

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

**He-M 204.02, He-M 305.02,  
He-M 311.01, and He-M 311.02**

1. Agency Name & Address:

**Dept. of Health & Human Services  
Hampstead Hospital & Residential Treatment  
Facility  
218 East Road  
Hampstead, NH 03841**

2. RSA Authority:

**RSA 135-C:5, I(b)  
RSA 135-C:61, II, III, VI, and XI**

3. Federal Authority: \_\_\_\_\_

4. Type of Action:

Adoption \_\_\_\_\_

Repeal \_\_\_\_\_

Readoption \_\_\_\_\_

Readoption w/amendment   **X**  

5. Short Title: **Purpose & Definitions- Adding “Hampstead Hospital & Residential Treatment Facility”**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

**He-M 204 provides procedures for protecting the rights of persons applying for, receiving, or eligible for services in state mental health facilities.**

**He-M 305 addresses personal safety emergencies and the circumstances in which involuntary emergency treatment, seclusion, and restraint can be provided to children and adults being served in state mental health facilities.**

**He-M 311 provide for protecting the rights of individuals receiving mental health services in state mental health facilities.**

**The Department of Health and Human Services (Department) is proposing to readopt with amendment:**

- **He-M 204.02 on the definitions by amending the definitions of “facility and “facility administrator”;**
- **He-M 305.02 on definitions by amending the definitions of “facility”;**
- **He-M 311.01 on the purpose of He-M 311 to include Hampstead Hospital and Residential Treatment Facility (HHRTF); and**
- **He-M 311.02 on definitions by amending the definition of “facility”.**

**Currently He-M 204.02, He-M 305.02, He-M 311.01, and He-M 311.02 explicitly reference New Hampshire Hospital and Glencliff home as state mental health facilities. In June 2022, the State purchased HHRTF to provide inpatient and residential mental health services for children, adolescents, and young adults. The purpose of these amendments is to clarify that the protections also encompass individuals receiving services at HHRTF.**

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

**Groups affected by this rule include persons applying for, receiving, or eligible for services in state mental health facilities.**

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

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-M 204.02	RSA 135-C:56-57; RSA 171-C:19
He-M 305.02	RSA 135-C:57, IV; RSA 126-U:1
He M 311.01	RSA 135-C:2, 8, 11, 12, 13, 14, 15, & 29
He M 311.02	RSA 135-C:8, 11, 12, 13, 14, 15, & 29

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

Name: **Allyson Raadmae** Title: **Administrator- Administrative Rules Unit**  
Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**  
**Administrative Rules Unit** Fax#: **(603) 271-5590**  
**129 Pleasant Street, 2<sup>nd</sup> Floor** E-mail: [Allyson.E.Raadmae@dhhs.nh.gov](mailto:Allyson.E.Raadmae@dhhs.nh.gov)  
**Concord, NH 03301**

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

**The proposed rules may be viewed and downloaded at:**  
<https://www.dhhs.nh.gov/doing-business-dhhs/legal-services/administrative-rules/nh-administrative-rules-public-comment>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, May 14, 2024**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, May 7, 2024 at 11:00 a.m.**

Physical Location: [\*\*DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH\*\*](#)

Electronic Access (if applicable): **N/A**

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

FIS # 24:044, dated March 26, 2024

**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 on state funds:**

No federal mandate, 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 rules modify an existing program or responsibility, but do not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.**

PART He-M 204 RIGHTS PROTECTION PROCEDURES FOR MENTAL HEALTH SERVICES

**Readopt with amendment He-M 204.02, effective 9-25-19 (Document #12878), to read as follows:**

He-M 204.02 Definitions.

(a) “Abuse” means an act or omission by an employee, subcontracted service provider, consultant, student, intern or volunteer of a program which is not accidental and harms or threatens to harm an individual’s physical, mental or emotional health or safety and includes emotional abuse, physical abuse, and sexual abuse.

(b) “Administrator” means the chief administrator for the bureau of mental health services of the department of health and human services.

(c) “Agency” means a facility, community mental health program, community mental health provider, or any of their subcontracted service providers.

(d) “Agency director” means the person responsible for the overall administration or operation of a CMHP, community mental health provider, peer support agency, emergency shelter, or facility or his or her designee.

(e) “Bureau of mental health services (BMHS)” means the bureau of mental health services of the department of health and human services.

(f) “Coercion” means an act by an employee, subcontracted service provider, student, intern, or volunteer, which is designed to compel an individual to act in clear opposition to the preference of the individual excluding involuntary admissions, revocations of conditional discharge, the imposition of emergency treatment, and as otherwise prescribed by law or rule.

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

(h) “Community mental health program (CMHP)” means “community mental health program” as defined in RSA 135-C:2, IV.

(i) “Community mental health provider” means a medicaid provider of community mental health services that has been approved by the commissioner to provide specific mental health services pursuant to He-M 426.

(j) “Complaint” means:

(1) Any allegation or assertion that a right of an individual as set forth in He-M 309, rights of persons receiving mental health services in the community, or He-M 311, rights of persons in state mental health facilities, have been violated; or

(2) Any allegation or assertion that the department or an agency has acted in an illegal or unjust manner with respect to an individual or category of individuals.

(k) “Complaint investigator” means the person who is designated by office of client and legal services or a facility to investigate, resolve or take other appropriate action on complaints.

(l) “Complaint manager” means a person designated by the community mental health program or the community mental health provider who is responsible for receiving, managing, and resolving complaints in accordance with these rules.

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

(n) “Emotional abuse” means any of the following when the act results, or is likely to result in the mental anguish or emotional distress of an individual:

- (1) The misuse of power, authority or both;
- (2) Harassment; such as:
  - a. Intimidation;
  - b. Humiliation; or
  - c. Degradation; or
- (3) Unreasonable confinement.

(o) “Exploitation” means the use of an individual’s person or property for another’s profit or advantage, or breach of a fiduciary relationship through improper use of an individual’s person or property, including situations where a person obtains property or services from an individual through undue influence, harassment, deception, fraud, or duress.

(p) “Facility” means New Hampshire hospital, Glenclyff home, Hampstead Hospital and Residential Treatment Facility, or any other treatment program designated under RSA 135-C:26.

(q) “Facility administrator” means the chief executive officer at New Hampshire hospital or Hampstead Hospital and Residential Treatment Facility, or administrator at Glenclyff home, or any other treatment program designated under RSA 135-C:26.

(r) “Founded” means that the facts indicate that the rights of an individual under He-M 309, or He-M 311 were violated.

(s) “Guardian” means a person appointed by the court pursuant to RSA 464-A:9 to have care and custody of an individual, or the parent or legal custodian of a minor child.

(t) “Individual” means a consumer as defined by He-M 401 or a client as defined in He-M 311, who has applied for, has been found eligible for, or is receiving state-funded services from an agency, or peer support agency, or a guardian acting on his or her behalf.

(u) “Neglect” means an act or omission which results or is likely to result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional, or physical health and safety of an individual.

(v) “Office of client and legal services (OCLS)” means the client and legal services section of the department established by RSA 171-A:19 to, in part, assist the commissioner in responding to complaints by or on behalf of persons with mental illness.

(w) “Physical abuse” means the use of physical force which results or is likely to result in physical injury to an individual.

(x) “Restraint” means:

- (1) Any drug or medication when it:
  - a. Is used as a restriction to manage an individual’s behavior or restrict the individual’s freedom of movement; and
  - b. Is not a standard treatment or dosage for the individual’s condition, in that its overall effect reduces an individual’s ability to effectively or appropriately interact;

(2) Any manual method, physical or mechanical device, material or equipment that immobilizes an individual or reduces the ability of an individual to move his or her arms, legs, head, or other body parts freely but does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of an individual, if necessary, for the purpose of:

- a. Conducting routine physical examinations or tests;
- b. Protecting the individual from falling out of bed; or
- c. Permitting the individual to participate in activities without the risk of physical harm; or

(3) “Restraint” as defined in RSA 126-U:1, IV when the individual is a child as defined in RSA 126-U:1,I.

(y) “Seclusion” means:

(1) The involuntary confinement of an individual who:

- a. Is placed alone in a room or area from which the individual is physically prevented, by lock or person, from leaving; and
- b. Cannot or will not make an informed decision to agree to such confinement; or

(2) “Seclusion” as defined in RSA 126-U:1, V-a when the individual is a child as defined in RSA 126-U:1,I.

(z) “Sexual abuse” means contact or interaction of a sexual nature between an individual and an employee of, a consultant, or a volunteer for a program.

(aa) “Unfounded” means that the facts do not indicate that the rights of an individual under He-M 309, or He-M 311 were violated.

(ab) “Unreasonable confinement” means any confinement which is neither medically necessary nor necessary for the protection of a person or to prevent harmful behavior, or confinement used with punitive intent.

#### APPENDIX

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-M 204.02	RSA 135-C:56-57; RSA 171-C:19

PART He-M 305 PERSONAL SAFETY EMERGENCIES

**Readopt with amendment He-M 305.02, effective 12-28-16 (Document #12077), to read as follows:**

He-M 305.02 Definitions.

(a) “Advance practice registered nurse (APRN)” means advanced practice registered nurse as defined in RSA 135-C:2, II-a, namely, “an advanced practice registered nurse licensed by the board of nursing who is certified as a psychiatric mental health nurse practitioner by a board-recognized national certifying body.”

(b) “CMS regional office” means the office of the U.S. Department of Health and Human Services, Branch Chief, Survey and Enforcement Branch, Centers for Medicare & Medicaid Services, Room 2275, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

(c) “Child” means “child” as defined in RSA 126-U:1, I.

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

(e) “Facility” means New Hampshire hospital, Glencliff home for the elderly, [Hampstead Hospital and Residential Treatment Facility](#), or any other treatment program designated under RSA 135-C:26

(f) “Individual” means a person receiving services from a facility.

(g) “Informed decision” means a choice made voluntarily by an individual or applicant for services or, where appropriate, such person's legal guardian, after all relevant information necessary to making the choice has been provided, when:

- (1) The person understands that he or she is free to choose or refuse any available alternative;
- (2) The person clearly indicates or expresses his or her choice; and
- (3) The choice is free from all coercion.

(h) “Nursing staff” means a registered or licensed practical nurse or other care provider working under the direct supervision of a registered nurse.

(i) “Personal safety emergency” means a physical status or a mental status and an act or pattern of behavior of an individual which, if not treated immediately, will result in serious physical harm to the individual or others.

(j) “Physician” means a medical doctor licensed in the state of New Hampshire who is employed by, consultant to, or otherwise under contract with a facility.

(k) “Restraint” means:

- (1) Any drug or medication when it:
  - a. Is used as a restriction to manage an individual’s behavior or restrict the individual’s freedom of movement; and
  - b. Is not a standard treatment or dosage for the individual’s condition, in that its overall effect reduces an individual’s ability to effectively or appropriately interact; or

(2) Any manual method, physical or mechanical device, material, or equipment that immobilizes an individual or reduces the ability of an individual to move his or her arms, legs, head, or other body parts freely but does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of an individual, if necessary, for the purpose of:

- a. Conducting routine physical examinations or tests;
- b. Protecting the individual from falling out of bed; or
- c. Permitting the individual to participate in activities without the risk of physical harm; or

(3) The term restraint means “restraint” as defined in RSA 126-U:1, IV as applied to a person who has not reached 18 years of age, or who is otherwise a child as defined by RSA 126-U:1, I.

(l) “Seclusion” means the involuntary confinement of an individual who:

(1) With regard to a person who is 18 or older:

- a. Is placed alone in a room or area from which the individual is physically prevented, by lock or person, from leaving; and
- b. Cannot or will not make an informed decision to agree to such confinement; or

(3) The term “seclusion” as defined in RSA 126-U:1, V-a as applied to a person who has not reached 18 years of age, or who is otherwise a child as defined by RSA 126-U:1, I.

(m) “Training” means provision of education to staff, based on the specific needs of the individual population, resulting in demonstrated knowledge and documented competency.

(n) “Treatment” means medical or psychiatric care, excluding seclusion or restraint, provided by a physician, or a person acting under the direction of a physician, in accordance with generally accepted clinical and professional standards.

## PART He-M 311 RIGHTS OF PERSONS IN STATE MENTAL HEALTH FACILITIES

**Readopt with amendment He-M 311.01 and He-M 311.02, effective 4-23-15 (Document #10820), to read as follows:**

He-M 311.01 Purpose. The purpose of these rules is to define the rights of individuals receiving services in state mental health facilities which include New Hampshire hospital, Glencliff home, [Hampstead Hospital and Residential Treatment Facility](#), and any receiving facility so designated by the commissioner pursuant to RSA 135-C:26.

He-M 311.02 Definitions.

(a) "Abuse" means an act or omission by an employee, consultant or volunteer of a mental health facility or designated receiving facility which is not accidental and harms or threatens to harm an individual's physical, mental or emotional health or safety and includes emotional abuse, physical abuse, and sexual abuse.

(b) "Attorney" means a member of the New Hampshire Bar Association who is retained, employed, or appointed by a court to represent an individual.



(c) “Bureau” means the bureau of behavioral health within the department of health and human services.

(d) “Client” means “individual” as defined in (l) below.

(e) “Community residence” means a residence, exclusive of any independent living arrangement, that:

(1) Provides residential services in accordance with He-M 426 for at least one individual with a mental illness;

(2) Provides services based on the needs identified in a resident’s individual service plan (ISP);

(3) Is operated directly by a facility or by contract or agreement between a facility and another entity;

(4) Serves individuals whose services are funded by the department; and

(5) Is certified pursuant to He-M 1002.

(f) “Department” means the department of health and human services.

(g) “Direct care” means services provided to individuals including, but not limited to: assistance with medication, accompanying an individual to a treatment team or other clinical meeting, or providing ongoing direct and active support.

(h) “Emotional abuse” means the misuse of power, authority or both, verbal harassment, or unreasonable confinement which results or could result in mental anguish or emotional distress of an individual.

(i) "Exploitation" means the use of an individual’s person or property for another's profit or advantage or breach of a fiduciary relationship through improper use of an individual’s person or property including situations where a person obtains money, property, or services from an individual through undue influence, harassment, deception, or fraud.

(j) "Facility" means New Hampshire hospital, Glencliff home, [Hampstead Hospital and Residential Treatment Facility](#), and any receiving facility so designated by the commissioner pursuant to RSA 135-C:26.

(k) "Guardian" means a person appointed under RSA 463, or RSA 464-A, or who is a parent of an individual under the age of 18 whose parental rights have not been terminated or limited by law in such a way as to remove the person’s right to make health care decisions on behalf of the individual.

(l) "Individual" means: A person who is receiving or applying for a service from a facility. The term includes “client.”

(m) "Informed decision" means “informed decision” as defined in RSA 135-C:2, IX namely, “a choice made by a client, an individual, or person seeking to be admitted who has the ability to make such a choice and who makes it voluntarily after all relevant information necessary to making the decision has been provided, and who understands that he or she is free to choose or refuse any available alternative, and who clearly indicates or expresses his or her choice. The choice shall be free from all coercion.” The term also includes such decision of an individual, as defined in He-M 311.02(1) above, and the individual’s legal guardian, where appropriate, based on the same factors as an informed decision by an individual or person seeking to be admitted.

(n) "Mental illness" means "mental illness" as defined in RSA 135-C:2 X, namely, "a substantial impairment of emotional processes, or of the ability to exercise conscious control of one's actions, or of the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions. It does not include impairment primarily caused by: (a) epilepsy; (b) intellectual disability; (c) continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or (d) dependence upon or addiction to any substance such as alcohol or drugs."

(o) "Neglect" means an act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional, or physical health of an incapacitated adult. The term also includes neglect toward an individual.

(p) "Physical abuse" means the use of physical force which results or could result in physical injury to an individual.

(q) "Program" means any public or private corporation, person or organization which provides services to individuals with a mental illness or intellectual disability when such services are funded in whole or in part or are operated, monitored or regulated by the bureau.

(r) "Service" means any evaluation, training, counseling, therapy, habilitation, case management, or other type of assistance, medical care, or treatment provided by a facility.

(s) "Service delivery system" means those facilities and programs funded, in whole or in part, operated, monitored, or regulated by the bureau.

(t) "Sexual abuse" means contact or interaction of a sexual nature between an individual and an employee of or a consultant or volunteer for a facility.

(u) "Treatment" means "treatment" as defined in RSA 135-C:2, XVI, namely, "examination, diagnosis, training, rehabilitation therapy, pharmaceuticals, and other services provided to individuals in the mental health services system. Treatment shall not include examination or diagnosis for the purpose of determining the need for involuntary emergency admissions pursuant to RSA 135-C:27-33 or involuntary admissions pursuant to RSA 135-C:34-54." The term includes treatment provided to individuals in the mental health system.

#### APPENDIX

<b>Rule</b>	<b>Specific State or Federal Statutes or Regulations which the Rule Implements</b>
He-M 305.02	RSA 135-C:57, IV; RSA 126-U:1
He M 311.01	RSA 135-C:2, 8, 11, 12, 13, 14, 15, & 29
He M 311.02	RSA 135-C:8, 11, 12, 13, 14, 15, & 29