

RULEMAKING NOTICE FORM

Notice Number 2016-90 Rule Number He-M 612

<p>1. Agency Name & Address: Dept. of Health & Human Services New Hampshire Hospital 36 Clinton Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 135-C:31, V, RSA 135-C:48</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Transfers Between Receiving Facilities**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) proposes to readopt with amendment He-M 612. He-M 612 is scheduled to expire 6-26-16, but is subject to extension pursuant to RSA 541-A:14-a.

He-M 612 describes criteria and procedures for transfers of civilly committed persons between receiving facilities in the mental health services system. The proposed rule makes an editorial correction to replace references to He-M 202, with He-M 204, and updates the rule including references to RSA 126-U, to address transportation of a child pursuant to RSA 126-U:12.

6. (b) Brief description of the groups affected:

Persons who are civilly committed and are transferred from receiving facilities to New Hampshire Hospital, their families, the facilities' staff and the entities that transport those civilly committed persons are affected by this rule.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	State Statute Implemented
He-M 612.01	RSA 135-C:31, V, RSA 135-C:48
He-M 612.02	RSA 135-C:31, V, RSA 135-C:48
He-M 612.03(a), (b)	RSA 135-C: 26
He-M 612.03(c)	RSA 135-C:31, V; RSA 135-C:48
He-M 612.04	RSA 135-C:28
He-M 612.05	RSA 135-C:15, RSA 135-C:26

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

Name:	Catherine Bernhard	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9374
		Fax#:	271-5590
		E-mail:	catherine.l.bernhard@dhhs.nh.gov

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. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Monday July 11, 2016.**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, July 1, 2016 at 1:00 p.m.**

Place: [DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 16:096, dated 05/24/16

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact of state funds:

There is no federal mandate, and no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To Independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule modifies an existing program or responsibility, but it does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-M 612, effective 6-26-08 (Document #9192), to read as follows:

PART He-M 612 TRANSFERS BETWEEN RECEIVING FACILITIES

Statutory Authority: RSA 135-C:31, V; 135-C:48

He-M 612.01 Purpose. The purpose of these rules is to establish the criteria and procedures for transfers of civilly committed persons between receiving facilities in the mental health services system.

He-M 612.02 Definitions. The words and phrases used in these rules shall mean the following:

(a) "Administrator" means the chief executive officer of the facility or, in the absence of the administrator, the executive person in charge of the facility.

(b) "Attorney" means a lawyer retained by, employed by, or appointed by a court to represent a client.

(c) "Commissioner" means the commissioner of the department of health and human services.

(d) "Department" means the department of health and human services.

(e) "Guardian" means a person who is appointed by the court to care for the person and/or property of another person pursuant to RSA 464-A.

(f) "Involuntary admission" means admission of a person to a receiving facility on an involuntary basis by an order of the probate court pursuant to RSA 135-C:34-54.

(g) "Involuntary emergency admission" means admission to a facility on an involuntary, emergency basis, pursuant to RSA 135-C:27-33, of an individual who is in such mental condition as a result of a mental illness as to pose a likelihood of harm to self or others.

(h) "Receiving facility," as defined in RSA 135-C:2, XIV, means "a treatment facility which is designated by the commissioner to accept for care, custody and treatment persons involuntarily admitted to the state mental health services system."

He-M 612.03 Status Transfers.

(a) Receiving facilities shall be designated under RSA 135-C:26 and He-M 405.04 for any one or more of the following purposes:

(1) To receive persons for involuntary emergency admission beginning with initial custody and continuing through the day following the probable cause hearing;

(2) To receive persons for the period of involuntary emergency admission after the probable cause hearing; and

(3) To receive persons for involuntary admission pursuant to RSA 135-C:34-54.

(b) Whenever a receiving facility has custody of a person for a period of an involuntary emergency admission or an involuntary admission and the facility has not been designated by the commissioner as a receiving facility for that purpose, the administrator of the receiving facility shall

transfer the person to New Hampshire hospital, or another facility which has been designated for that purpose, for any remaining period of involuntary emergency admission or involuntary admission.

(c) When a receiving facility is aware that it has custody of a person who requires a transfer under this section, the facility shall immediately notify New Hampshire hospital, or another facility which has been designated for that purpose, of the need to transfer the person.

(d) Notification pursuant to (c) above shall be in the form of a transfer order which shall:

(1) State the reason for the transfer;

(2) Identify the facility to which the person is being transferred; ~~and~~

(3) Be signed by the facility administrator or the administrator's designee; ~~and-~~

(4) If the person to be transferred is a child, comply with the requirements of RSA 126-U:12.

(e) A copy of the transfer order shall be given to the person being transferred and the person's guardian and attorney, if any.

(f) Within 24 hours of receipt of a transfer order, the facility from which a person is being transferred shall arrange for transportation of the person from the facility to New Hampshire hospital or another facility receiving the person. The person shall be transported by facility staff, New Hampshire hospital staff, or any law enforcement officer empowered to transport under RSA 135-C:62.

(g) If, prior to taking custody of a person under RSA 135-C:27-33 or RSA 135-C:34-54, a receiving facility determines that it has not been designated for the purpose for which the person is being placed at the facility, the administrator of the facility or the administrator's designee shall:

(1) Refuse to accept custody of the person and direct the law enforcement officer transporting the person to deliver the person to a receiving facility which has the requisite designation; or

(2) Admit the person to the facility and arrange a transfer pursuant to (c) and (d) above if the administrator or the administrator's designee determines that the refusal to accept custody likely will result in harm to the person or to others.

(h) Once transferred, a person shall be subject to RSA 135-C, and RSA 126-U if applicable, as if originally placed in the custody of New Hampshire hospital or another facility to which the person was transferred.

(i) If a person being transferred under He-M 612.03 objects to the transfer, the challenge shall be treated as a client complaint in accordance with He-M-202-07-204.

He-M 612.04 Treatment and Security Transfers. Whenever a facility has custody of a person for a period of involuntary emergency admission or involuntary admission, the administrator of the facility or the administrator's designee shall order the transfer of the person to another receiving facility under the following circumstances and procedures:

(a) Transfers for treatment purposes shall be ordered if:

(1) A person's condition is such that the facility which has custody cannot reasonably provide the treatment required to stabilize or ameliorate the person's condition; and

(2) The administrator or the administrator's designee has determined that the facility to which the person is to be transferred can provide the treatment the person requires;

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

(1) A person's behavior is such that the facility which has custody cannot reasonably provide the supervision and control necessary to prevent the person from causing bodily harm to self or others, or significant damage to property; and

(2) The administrator or the administrator's designee has determined that the facility to which the person is to be transferred can provide the supervision and control the person requires;

(c) All transfers under He-M 612.04 shall only occur following the prior approval of the commissioner or the commissioner's designee;

(d) The commissioner or the commissioner's designee shall grant prior approval for transfer verbally or in writing after:

(1) Consideration of the facts upon which the transfer order was based; and

(2) Determination that the transfer complies with He-M 612;

(e) When a transfer is to be made for treatment or security purposes, the administrator or the administrator's designee shall sign a transfer order which shall state the reasons for the transfer and the facility to which the person is to be transferred;

(f) The administrator or the administrator's designee shall give:

(1) The person to be transferred:

a. A copy of the transfer order; and

b. A verbal explanation of:

1. The transfer order;

2. The transfer procedures; and

3. The right to object to the transfer; and

(2) The person's guardian and attorney, if any, a copy of the order;

(g) The administrator of a facility shall order an emergency transfer of a person without securing the prior approval of the commissioner if:

(1) There is serious likelihood that the person or others will be in danger if the transfer is not made; and

(2) An immediate transfer is necessary in order to protect the person or others;

(h) Immediately following an emergency transfer of a person, the administrator of a facility shall provide to the commissioner or the commissioner's designee a copy of the transfer order required by He-M 612.04 (d);

(i) Within 48 hours of receipt of a transfer order, the commissioner or the commissioner's designee shall either approve the transfer or disapprove the transfer based upon the criteria listed in (g) (1) and (2), and, if the transfer is disapproved, the person shall be promptly returned to the facility from which the person was transferred;

(j) Objections to transfers under this section shall require emergency action pursuant to He-M [202:09 204](#);

(k) Once transferred, a person shall be subject to RSA 135-C as if originally placed in the custody of the facility to which the person was transferred;

(l) Transportation of a person under this section shall be arranged by the facility making the transfer, ~~and~~

(m) The person shall be transported by staff of the facility from which or to which the person is being transferred or by any law enforcement officer empowered to transport under RSA 135-C:62; ~~and~~

[\(n\) If the person to be transferred is a child, any transportation, notice and documentation shall comply with the requirements of RSA 126-U:12.](#)

He-M 612.05 Transfers to Less Restrictive Settings.

(a) Whenever a receiving facility has custody of a person for a period of involuntary emergency admission or involuntary admission, the administrator of the facility or the administrator's designee shall order the transfer of the person to another receiving facility if:

(1) That facility can provide an environment which is less restrictive of the person's freedom of movement than the receiving facility having custody of the person; and

(2) That facility can provide the care, treatment and security required for the person.

(b) When a transfer is being made to a facility with a less restrictive setting, the administrator or the administrator's designee shall sign an order of transfer. The transfer order shall state the reason for the transfer and the facility to which the person is to be transferred.

(c) The administrator or the administrator's designee shall give:

(1) The person to be transferred:

a. A copy of the transfer order; and

b. A verbal explanation of:

1. The transfer order;

- 2. The transfer procedures; and
- 3. The right to object to the transfer; and

(2) The person's guardian and attorney, if any, a copy of the order; and

(3) If the person to be transferred is a child, the required notice and documentation required by RSA 126-U:12.

(d) No transfer shall take place under He-M 612.05 without the prior approval, based on the criteria listed in (a) above, of the commissioner and the administrator of the facility to which the person is being transferred.

(e) If a person being transferred under He-M 612.05 objects to the transfer, the challenge shall be treated as a client complaint in accordance with He-M ~~202.07~~ 204.

(f) Once transferred, a person shall be subject to RSA 135-C as if originally placed in the custody of the facility to which the person was transferred.

(g) Transportation of a person under this section shall be arranged by the facility making the transfer.

(h) The person shall be transported by staff of the facility from which or to which the person is being transferred or by any law enforcement officer empowered to transport under RSA 135-C:62.

Appendix

Rule	State Statute Implemented
He-M 612.01-612.02, 612.03(c) - 612.05	RSA 135-C:31, V; RSA 135-C:48
He-M 612.03(a)-(b)	RSA 135-C:26
He-M 612.04	RSA 135-C:28
He-M 612.05	RSA 135-C:15 and :26