discharge unless:~~

~~a. The discharge has been revoked previously in accordance with RSA 171-A:23 and He-M 528.07; or~~

~~b. Another order of involuntary admission of the person has been made pursuant to RSA 171-B:12; or~~

~~(2) When the bureau administrator has reviewed the situation and determined that an absolute discharge will not create a potentially serious likelihood of danger to others or a potentially serious likelihood of substantial damage to real property.~~

(b) A notice of absolute discharge shall be given verbally or in writing, in clear and understandable language, after consideration of the facts upon which the absolute discharge was based, if the bureau administrator determines that the criteria identified in (a)(1) or (2) above have been met.

(c) The DRF administrator shall, in writing, immediately notify the court that made the original order of involuntary admission pursuant to RSA 171-B:12 and the attorney general that the ~~person individual~~ has been granted an absolute discharge.

He-M 528.05 Transfer to Another DRE. ~~An individual A person~~ who so consents may be transferred from one DRF to another for the purpose of being conditionally discharged. Such a transfer shall be in accordance with He-M 529 and RSA 171-B:15, II.

He-M 528.06 Revision of Conditions of Discharge from a DRF. The term and conditions of a conditional discharge granted pursuant to He-M 528.03 may be revised at any time in accordance with the following procedures:

(a) The revisions shall be proposed by the area agency or provider agency serving the ~~person individual~~ conditionally discharged, the ~~individual person~~ conditionally discharged, or the DRF from which the ~~individual person~~ was conditionally discharged by forwarding a written request from the proposing party to the other parties;

(b) The DRF administrator shall immediately inform the bureau administrator of any proposed revisions of the discharge conditions;

(c) The ~~person's-individual's~~ treatment team shall meet to consider and make a recommendation regarding the proposed revisions;

(d) Any proposed revisions shall be in writing and be signed by:

(1) The ~~person-individual~~ subject to the conditional discharge;

(2) The guardian, if any;

(3) The DRF administrator; and

(4) The area agency or provider agency executive director or designee;

(e) The bureau administrator shall approve the revision after consideration of the facts upon which the revisions were based if they he or she determines that the criteria identified in He-M 528.03 (b)(1) and (3) and (c)–(d) above have been met;

(f) Upon approval by the bureau administrator, the revised conditions shall become effective until such time as:

(1) The order of involuntary admission expires;

(2) The conditional discharge is revoked or revised; or

(3) The individual is absolutely discharged; and

(g) Copies of the revised conditions shall be filed in the ~~person's-individual's~~ clinical record at the ~~area-agency~~service coordination agency and provided to:

(1) The ~~individual~~person;

(2) The guardian, if any; and

(3) The DRF from which the ~~individual~~person was conditionally discharged.

He-M 528.07 Revocation of Conditional Discharge.

(a) An executive director or designee of an area agency providing continuing treatment to ~~an individual-person~~ conditionally discharged pursuant to He-M 528.03 shall, after the review conducted pursuant to He-M 528.07 (b) and (c) below, temporarily revoke ~~an individual's-a-person's~~ conditional discharge if it is determined that:

(1) The person has violated a condition of the discharge; and

(2) A condition or behavior exists as a result of which the ~~individual~~person might pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property.

(b) Before temporarily revoking a conditional discharge pursuant to He-M 528.07 (a), the area agency or provider agency executive director or designee shall conduct a review of the acts, behavior, or condition of the ~~person-individual~~ to determine if one of the criteria set forth in He-M 528.07 (a) is met.

(c) Prior to the review, in (b) above, the ~~individual person~~ shall be given written and oral notice of the ~~claim~~ belief, and the specific reasons therefor, that a violation of a condition of the discharge has occurred or that a condition or behavior exists which may result as a result of which the person might pose in a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property, and the person has been given an opportunity to provide information to the area agency administrator as to why the revocation should not occur.

(d) If the ~~individual person or guardian, as applicable~~, refuses to consent to the review authorized by He-M 528.07 (b), the executive director or ~~other representative~~ designee of the area agency may sign a complaint to compel review.

(e) Upon issuance of a complaint pursuant to (d) above, any law enforcement officer shall be authorized and directed, pursuant to RSA 171-A:23, IV, to take custody of the ~~individual person~~ and immediately deliver them ~~him or her~~ to the place for review specified in the complaint.

(f) Following the review conducted pursuant to (b) above, the area agency executive director or designee shall:

- (1) Temporarily revoke the conditional discharge if they ~~he or she~~ finds that a violation of a condition of the discharge has occurred or that a condition or behavior exists as a result of which the ~~individual person~~ might pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property;
- (2) Identify the DRF to which the ~~individual person~~ is to be delivered;
- (3) Inform the ~~individual person or guardian, as applicable~~, in writing of the specific reasons for the revocation and the receiving facility to which the ~~individual person~~ is to be delivered;
- (4) ~~Direct~~ Notify a law enforcement officer to take custody of the ~~individual person~~ and deliver the ~~individual person~~ to the identified receiving facility; and
- (5) Notify the DRF administrator immediately by telephone of the temporary revocation.

(g) The law enforcement officer who takes custody of the ~~person-individual~~ whose conditional discharge has been temporarily revoked shall, pursuant to RSA 171-A:23, IV, deliver the ~~individual person~~, together with a copy of the notice of, and reasons for, the temporary revocation of the conditional discharge, to the DRF identified in accordance with (f) above.

(h) Within 48 hours of the arrival at a DRF identified in accordance with (f) above of ~~an individual a person~~ whose conditional discharge has been temporarily revoked, the area agency shall deliver or cause to be delivered to the DRF a copy of the court order of involuntary admission and a copy of the terms of the conditional discharge.

(i) The administrator, or clinical director if designated by the administrator, of the DRF to which ~~an individual a person~~ has been returned shall:

- (1) Review the reasons for temporary revocation of the conditional discharge with the individual; and
- (2) Revoke absolutely the conditional discharge if the temporary revocation documents that:
 - a. The ~~individual person~~ has violated a condition of the discharge; or

b. A condition or behavior exists as a result of which the ~~individual~~~~person~~ might pose a potentially serious likelihood of danger to others, themselves or a potentially serious threat of substantial damage to real property.

(j) Within 72 hours, excluding holidays, of delivery of ~~an individual~~~~a person~~ to a DRF pursuant to (g) above:

(1) A review pursuant to (i)(1) above shall be completed; and

(2) An administrator's decision pursuant to (i)(2) above shall be made.

(k) The DRF administrator shall immediately provide written notice of the following to an individual~~a person~~ whose conditional discharge has been absolutely revoked:

(1) The reason for the revocation; and

(2) The ~~individual's~~~~person's~~ right to appeal and right to legal counsel as set forth in He-M 528.08.

~~(l) Immediately upon absolute revocation, the DRF shall notify the attorney designated by the department pursuant to He-M 528.08 (e) to provide counsel to the individual regarding his or her right to appeal and his or her right to be represented by an attorney.~~

~~(lm)~~ The ~~individual~~~~person~~ whose conditional discharge has been absolutely revoked shall be admitted to the DRF identified in accordance with (f) above and be subject to the terms and conditions of the order of involuntary admission made pursuant to RSA 171-B:12 as if such conditional discharge had not been granted.

~~(mn)~~ Following the revocation of a conditional discharge, the treatment team shall reconvene to consider revised terms or alternative supports, services, and treatment that might allow for a subsequent conditional discharge.

~~(ne)~~ Following a review pursuant to (b) above or; an examination and review pursuant to (i)(1) above, ~~or an appeal pursuant to He-M 528.08~~, if it is determined that the conditions for temporary revocation of conditional discharge identified in (a)(2) or (i)(2) above do not apply, the person shall:

(1) Promptly be returned by the DRF to the location where they were ~~he or she was~~ taken into custody; and

(2) Be subject to the term and provisions of conditional discharge that were in effect prior to the temporary revocation of the conditional discharge.

He-M 528.08 Appeal of Revocation.

(a) ~~An individual~~~~A person~~ whose conditional discharge has been absolutely revoked pursuant to He-M 528.07 (i) may appeal the decision to the bureau administrator, notwithstanding the consent of the ~~individual's~~~~person's~~ guardian, if any. The ~~individual~~~~person~~ may request assistance from the DRF in effecting the appeal.

(b) The appeal request shall:

(1) Be in writing;

(2) State whether or not assistance of legal counsel is requested at such a hearing;

(3) State whether or not the person is able to pay for legal counsel if the assistance of counsel is requested; and

(4) Include such information related to the basis for the appeal as the person, at the time, elects to offer.

(c) The ~~DRF individual~~ shall submit the appeal to the bureau administrator together with copies of all notices provided to the ~~individual person~~ pursuant to He-M 528.07 and any other information relevant to the reasons for absolute revocation of the conditional discharge.

(d) If a hearing is requested, the hearing shall be conducted in accordance with ~~He-M 202.08 and~~ He-C 200, and shall occur within 5 days, excluding weekends and holidays, of the receipt of the request for hearing.

(e) The bureau administrator shall obtain legal counsel for any ~~individual person~~ who requests a hearing on the appeal and requests legal counsel.

(f) Following a hearing, the bureau administrator shall, within 3 working days, decide if the ~~individual person~~ either has violated a condition of the discharge or if a condition or behavior exists as a result of which the ~~individual person~~ might pose a potentially serious likelihood of danger to others or a potentially serious threat of substantial damage to real property.

(g) In reaching a decision, the bureau administrator shall only consider evidence presented at the hearing.

(h) The burden shall be upon the administrator of the DRF who absolutely revoked the conditional discharge to establish that the criteria for absolute revocation of the conditional discharge are met by clear and convincing evidence.

(i) The decision made by the bureau administrator shall be in writing, state the reasons for the decision, and be sent promptly to the ~~individual person or guardian, as applicable,~~ appealing, ~~his or her their~~ legal counsel, if any, and the DRF and area agency that initiated the process to revoke the conditional discharge of the ~~individual person~~.

He-M 528.09 Waivers.

(a) A DRF or area agency may request a waiver of specific procedures outlined in He-M 528 by 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:

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

(2) The DRF and area agency’s executive director or designee recommending approval of the waiver, when the waiver is requested by a provider agency.~~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

~~A waiver request shall be submitted to:~~

~~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 or area agency's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered 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 ~~(hi)~~ below.

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

~~(ij)~~ A DRF or area agency 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 528.01	RSA 171-A:3
He-M 528.02	RSA 171-A:3
He-M 528.03	RSA 171-A:22
He-M 528.04	RSA 171-A:21, I
He-M 528.05	RSA 171-A:8-a, I
He-M 528.06	RSA 171-A:22
He-M 528.07	RSA 171-A:23
He-M 528.08	RSA 171-A:24
He-M 528.09	RSA 171-A:3; RSA 541-A:22, IV