

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2016-35 Rule Number He-M 314

<p>1. Agency Name & Address:</p> <p>NH Dept. of Health & Human Services Bureau of Homeless and Housing 129 Pleasant Street, Brown Building Concord, NH 03301</p> <p>5. Filing Date: November 2, 2016</p>	<p>2. RSA Authority: <u>RSA 126-A:31</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption <u>X</u></p> <p>Readoption w/amendment _____</p>
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6. Short Title: **Rights of Persons Using Emergency Shelters**

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Summary explaining the effect of the rule:

He-M 314 describes the rights of persons requesting or receiving emergency shelter services from shelter providers that receive funding from the State of New Hampshire. These rules also describe the responsibilities of shelter providers relative to such rights.

The rule is due to expire on November 22, 2016.

9. Listing of people, enterprises, and government agencies affected by the rule:

This rule affects emergency shelter providers and persons who utilize the services of emergency shelters.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-M 314.01 - 314.09	RSA 126-A:26

11. Summary of the effect upon the state if the rule were not adopted:

If this interim rule is not adopted, the Department would lack the necessary enforcement mechanism to properly regulate these facilities and provide for the rights of persons using such facilities.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

November 17, 2016

13. The fiscal impact statement prepared by the Legislative Budget Assistant

Not applicable.

Readopt He-M 314, effective 11/22/08 (Document #9328), cited and to read as follows:

CHAPTER He-M 300 RIGHTS

PART He-M 314 RIGHTS OF PERSONS USING EMERGENCY SHELTERS

Statutory Authority: RSA 126-A:31

He-M 314.01 Purpose. The purpose of these rules is to define the rights of persons requesting or receiving emergency shelter or shelter services from shelter providers that receive funding from the State of New Hampshire and to establish the responsibilities of shelter providers relative to such rights.

He-M 314.02 Definitions. The words and phrases used in this chapter shall have the following meanings:

(a) “Emergency shelter” means any facility, the primary purpose of which is to provide temporary shelter for homeless individuals or families. The term “emergency shelter” does not include transitional housing designed to provide housing as well as educational or rehabilitative programs and services for a person or family for at least 6 consecutive months.

(b) “Guest” means a homeless person who is receiving shelter services from an emergency shelter.

(c) “Homeless” means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family who has a primary nighttime residence that is:

a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including:

1. Welfare hotels; and

2. Congregate shelters;

b. An institution other than a penal facility that provides temporary residence for individuals intended to be institutionalized; or

c. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(d) “Shelter services” means:

(1) Provision of the following:

a. Adequate bedding and mattress;

b. Basic food at no cost to the guest;

c. Soap and hot water for personal hygiene; and

d. First aid; and

(2) Additional services the shelter elects to provide, including:

a. Assistance in obtaining permanent housing;

b. Medical and psychological counseling and supervision;

c. Employment counseling;

d. Nutritional counseling;

e. Substance abuse intervention, treatment and counseling;

f. Assistance in obtaining other federal, state, and local assistance; and

g. Other services related to obtaining self-sufficiency such as:

1. Child care;

2. Transportation;

3. Job placement; and

4. Job training.

(e) “Specialized facility” means an emergency shelter designed solely to serve the needs of homeless members of an identifiable group including:

(1) Victims of domestic violence;

(2) Persons with mental illness;

(3) Families with children;

(4) Persons with substance abuse problems; and

(5) Other groups of homeless people with similar therapeutic, rehabilitative, or programmatic needs.

He-M 314.03 Notice of Rights.

(a) In clearly understandable language, each emergency shelter shall provide persons entering the shelter with a verbal summary of their rights and responsibilities pursuant to He-M 314, notification of how to access the shelter’s grievance procedures, and, upon request, a written copy of the grievance procedures.

(b) A notice of rights and any house rules shall be permanently posted in a public area of the shelter and be presented in clearly understandable language and form.

(c) Each emergency shelter shall have on the premises complete copies of rules pertaining to guest rights that are available for guest review including, at a minimum, He-M 204, He-M 314, and He-C 200.

He-M 314.04 Fundamental Rights.

(a) No emergency shelter shall deprive a guest receiving emergency shelter services in New Hampshire of any legal right to which all citizens of the state and the United States are entitled.

(b) The legal rights protected shall include, at a minimum:

(1) The right of freedom of religion and religious preference, including the right to be free from engaging in any religious activity or practice; and

(2) The right to not be discriminated against in any manner because of race, color, sex, sexual orientation, religion, national origin, age, or physical or mental disability, as provided in RSA 354-A:17, title VII of the civil rights act of 1964, 42 U.S.C. 2000e et. seq.; section 504 of the rehabilitation act of 1973, 29 U.S.C. 791 et. seq.; the age discrimination act of 1975, 29 U.S.C. 621; the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, and the Fair Housing Act, 42 U.S.C. Sec. 3601.

He-M 314.05 Personal Rights.

(a) Persons who are requesting or receiving emergency shelter services shall be treated by emergency shelter staff and volunteers with dignity and respect regardless of the circumstances which brought them to the shelter.

(b) Staff and volunteers of an emergency shelter shall not abuse, neglect or exploit guests.

(c) Guests shall have the right to have information in their records treated as confidential and disclosed by staff to third parties only as permitted by the guest, required by law, or allowed in accordance with (e) below.

(d) Any provisions of He-M 314 that conflict with RSA 173-C:1 shall not apply.

(e) A shelter employee may disclose:

(1) To law enforcement personnel that information necessary to report a crime committed at the shelter; and

(2) To an employee of another shelter:

a. The fact that a guest committed a violent act or threats of violence within the last 30 days while on shelter premises; and

b. The circumstances of such acts or threats.

(f) Guests shall have the right to privacy including the following:

(1) The right to courtesies such as knocking on closed doors before entering;

- (2) The right to send and receive unopened and uncensored correspondence;
- (3) The right to have reasonable access to a telephone with such privacy as shelter arrangements allow, provided that:
 - a. Guests may be required to pay for long distance calls; and
 - b. Calls shall only be made for the following reasons:
 - 1. Searching for a job;
 - 2. Making medical appointments;
 - 3. Searching for housing; or
 - 4. Other similar matters related to the affairs of the resident; and
- (4) The right to be free from searches of their persons and possessions, except that:
 - a. Searches shall be conducted only in accordance with applicable constitutional and legal standards;
 - b. Guests may be subjected to routine screening or scanning for detection of concealed weapons upon entering the shelter; and
 - c. The policies and practices regarding such searches shall be uniformly applied to all guests.

(g) No emergency shelter shall exclude guests for any part of the day, from October 1 through April 30, unless reasonable arrangements are made for guests to use an alternative indoor site which is available for guests' use while the shelter is closed. From May 1 through September 30, guests shall not be excluded during severe weather without an adequate indoor alternative.

He-M 314.06 Admission.

- (a) No person, regardless of previous place of residence, shall be denied admission to an emergency shelter if beds or rooms are available, except as detailed in He-M 314.07 below.
- (b) No person shall be denied emergency shelter because he or she does not have a valid state driver's license, non-driver ID, or other form of government-issued identification.
- (c) An emergency shelter shall have the ability to approve admission of persons at least 18 hours per day and 7 days per week. A shelter may defer entry to the facility until the facility opens for the night except as provided in He-M 314.05(g).
- (d) A shelter shall, at a minimum, admit a person to an available bed during the shelter's posted evening hours. A shelter shall admit a person at other hours if staff resources permit.
- (e) No person seeking admission to an emergency shelter shall be denied access for lack of funds to pay for shelter nor be required to receive approval of a third party payor or intermediary.

(f) Shelters may establish a sliding fee scale for admission to the shelter, provided that the fee scale includes the provision of shelter services at no cost to guests who are currently unemployed and lack other means of financial support.

(g) At the time of admission, shelters shall advise guests of the daily fee, if any, the guest will be charged.

(h) Shelter fees paid by guests shall:

(1) Be structured so as not to inhibit transition into permanent housing; and

(2) Not exceed 30% of a guest's net income.

He-M 314.07 Denial of Admission and Termination of Service.

(a) A request for admission to a shelter shall be denied if the person requesting services poses a direct threat to the health or safety of others in the shelter and the shelter is unable to provide a reasonable accommodation which would eliminate the risk of direct threat. When a person is denied admission on this basis, the shelter may contact the local police department.

(b) A request for admission to a shelter shall be denied if the shelter lacks space to house the person.

(c) A request for admission to a shelter may be denied if the shelter is a specialized facility and the person seeking shelter is not a member of the special population for which the shelter is designed.

(d) For any person who is denied admission to a shelter, the shelter shall:

(1) Inform the person of the reasons for the denial;

(2) Make every effort to locate alternate emergency shelter; and

(3) Inform the person of the shelter's grievance procedures if the denial is for any reason other than lack of space or failure to meet the shelter's admission criteria.

(e) An emergency shelter may require a guest to leave the shelter under the following circumstances:

(1) The guest engages in behavior which poses a direct threat to the health or safety of others in the shelter;

(2) The guest engages in behavior which poses a direct threat to his or her own health or safety;

(3) The guest steals or destroys the property of the shelter or other guests, provided that if the guest denies such allegations he or she shall not be required to leave unless:

a. The guest is arrested by the police; or

b. Following an investigation by a shelter staff member, pursuant to (h) below, the staff member conducting the investigation finds the allegation to be true; or

(4) The shelter director or person in charge of the shelter at the time of the incident has reason to believe that the guest, while on the premises, is engaging in behavior that substantially interferes with the use and enjoyment of the premises by other guests.

(f) A shelter shall maintain a log of all guests required to leave the shelter and the reasons therefor. The information contained in the log shall be forwarded to the bureau of homeless and housing services upon request.

(g) Whenever a guest is required to leave a shelter pursuant to (e) above, the shelter shall:

(1) Provide the guest written documentation of the reason for being required to leave the shelter and the time frame during which the guest cannot return to the shelter; and

(2) No later than 24 hours after the guest is excluded, create a written record which contains the following information:

a. A full description of the guest's behavior that resulted in his or her being required to leave the shelter;

b. The names of the persons who were adversely affected by the behavior; and

c. The signature of the staff member who witnessed the behavior or conducted the investigation.

(h) If the circumstances that result in a guest being required to leave a shelter are not witnessed by a staff member, the incident shall be investigated by a staff member. Shelter staff shall document in the written record required in (g) above that the matter was investigated by a staff member and identify who performed the investigation.

(i) No guest shall be required to leave a shelter based upon the application of a limit on the length of time that a guest is allowed to remain in residence.

He-M 314.08 House Rules.

(a) Emergency shelters shall adopt house rules determined by the shelter to be necessary for the safe and effective operation of the shelter provided that such rules do not conflict with He-M 314 or state or federal law. Whenever house rules are developed or revised, representative guests and former guests shall be asked for input. A shelter may develop sanctions for rules violations, except that sanctions shall not include withholding food or medical attention.

(b) House rules shall clearly state those rule infractions that could result in a guest being required to leave the shelter and the corresponding time frames during which a guest cannot return to a shelter. These rules shall be based on the categories described in He-M 314.07(e).

(c) House rules shall be:

(1) Posted in a public area; and

(2) Reviewed by staff with each guest upon admission. A copy of the rules shall be signed by a staff person and the guest to indicate that they were reviewed and be kept in each guest's file.

(d) Any house rules or revisions of house rules, including any sanctions, shall be forwarded to the bureau of homeless and housing services for review and approval prior to implementation. House rules that the bureau of homeless and housing services determines to be in conflict with He-M 314.08(a) and (b) shall not be implemented.

He-M 314.09 Grievance Procedures.

(a) Each shelter shall establish written grievance procedures by which a guest’s complaints are addressed.

(b) A shelter shall provide a guest who files a grievance the opportunity to have someone assist him or her in filing the grievance. If the guest cannot obtain assistance, the shelter staff, upon the guest’s request, shall attempt to obtain assistance for such guest from New Hampshire Legal Assistance or the Legal Advice and Referral Center (LARC).

(c) Each shelter shall establish written investigation procedures for allegations that a guest’s rights as stated in He-M 314.04 through 314.06 have been violated by shelter staff or volunteers.

(d) The investigation of a guest’s grievance shall not be conducted by any person who participated in the action or decision that is the subject of the grievance.

(e) Following completion of the investigation, the shelter shall:

- (1) Issue a written decision to the complainant setting forth the disposition of the grievance;
- (2) Include information on how the guest can appeal the decision in accordance with He-M 204; and
- (3) Forward a copy of the decision to the bureau of homeless and housing services.

(f) A guest may appeal the finding and proposed resolution to his or her grievance to the department in accordance with He-M 204, rights protection procedures, and He-C 200, rules of practice and procedure.

(g) Each shelter shall forward its grievance procedures and any proposed revisions to its grievance procedures to the bureau of homeless and housing services for review and approval, prior to implementation. Grievance procedures that the bureau of homeless and housing services determines to be in conflict with He-M 314.09 shall not be implemented.

APPENDIX B

RULE	STATUTE
He-M 314.01 - 314.09	RSA 126-A:26