

Readopt with amendment He-M 529.01 through He-M 529.04, effective 7-1-16 (Document #11125), to read as follows:

PART He-M 529 TRANSFERS BETWEEN DESIGNATED RECEIVING FACILITIES IN THE DEVELOPMENTAL SERVICES SYSTEM

Statutory Authority: RSA 171-A:8-a, I

He-M 529.01 Purpose. The purpose of these rules is to establish the criteria and procedures for transfers of involuntarily admitted ~~persons~~individuals between designated receiving facilities in the developmental services system.

He-M 529.02 Definitions.

- (a) “Attorney” means a lawyer retained, employed, or appointed by a court to represent an individual.
- (b) “Bureau administrator” means the chief administrator of the bureau of developmental services.
- (c) “Commissioner” means the commissioner of the department of health and human services or their designee.
- (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 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~~their designee.
- (g) “Guardian” means a person who is appointed by the court to make decisions regarding the individual~~person~~ or property, or both, of another person pursuant to RSA 464-A.
- (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.
- (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.

He-M 529.03 Treatment and Security Transfers.

- (a) Whenever a DRF has custody of ~~an individual~~ a person for a period of involuntary admission, the DRF administrator or the administrator’s designee shall order the transfer of the ~~individual~~person to another DRF under the circumstances and procedures identified in (b)–(k) below.
- (b) Transfers for treatment purposes shall be ordered if ~~an individual’s~~ a person’s condition is such that the DRF that has custody cannot reasonably provide the treatment required to stabilize or ameliorate the ~~individual’s~~ person’s condition.

(c) Transfers pursuant to (b) above shall only occur after the DRF administrator consults with the administrator of the proposed receiving DRF and determines that it can provide the treatment the individualperson requires.

(d) Transfers for medical treatment at an acute care hospital shall be made if the following conditions apply:

(1) The individualperson has medical needs requiring treatment that cannot be provided at the DRF;

(2) The hospital to which the individualperson is to be transferred can provide the treatment that the individualperson requires; and

(3) ~~One of the following conditions applies:~~

~~a. The individualperson, or the individual'sperson's legal guardian if the guardian has been granted decision-making authority regarding medical care, has approved the transfer.~~

~~b. A personal safety emergency exists pursuant to He-M 305.03.~~

(e) ~~An individualperson~~ who is transferred for medical treatment shall remain under the protective custody of the admitting DRF pursuant to the authority under which the individualperson was involuntarily admitted.

(f) Transfers for security purposes shall be ordered if:

(1) ~~An individual'sperson's~~ behavior is such that the DRF that has custody cannot reasonably provide the supervision and control necessary to prevent the individualperson from causing bodily harm to self or others or significant damage to property; and

(2) The DRF administrator has determined that the DRF to which the individualperson is to be transferred can provide the ~~supervision and control~~ security and treatment the individualperson requires.

(g) No transfer shall occur under He-M 529.03 without the prior approval of the bureau administrator.

(h) Within 48 hours of receipt of a transfer order, the bureau administrator shall either approve or disapprove the transfer in accordance with He-M 529.06.

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

(j) When a transfer is to be made for treatment or security purposes, the DRF administrator shall sign a transfer order stating the reasons for the transfer and identifying the DRF to which the individualperson is to be transferred.

(kj) The DRF administrator shall:

(1) Give to the individualperson to be transferred:

a. A copy of the transfer order, in the individual's primary language; and

b. A verbal explanation of the order, in clear and understandable language, the transfer procedures, and the right to object to the transfer; and

(2) Send a copy of the order to the individual's person's guardian and attorney, if any, within 24 hours of issuance.

~~(k) Within 48 hours of receipt of a transfer order, the bureau administrator shall either approve the transfer if it is determined that the criteria identified in (f) above have been met or disapprove the transfer.~~

(l) Once transferred, an individual-person shall be subject to RSA 171-B as if originally placed in the custody of the DRF to which the individual-person was transferred, except as provided in (e) above.

(m) Transportation of an individual-person under this section shall be arranged by the staff of the DRF transporting the individual from which or to which the individual is being transferred. ~~making the transfer, as follows:~~

~~(1) The person may be transported by staff of the DRF from which or to which the person is being transferred; or~~

~~(2) The person may be transported by any law enforcement officer empowered to transport under RSA 171-A:27.~~

He-M 529.04 Transfers to Less Restrictive Settings.

(a) Whenever a DRF has custody of an individual-person for a period of involuntary admission, the DRF administrator shall order the transfer of the individual-person to another DRF if:

(1) The DRF to which the individual-person will be transferred can provide an environment that is less restrictive of the individual's person's freedom of movement than the DRF having custody of the individual-person; and

(2) The DRF to which the individual-person will be transferred can provide the care, treatment, and security required for the individual-person.

(b) When a transfer is being made to a DRF with a less restrictive setting, the administrator of the transferring DRF shall sign an order of transfer.

(c) The transfer order shall state the reason for the transfer and identify the DRF to which the individual-person is to be transferred.

(d) The individual-person to be transferred shall be given a copy of the transfer order, in their primary language and a verbal explanation of the order, in clear and understandable language, the transfer procedures, and the right to object to the transfer.

(e) A copy of the order, in their primary language, shall also be sent to the individual's person's guardian or attorney, if any.

(f) Any transfer under He-M 529.04 shall require:

(1) Prior approval by the bureau administrator, based upon a determination that the transfer criteria specified in (a) above have been met; and

(2) Prior approval by the administrator of the DRF to which the individual-person is being transferred.

(g) If ~~an individual a person~~ being transferred under He-M [529.03](#) or He-M [529.04](#) objects to the transfer, the challenge shall be treated as an appeal in accordance with He-C 200 [and He-M 529.05](#), notwithstanding the consent of the ~~individual's person's~~ guardian, if any.

(h) Once transferred, ~~an individual a person~~ shall be subject to RSA 171-B as if originally placed in the custody of the DRF to which the ~~individual person~~ was transferred.

(i) Transportation of ~~an individual a person~~ under this section shall be arranged by the DRF making the transfer, as follows:

(1) The ~~individual person~~ may be transported by staff of the DRF from which or to which the ~~individual person~~ is being transferred; or

(2) The ~~individual person~~ may be transported by any law enforcement officer empowered to transport under RSA 171-A:27.

Adopt He-M 529.05 to read as follows:

He-M 529.05 Appeal of Transfer.

(a) An individual who has been determined eligible for transfer to a less restrictive setting pursuant to He-M 529.04(a) may appeal the decision to the bureau administrator, notwithstanding the consent of the individual's guardian, if any. The individual 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 individual shall submit the appeal, together with copies of all notices provided to the individual pursuant to He-M 529.04 and any other information relevant to the reasons for transfer to the bureau administrator in care of the department's office of client and legal services.

(d) The bureau administrator shall immediately forward the appeal to the department's administrative appeals unit which shall assign a presiding officer to conduct a hearing, as provided in He-C 200.

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

(f) The department shall obtain legal counsel for any individual who requests a hearing on the appeal and requests legal counsel.

(g) Following a hearing, the administrative appeals unit shall, within 3 working days, decide if the individual is eligible for transfer to a less restrictive setting.

(h) The burden shall be upon the administrator of the DRF who determined the criteria for the individual to be eligible for transfer to a less restrictive setting discharge are met by clear and convincing evidence.

Readopt with amendment and renumber He-M 529.05 and He-M 529.06, effective 7-1-16 (Document #11125), as He-M 529.06 and He-M 529.07 to read as follows:

He-M 529.0~~6~~⁵ Emergency Transfers.

(a) ~~An individual~~^{A person} who has been admitted to a DRF by an involuntary admission pursuant to RSA 171-B:12 shall, in the event that an emergency is determined to exist pursuant to (b) below, be transferred to another DRF by the DRF administrator without the prior approval of the bureau administrator.

(b) A DRF administrator shall determine that an emergency exists when there is serious likelihood of danger to the ~~individual~~^{person} or to others or a serious likelihood of substantial damage to property if the transfer is not made and an immediate transfer is necessary in order to protect the ~~individual~~^{person} or others.

(c) The determination of a serious likelihood of danger shall be based upon the behavior(s) of the ~~individual~~^{person} to be transferred or other circumstances that create a strong probability that the ~~individual~~^{person} will cause or attempt to cause harm to self or others, or will cause or attempt to cause substantial damage to property and the DRF cannot reasonably provide the degree of safety and security necessary to prevent the harm or the damage.

(d) Prior to the emergency transfer of the ~~individual~~^{person}, the DRF administrator or his or her designee shall:

(1) Inform the ~~individual~~^{person} verbally, in their primary language and in writing, in clear and understandable language, of the transfer and reasons therefor; and

(2) Give the ~~individual~~^{person} an opportunity to consent to the transfer.

(e) The commissioner shall, within 24 hours, excluding Saturdays, Sundays and holidays, of an emergency approve the transfer of the ~~individual~~^{person} if the criteria identified in (b) above have been met.

(f) If the approval referenced in (e) above is not granted within 24 hours after the transfer, the ~~individual~~^{person} shall be immediately returned to the DRF from which ~~they were~~^{he or she was} transferred.

(g) If the commissioner approves the emergency transfer and the ~~individual~~^{person} transferred has consented to the transfer, no further action shall be necessary and the ~~individual~~^{person} will then be in the care and custody of the DRF to which ~~they have~~^{he or she has} been transferred.

(h) If the ~~individual~~^{person} being transferred objects to the transfer, the challenge shall be treated as an appeal in accordance with He-C 200, notwithstanding the consent of the ~~individual's~~^{person's} guardian, if any.

(i) A hearing shall be conducted in accordance with the procedures set forth in ~~He-M 202.08 and~~ He-C 200 within 72 hours, excluding Saturdays, Sundays and holidays, after the transfer has been approved. The review or hearing may occur following the transfer.

(j) Following a hearing, the person shall promptly be returned to the DRF from which ~~he or she was~~^{they were} transferred if the commissioner finds that an emergency pursuant to (b) above did not exist.

He-M 529.076 Waivers.

(a) A DRF 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, if applicable, indicating agreement with the request; and

(2) The ~~area agency's~~DRF'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'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.

(i) 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 529.01 – He-M 529.06	RSA 171-A:8-a; RSA 171-B:15
He-M 529.07	RSA 541-A:22, IV