

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number _____

He-M 1201

1. Agency Name & Address:

**Dept. of Health & Human Services
Bureau of Developmental Services
105 Pleasant St., Main Bldg
Concord, NH 03301**

2. RSA Authority:

**RSA 171-A:3, A:18, IV;
RSA 126-A:19, 20, I**

3. Federal Authority: _____

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment **X**

5. Short Title: **Healthcare Coordination and Medication Administration**

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

He-M 1201 describes the minimum standards for individuals' health coordination and for ensuring the safe administration of medications by providers to individuals who receive services pursuant to He-M 1001, He-M 507, He-M 518, He-M 521, He-M 524, or He-M 525 as applicable. The Department is proposing to enter into regular rulemaking because the interim rule effective 9-25-19 (Document # 12876) expires on 3-23-20. This proposal would readopt with amendment the rule.

The proposed rule changes are summarized as follows:

- **Updating the rule for better clarity, program integrity, and programmatic changes including documentation requirements, and to be consistent with other Departmental rules and the Board of Nursing rule Nur 404;**
- **Adding a definition for Health Risk Screening Tool (HRST) to align the rule with current practice;**
- **Amending He-M 1201.04(n) and renumbering as (p), to bring consistency to medication administration by removing the choice of whether to comply with, He-M 1201 or Nur 404, and adding that Nur 404 may be utilized in an emergency, but the provider must become certified pursuant to He-M 1201.06 within 30 days of being authorized under Nur 404;**
- **Amending the rule to increase the minimum time of training for providers from 8 hours to 10 hours and to specify the training curriculum to be used;**
- **Inserting language to include intramuscular epinephrine as a method of administration;**
- **Amending the rule to require observation of medication administration for any new individual, and clarifying that medication authorization must be done for each individual for whom the authorized provider will administer medication;**

- **Deleting He-M 1201.07(c), as this paragraph removed the authority of the Department to enforce the rule by making the nurse trainer the single authority over compliance with certain parts of the rule, and inserting the specific information that must be documented;**
- **Amending He-M 1201.09(a) on nurse training and quality review to enable the Department to provide more thorough oversight over compliance with elements of the rule, rather than the nurse trainer having this oversight. Having the nurse trainer be the single authority over compliance essentially created a Departmental rule that the Department had no authority to enforce; and**
- **Adding language to clarify that if a nurse cites a deficiency pursuant to the rules during a review that the nurse is required to conduct, the Department will not also cite a deficiency. Rather the Department will only cite a deficiency if the nurse has not documented a deficiency during their required review.**

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

This rule affects individuals with developmental disabilities or acquired brain disorder and their legal representatives, area agencies and their subcontractors, and other persons who contract with consumers to provide services. More specifically, persons most affected include consumers whose medications are administered to them by providers, such as nurses who provide training and oversight.

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 1201.01-1201.02	RSA 171-A:4; 126-A:19; 20; RSA 326-B:28
He-M 1201.03	RSA 171-A:4; 126-A:19; 20
He-M 1201.04	RSA 171-A:4; 126-A:19; 20, RSA 326-B:28
He-M 1201.05-1201.14	RSA 171-A:4; 126-A:19; 20; RSA 326-B:28
He-M 1201.01-1201.13	RSA 126-A:19; RSA 135-C:3

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The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

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

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **February 25, 2020**

Fax

E-mail

Other format (specify):

9. Public hearings scheduled for:

Date and Time: **February 18, 2020 3:00 PM**

Place: **DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH 03301**

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

FIS # 19:235, dated 01/03/2020

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

When compared to the existing rules, the proposed rules may increase costs to independently-owned businesses by an indeterminable amount.

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:

The proposed rule includes programmatic and documentation requirements which will have an indeterminable administrative impact on providers. Specifically, the increase in the minimum training requirements from eight hours to ten hours may result in additional costs for some providers. Despite this, many training programs are already at least 10 hours, so the Department of Health and Human Services expects any increase in costs to be minimal.

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

The proposal 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 1201, effective 9-25-19 (Document #12876, Interim), cited and to read as follows:

CHAPTER He-M 1200 MEDICATION STANDARDS

PART He-M 1201 HEALTHCARE COORDINATION AND ADMINISTRATION OF MEDICATIONS

He-M 1201.01 Purpose. The purpose of these rules is to establish minimum standards for individuals' health coordination and to ensure the safe administration of medications by providers to individuals who receive services pursuant to He-M 1001, He-M 507, He-M 518, He-M 521, He-M 524, or He-M 525 as applicable.

He-M 1201.02 Definitions.

(a) "Acquired brain disorder" means a disruption in brain functioning that:

- (1) Is not congenital or caused by birth trauma;
- (2) Presents a severe and life-long disabling condition, which significantly impairs a person's ability to function in society;
- (3) Occurs prior to age 60;
- (4) Is attributable to one or more of the following reasons:
 - a. External trauma to the brain as a result of:
 1. A motor vehicle incident;
 2. A fall;
 3. An assault; or
 4. Another related traumatic incident or occurrence;
 - b. Anoxic or hypoxic injury to the brain such as from:
 1. Cardiopulmonary arrest;
 2. Carbon monoxide poisoning;
 3. Airway obstruction;
 4. Hemorrhage; or
 5. Near drowning;
 - c. Infectious diseases such as encephalitis and meningitis;
 - d. Brain tumor;
 - e. Intracranial surgery;
 - f. Cerebrovascular disruption such as a stroke;
 - g. Toxic exposure; and

h. Other neurological disorders such as Huntington's disease or multiple sclerosis which predominantly affect the central nervous system; and

(5) Is manifested by:

a. Significant decline in cognitive functioning and ability; and/or

b. Deterioration in:

1. Personality;
2. Impulse control;
3. Judgment;
4. Modulation of mood; or
5. Awareness of deficits.

(b) "Administration" means an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to an individual by an authorized provider for immediate consumption or use.

(c) "Area agency" means an entity established as a non-profit corporation in the state of New Hampshire which is designated by the bureau administrator to provide services to persons with developmental disabilities and acquired brain disorders in a geographic area in accordance with RSA 171-A:18 and He-M 505.

(d) "Authorized provider" means a person who meets the requirements of He-M 1201.06 and is employed by, has a contract with, or receives any form of remuneration from a provider agency, individual, or family to deliver services to an individual pursuant to He-M 1001, He-M 507, He-M 518, He-M 521, He-M 524, or He-M 525, as applicable.

(e) "Bureau" means the bureau of developmental services of the department of health and human services.

(f) "Bureau administrator" means the chief administrator of the bureau of developmental services or his or her designee.

(g) "Competent" means having the knowledge, judgment, and skills necessary to perform safe medication administration and other nursing-related activities in accordance with Nur 404.

(h) "Controlled drug" means a drug which is included in schedule I, II, III, IV, or V of part B of the Controlled Substances Act, 21 U.S.C. 811-812.

(i) "Department" means the New Hampshire department of health and human services.

(j) "Developmental disability" means "developmental disability" as defined in RSA 171-A: 2, V, namely, "a disability:

(a) Which is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability; and

(b) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe handicap to such individual's ability to function normally in society.”

(k) “Family residence” means a residence that is:

- (1) Operated by a person or family residing therein; and
- (2) Under contract with a provider agency.

(l) “Individual” means a person with a developmental disability or acquired brain disorder who receives services from an area agency.

(m) “Frail health” means an acute and/or chronic medical condition that results in the inability of the individual to perform activities of daily living or daily routines which the individual previously had the ability to perform, and which has been identified by a nurse trainer to require ongoing monitoring to guard against deterioration.

(n) “Guardian” means the parent of a child under the age of 18 whose parental rights have not been terminated under RSA 170-C or a person appointed to be guardian of the individual under RSA 464-A.

(o) “Health Risk Screening Tool (HRST)” means the 2015 edition of the Health Risk Screening tool, available as noted in Appendix A, which is a web-based rating instrument used for performing health risk screenings on individuals in order to:

(1) Determine an individual’s vulnerability regarding potential health risks; and

(2) Enable the early identification of health issues and monitoring of health needs.

~~(o) “Health status indicators” means signs of an individual’s health status that suggest illness, such as changes in:~~

~~(1) Functional abilities;~~

~~(2) Weight;~~

~~(3) Vision or hearing abilities; or~~

~~(4) Patterns of:~~

~~a. Eating and drinking;~~

~~b. Seizures;~~

~~c. Breathing;~~

~~d. Elimination; or~~

~~e. Behavior.~~

(p) “Licensed person” means one of the following persons, who are licensed or registered in the state of New Hampshire:

- (1) A registered nurse;
- (2) A licensed practical nurse;

- (3) An advanced practice registered nurse;
- (4) A physician;
- (5) A pharmacist;
- (6) A physician assistant;
- (7) An optometrist;
- (8) A podiatrist; or
- (9) A dentist.

(q) “Medical director” means the medical director of the bureau or his or her designee.

(r) “Medication” means a drug prescribed for an individual by a prescribing practitioner, including drugs to be taken on a pro re nata (PRN) basis and over-the-counter drugs.

(s) “Medication error” means any deviation in the administration of a medication as prescribed or in the documentation of such administration, with the exception of an individual’s refusal.

(t) “Medication log” means a written record of medications prescribed for, and administered to, an individual.

(u) “Medication order” means:

- (1) —Written directions provided by a prescribing practitioner for a specific drug to be administered to an individual; or
- (2) Verbal directions provided by a prescribing practitioner to a licensed person for a specific drug to be administered to an individual.

(v) “Nurse trainer” means a registered nurse subject to the nursing scope of practice outlined in RSA 326-B and related administrative rules who has been designated as a trainer pursuant to He-M 1201.10.

(w) “Nursing-related activities” means tasks that relate to an individual’s health care and are delegated by a licensed nurse to an unlicensed person, when the tasks:

- (1) Are routine in nature;
- (2) Do not require the judgment of a nurse; and
- (3) Raise no expectation that the individual’s symptoms, vital signs, or reactions to medications will suddenly change.

(x) “PRN medication” means a drug ordered to be taken as needed under specific conditions.

(y) “Prescribing practitioner” means a licensed professional with prescriptive authority, including the following:

- (1) Physician;
- (2) Advanced practice registered nurse (A.P.R.N.);
- (3) Dentist;

- (4) Physician's assistant;
- (5) Optometrist; and
- (6) Podiatrist.

(z) "Provider" means a person who is employed by, has a contract with, or receives any form of remuneration from a provider agency, individual, or family to deliver services to an individual pursuant to He-M 1001, He-M 507, He-M 518, He-M 521, He-M 524, or He-M 525 as applicable.

(aa) "Provider agency" means an area agency or an entity under contract with an area agency that is responsible for provision of services to individuals.

(ab) "Semi-annually" means twice in a 12 month period of time, with the second required event occurring at least 6 calendar months from the first required event.

He-M 1201.03 Healthcare Coordination.

(a) A nurse trainer shall meet with each individual residing in a residence certified pursuant to He-M 1001 and his or her provider within 30 days of the individual's residency, and annually thereafter, to review the level of support provided.

(b) A review pursuant to (a) above shall include:

(1) For each individual;

a. Health history information;

~~b. HRST assessment~~~~b. Health status indicators; and~~

~~c.~~ Supports provided to maintain physical, mental, and social well-being as reflected in the service agreement pursuant to He-M 503.02 (t)(1)-(3); and

(2) The identification of individuals in frail health.

(c) For individuals who receive services pursuant to He-M 507 and He-M 518, the area agency or provider agency shall provide the following information to the nurse trainer when initiating services:

(1) Medical history, including diagnoses; and

(2) A list of current medications.

(d) Providers accompanying an individual receiving services pursuant to He-M 1001, He-M 507, He-M 518, He-M 521, He-M 524, or He-M 525, as applicable, to a non-emergent medical appointment shall have, at a minimum, the following information:

(1) The reason(s) or purpose for seeking non-emergent care;

(2) A list of the individual's current medications, allergies, and any recent diagnostic or laboratory testing, as applicable; and

(3) ~~The individual's current health status indicators.~~ Relevant information reflected within the HRST.

(e) The provider shall review with the primary care physician or practitioner the annual health screening recommendations including, but not limited to:

- (1) Cancer;
- (2) Hypertension;
- (3) Diabetes;
- (4) Dysphagia and aspiration;
- (5) Infectious diseases;
- (6) Osteoporosis;
- (7) Depression;
- (8) Dementia;
- (9) Thyroid functioning;
- (10) A healthy lifestyle; and
- (11) Any other recommendations specific to the needs of the individual.

~~(f) For each individual receiving services pursuant to He M 1001, the provider shall record and communicate an individual's health status indicators prior to:~~

~~(1) The annual health assessment pursuant to He M 1001.06 (a);~~

~~(2) Service coordinator visits pursuant to He M 503.11 (i); and~~

~~(3) Any appointment with the primary care physician or practitioner.~~

(fg) The nurse trainer shall maintain documentation pursuant to (a) and (c) above.

(gh) The provider shall maintain documentation pursuant to (d) and, (e), ~~and (f)~~ above.

He-M 1201.04 Medication Administration.

(a) ~~With the exception of (n) below, a~~Administration of medications to individuals shall be performed by authorized providers or licensed persons only.

(b) All individuals shall be initially assessed by a nurse trainer to determine the level of support needed specific to medication administration.

(c) The assessment pursuant to (b) above shall include the individual's:

- (1) Medication order(s) and medications prescribed;
- (2) Health status and health history; and
- (3) Ability to self-administer medications as outlined in He-M 1201.05 (b).

(d) If a guardian with authority to make health care decisions has been appointed for an individual, the provider agency shall obtain the consent of the guardian prior to the implementation of medication orders.

(e) Authorized providers shall maintain a copy of the guardian's consent, including the current contact information for the guardian, in the individual's record.

(f) Authorized providers shall administer only those medications for which there is a medication order.

(g) Authorized providers shall maintain a copy of each individual's medication orders in the individual's record.

(h) Authorized providers shall administer PRN medication in accordance with:

(1) A medication order; and

(2) PRN protocols that shall be:

a. The specific condition(s) for which the medication is ordered; ~~Specific written parameters for medication administration; and~~

b. A maximum daily dosage;

c. The interval between doses; and

d. Any special instructions. ~~Approved by the nurse trainer or prescribing practitioner.~~

(i) Authorized providers shall administer medications only to the individuals to whom they are regularly assigned or about whom they have current knowledge relative to the individual's medication regimes.

(j) -A complete medication list for each individual, including over-the-counter and complementary and alternative treatments, shall be reviewed by a nurse trainer in accordance with the orders of the prescribing practitioner, but no less frequently than 2 years from the date of the list.

(k) An individual's medication PRN protocols shall be reviewed by a nurse trainer in accordance with the orders of the prescribing practitioner, but no less frequently than 2 years from the date of the protocol.

(l) The authorized provider shall obtain information specific to each medication prior to administration of medication, including, at a minimum:

(1) The purpose and effect(s) of the medication;

(2) Response time of the medication;

(3) Possible side effects, adverse reactions, and symptoms of overdose;

(4) Possible medication interactions; and

(5) Special storage or administration procedures.

(m) In the event of discovery of a medication error, or of a medication refusal, an authorized provider shall:

(1) Consult immediately with a ~~licensed person~~ nurse trainer or the individual's prescribing practitioner concerning any actions to be taken;

(2) Document each medication error or individual's refusal pursuant to He-M 1201.07 (i) immediately upon discovery of the medication error or the individual's refusal; and

(3) Forward the documentation to the nurse trainer within 24 hours.

(~~HH~~) In those cases where an individual has a history of medication refusal, immediate consultation and documentation pursuant to (k) above shall not be necessary if a plan has been written by the authorized provider and nurse trainer that includes the actions to be taken to address the refusal and has been approved by the prescribing practitioner and, if applicable, the individual's guardian.

(~~HO~~) The authorized provider shall maintain copies of medication errors and medication refusal reports in each individual's record.

~~—(PH)~~ In family residences where no more than one individual is receiving services from an area agency, medication administration shall comply with He-M 1201. ~~or~~ Nur 404 may be utilized as determined by the nurse trainer in emergency situations, and the provider shall become certified pursuant to He-M 1201.06 within 30 days of being authorized under Nur 404.

He-M 1201.05 Self-Administration of Medication.

- (a) An individual shall be presumed to be capable to self-administer medications unless the individual:
- (1) Has been appointed a guardian, pursuant to RSA 464-A, with the authority to consent to or approve of medical treatment or care; or
 - (2) Has been assessed pursuant to (b) and (c) below and does not demonstrate the ability to self-administer medications.
- (b) An individual who wishes to self-administer medication(s), with the approval of his or her guardian, if applicable, shall be assessed by a nurse trainer and determined to be capable of self-administering medications if the individual demonstrates the ability to do the following:
- (1) Identify each medication;
 - (2) Indicate the purpose of each medication;
 - (3) Indicate the dosage, frequency, time, and route of administration for each medication;
 - (4) Understand the potential consequences of not taking the medication or of not taking the medication properly;
 - (5) Indicate circumstances for which assistance should be sought from licensed persons; and
 - (6) Seek assistance, if needed, from licensed persons.
- (c) For individuals who wish to self-administer medication but do not demonstrate the ability pursuant to (b) above, the provider agency shall:
- (1) Document in the service agreement the individual's need for education in order to self-administer medications;
 - (2) Initiate education that includes, minimally, the components outlined in (b) above; and
 - (3) After the individual has received the education in (2) above, require a licensed person or authorized provider to directly supervise the individual self-administering medications to prevent medication errors and to evaluate the individual's capability to self-administer medication.
- (d) The nurse trainer shall assess individuals who self-administer medications to determine the individual's continued capability to self-administer medications:
- (1) No later than last day of the 12th month from the date of the prior assessment; or

(2) More frequently if the individual begins to demonstrate that he or she does not meet the criteria in (b) above.

(e) The nurse trainer shall maintain documentation of the ability to self-administer medications, including the guardian's approval, if applicable, in the individual's record.

He-M 1201.06 Training and Authorization of Providers.

(a) Providers who request training to be authorized to administer medications shall complete a training program that:

(1) Includes of a minimum of 108 hours of classroom training, exclusive of testing or nurse trainer evaluation of whether or not the provider is competent;

(2) Is conducted by a nurse trainer and utilizes the New Hampshire state approved -written curriculum and test; and

(3) Covers the following topics:

- a. Effective health care coordination;
- b. The role, responsibilities, and performance of the authorized provider in the medication administration process;
- c. The rights of the individual regarding accepting or refusing medications;
- d. Principles of infection control as they relate to medication administration;
- e. Anatomy and physiology as it relates to medication administration;
- f. Common reactions to medications;
- g. Categories of medications and their effects;
- h. Effective management of poisoning or medication overdose;
- i. Storage and disposal of medications;
- j. Communication with individuals or guardian, if applicable, about the individual's medications;
- k. The 6 principles of medication administration, including:
 1. The correct medication;
 2. The correct dosage of the medication;
 3. The medication to the correct individual;
 4. The medication at the correct time;
 5. The medication to the individual by the correct method; and
 6. The accurate documentation;
- l. Methods of administration including:

1. Oral;
2. Topical;
3. Inhalant;
4. Sublingual;
5. Transdermal;
6. Nasal;
7. Ocular;
8. Auricular;
9. Vaginal;
10. Rectal; and
11. When indicated by the needs of the individual:

(i) Subcutaneous; ~~and~~

(ii) Enteral; and

(iii) Intramuscular only for epinephrine from a labeled and pre-set or pre-drawn delivery service.

m. Methods of documenting:

1. The administration of medications;
2. The use of controlled substances; and
3. Medication errors or refusals.

(b) The nurse trainer shall issue written authorization to a provider to administer medications if the provider:

- (1) Completed a minimum of 108 hours of classroom training as set forth in (a) above;
- (2) Scored 80% or higher on a written examination based on the information conveyed to them in the training referenced in (a) above;
- (3) Demonstrated knowledge of the following pertaining to each individual's medication(s):
 - a. The name of the medication;
 - b. The reason for its use;
 - c. Any side effects or adverse reactions; and
 - d. Any special instructions such as giving certain fluids, checking pulse rate or monitoring blood levels; and
- (4) Following direct observation by a nurse trainer, has been found competent, pursuant to Nur 404.~~06 (b) (f)~~, to be authorized to administer medications.

(c) The authorized provider shall notify the nurse trainer whenever:

- (1) Any change in an individual's medication occurs;
- (2) Any clarification of medication orders or administration is needed;
- (3) An individual is hospitalized or receives medical treatment; or
- (4) A new individual begins to receive services.

(d) Following notification in (c) above, the nurse trainer shall educate the authorized provider according to (b)(3) above.

(e) Following notification in (c)(4) above, the nurse trainer shall directly observe the authorized provider(s) administering medications to the new individual(s) within 5 business days of the individual(s) moving into the home

~~(fe)~~ Providers shall be re-authorized to administer medications at least annually or by the last day of the 12th month from the date of the prior authorization.

~~(gf)~~ Re-authorization of an authorized provider shall:

- (1) Include, at a minimum, a demonstration of (a)(3)d. and k., and (b)(3) above;
- (2) Follow a nurse trainer's direct observation of the provider in the administration of medication performed in accordance with Nur 404.06 ~~(b) (f)~~; and
- (3) Be valid for the period of time described in (e) above.

~~(hg)~~ Each authorized provider shall maintain documentation in the individual's record of authorization pursuant to (b), (d), (e), and (f) above.

~~(ih)~~ The nurse trainer shall rescind or reinstate the authorization of a provider to administer medications in accordance with Nur 404 and He-M 1201.06, respectively.

(j) The nurse trainer shall specifically authorize a provider for each individual for whom the provider will provide medication, in accordance with Nur 404.

He-M 1201.07 Documentation.

(a) Documentation of medication administration shall be performed and maintained by authorized providers or licensed persons only.

(b) Authorized providers and licensed persons shall document medication administration only for those medications that they administered themselves.

~~(e) With the exception of (f) below and within the scope of Nur 404, the nurse trainer shall remain the single authority over compliance with (d) (j) below.~~

(c) For each individual for whom medications are administered, an authorized provider shall maintain documentation of medication administration that includes:

(1) The name of the individual;

(2) If applicable, the guardian's name and contact information;

(3) Allergies, if applicable; and

(4) For each medication prescribed:

a. The name;

b. The dosage;

c. The frequency of administration;

d. The route of administration;

e. The date and time of administration;

f. The name of the prescribing practitioner;

g. The order date; and

h. Special considerations in administering the medication, if applicable, as directed by the prescribing practitioner or the pharmacist.

(d) The authorized provider or licensed person shall document all medication administration on the individual's medication log as soon as possible following administration including, at a minimum, elements specified in Nur 404.05 ~~(e)(1)-(3)~~.

(e) Documentation of administration of controlled medication shall be in a log separate from the medication log for all other medications.

(f) When a PRN medication is administered, documentation shall be pursuant to He-M 1201.06(c) and shall also include the reason for administration and the effect the medication had on the individual.

(eg) Each authorized provider or licensed person who administers medications to an individual shall enter his or her full signature and initials on a cover sheet annually in the individual's current medication log.

(fh) When a controlled drug is prescribed for an individual, authorized providers or licensed persons shall maintain an inventory that includes:

- (1) The name of the drug and strength;
- (2) The amount used;
- (3) The amount remaining;
- (4) The signature of the authorized provider or licensed person who administers the controlled medication;
- (5) Documentation of a daily count; and
- (6) If applicable, documentation of disposal in the presence of 2 people, at least one of whom is a licensed person.

(gi) When an over-the-counter medication is prescribed, authorized providers shall consult with a licensed person to:

- (1) Ensure the over-the-counter medication is:
 - a. The right brand-name or generic drug;

- b. The right dosage;
- c. Appropriate for the right route of administration; and
- d. Administered in keeping with a PRN protocol pursuant to He-M 1201.04 (h)(2); and

(2) Review any special considerations in administering the medication, as directed by the licensed person.

(h) Documentation pursuant to (g)(1) and (2) above shall include the name of the licensed person the authorized provider consulted with and the date of the consultation.

(i) Upon discovery of each medication error, and each time an individual refuses medications, except as noted in He-M 1201.04 (1), the authorized provider or licensed person shall document, at a minimum, the following:

- (1) The individual's name;
- (2) The date and time of medication error or individual's refusal;
- (3) The drug name, dosage, frequency, and route of administration;
- (4) A description of the medication error or individual's refusal;
- (5) Date and time of consultation of a licensed person, pursuant to He-M 1201.04 (k);
- (6) Actions recommended by the licensed person;
- (7) Actions taken by the authorized provider; and
- (8) Date and time of notification of a nurse trainer.

(j) The nurse trainer shall submit a written report to the area agency or subcontract agency within 5 business days regarding any authorized provider or licensed person who demonstrates a pattern of noncompliance with He-M 1201 as determined by Nur 404.06 (e)(2), and include documentation from (i) above.

(k) The requirements of (a)-(j) above shall not apply to individuals who self-administer medications pursuant to He-M 1201.05 (b).

He-M 1201.08 Storage of Medications.

(a) All medications to be administered by authorized providers, except as noted in (c) below shall be kept in a locked container, cabinet, or closet.

(b) All controlled drugs to be administered by authorized providers, except as noted in (c) below, shall be stored in a locked compartment within a locked container, cabinet, or closet.

(c) In family residences of 3 or fewer individuals certified as a community residence pursuant to He-M 1001, medications shall be stored in a manner determined to be safe by the nurse trainer, including in unlocked containers. Such a decision shall be documented by the nurse trainer in the individual's record.

He-M 1201.09 Quality Review.

~~(a) Within the scope of Nur 404, the nurse trainer shall remain the single authority over compliance with (b)(1) and (d) below.~~

(a) A nurse trainer shall review the following for all individuals whose medications are administered by authorized providers:

(1) Documentation that the provider administering the medication(s) holds a current authorization;

(2) Medication orders and PRN protocols;

(3) Medication labels and medications listed on the medication log to ensure that they match the prescribing practitioner's orders;

(4) Medication logs to ensure that documentation indicates:

a. That medication was administered as prescribed;

b. Refusal by the individual to take medication, if applicable;

c. Any medication occurrences; and

(5) Medication storage to ensure compliance with He-M 1201.08.

(6) Controlled drug inventory pursuant to He-M 1201.07 (f)

~~(b) For all individuals whose medications are administered by authorized providers, a registered nurse or licensed practical nurse shall perform a review that includes the following:~~

~~(1) Elements specified in Nur 404.05 (e)(1) (3);~~

~~(2) Controlled drug inventory pursuant to He M 1201.07 (f); and~~

~~(3) Medication storage to ensure compliance with He M 1201.08.~~

~~(b)~~ (be) Reviews pursuant to ~~(a)~~ (a) above shall occur according to the following timeframes:

(1) At least semi-annually, for:

a. Family residences with 3 or fewer individuals certified pursuant to He-M 1001; and

b. Individuals receiving medication administration in accordance with these rules and services pursuant to He-M 521, He-M 524, or He-M 525;

(2) At least monthly for the first 3 months for newly eligible individuals beginning services or for individuals receiving services in a new setting;

(3) At ~~least a frequency determined by the nurse trainer~~ semi-annually, pursuant to Nur 404.06 (e)(2)a. d. for authorized providers who:

a. Administer medications but do not reside in the family residence with 3 or fewer individuals; or

b. Administer medications in programs certified under both He-M 507 and He-M 1001; and

(4) At least monthly, for all other settings in which authorized providers administer medications.

(c) Any deficiencies discovered and documented by the nurse trainer pursuant to the required review in (a) above shall not result in additional citations during a certification review.

(d) The nurse trainer shall submit information regarding patterns of non-compliance, as demonstrated by reports in He-M 1201.07 (j) above, to the medication committee pursuant to He-M 1201.11.

(e) The provider agency shall retain the documentation of reviews for at least 6 years, with the most current year kept in the individual's record.

He-M 1201.10 Designation of Nurse Trainers.

(a) The bureau administrator or designee shall, upon request, grant designation as a nurse trainer to any nurse licensed in New Hampshire who:

- (1) Has 2 years of licensed nursing experience within the past 5 years, at least one of which was as a registered nurse;
- (2) Has completed a 6-hour orientation program conducted by the bureau; and
- (3) Is not under disciplinary action pursuant to RSA 326-B:37, III.

(b) The bureau administrator shall, upon request, grant a 45-day conditional designation as a nurse trainer to registered nurses who fulfill the requirements of (a)(1) and (3) above but have not yet completed the orientation required by (a)(2) above.

(c) A registered nurse granted conditional designation shall not authorize or re-authorize providers to administer medications but may supervise currently authorized providers.

(d) In order to maintain designation as a nurse trainer, the nurse trainer shall include one contact hour of continuing education specific to the field of developmental disability or acquired brain disorder as a part of his or her 2-year nursing license renewal cycle.

(e) Contact hours shall include, but not be limited to, one or more of the following:

- (1) An independent study course;
- (2) Continuing medical education; or
- (3) College courses.

(f) Nurse trainers shall maintain proof of completion of contact hours pursuant to (d) above for a minimum of 4 years.

(g) The bureau shall conduct unscheduled audits to determine if nurse trainers are meeting the requirements identified in (d) above.

He-M 1201.11 Medication Committee.

(a) The bureau administrator shall appoint a medication committee to review information summarized and submitted on forms required by (g) below.

(b) The committee shall be composed of at least the following:

- (1) The medical director of the bureau or physician designee who shall serve as chairperson of the committee;
- (2) Two registered nurses from provider agencies;

- (3) Two non-nurse representatives from provider agencies; and
- (4) A representative of the bureau.

(c) Each provider agency shall complete and submit semi-annually to the area agency Form 1201-A [“Six Month Nurse Trainer Report to NH Bureau of Developmental Services Medication Committee – For Programs with Reportable Errors”](#)(~~August–March 202013~~) and Form 1201-B [“Six Month Provider Agency Report to NH Bureau of Developmental Services Medication Committee”](#) (~~August–March 202013~~) according to table 12.1.1 for each service in which authorized providers administer medications.

(d) Using Form 1201-C [“Six Month Area Agency Report to NH Bureau of Developmental Services Medication Committee”](#) (~~August–March 202013~~), an area agency shall report on each provider agency’s performance regarding medication administration based on the information submitted through Form 1201-A (~~August 2013~~) and Form 1201-B (~~August 2013~~).

(e) Area agencies shall submit reports prepared on Forms 1201-A, 1201-B, and 1201-C (~~August 2013~~) to the bureau.

(f) Area agencies and provider agencies shall submit reports in accordance with Table 12.1.1 below:

(g) The medication committee shall evaluate reports submitted pursuant to (f) above.

(h) Upon evaluation of reports submitted pursuant to (f) above, the medication committee shall:

(1) Recommend that the bureau administrator accept the report if, as demonstrated by the reports, the area agency or provider agency has complied with the provisions of He-M 1201;

(2) Request that additional information be submitted by the area agency; and

(3) Identify areas of non-compliance, as demonstrated by the reports, for those area agencies or provider agencies that failed to comply with the provisions of He-M 1201, and make recommendations:

a. To the area agency regarding plans for monitoring, oversight, and quality improvement; and

b. To the bureau administrator for corrective actions to be taken by those area agencies or provider agencies identified.

(i) The bureau administrator shall:

(1) Review all recommendations for corrective action made pursuant to (j)(3) above;

(2) Require the area agency or provider agency to take corrective action if he or she determines that the action is necessary for the area agency or provider agency to be in compliance with the provisions of He-M 1201; and

(3) Send written notification of the required corrective actions in (2) above to the area agency or provider agency.

(j) Within 30 days of the date of the written notification in (k)(3) above, the area agency or provider agency shall forward the corrective action plan to the medication committee and fully implement the plan.

He-M 1201.12 Revocation.

(a) The bureau administrator shall revoke the designations of those nurse trainers and authorizations to administer medications of those providers in programs where corrective action has been required, under the following circumstances:

- (1) An agency fails to submit a corrective action plan to the bureau administrator pursuant to He-M 1201.11 (j);
 - (2) An agency submits a corrective action plan which fails to satisfy the criteria specified by the bureau administrator pursuant to He-M 1201.11 (i); or
 - (3) An agency fails to completely implement a corrective action plan within 30 days.
- (b) Upon revocation, the bureau administrator shall issue written notice that:
- (1) States the reasons for the revocation; and
 - (2) Informs the nurse trainer or provider of the right to appeal the decision as described in He-M 1201.13 (a).

(c) Absent an appeal, the designation of nurse trainer or authorized provider shall be revoked following the provision of the 30 days' written notice.

(d) The bureau administrator shall withdraw a notice of revocation if, within the notice period, the area agency or provider agency complies with or, in the judgment of the bureau administrator, has made progress toward complying with the corrective action required by He-M 1201.11 (i)(2).

(e) The bureau administrator's decision to revoke designation or authorization may be appealed pursuant to He-M 1201.13.

(f) If an appeal of the decision is filed, the revocation shall be postponed pending final action on the appeal.

He-M 1201.13 Appeals.

(a) A request for appeal pursuant to He-M 1201.12 (e) shall be submitted in writing to the bureau administrator in care of the department's office of client and legal services within 10 days following the date of the notification of revocation of authorization of a provider to administer medication or designation of a nurse trainer.

(b) The bureau administrator or his or her designee shall immediately forward the request to the administrative appeals unit which shall assign a presiding officer to conduct a hearing or independent review.

(c) Appeals shall be conducted in accordance with He-C 200.

He-M 1201.14 Waivers.

(a) An area agency, provider agency or individual may request a waiver of specific procedures outlined in this chapter, in writing, from the department.

(b) The entity requesting a waiver shall:

- (1) Complete the form entitled "NH Bureau of Developmental Services Request for Waiver to He-M 1201" (~~August-March 2020~~ edition); and

- (2) Include a signature from the individual(s) or legal guardian(s) indicating agreement with the request and the area agency's executive director or designee recommending approval of the waiver.
- (c) All information entered on the forms described in (b) above shall be typewritten or otherwise legibly written.
- (d) No provision or procedure prescribed by statute shall be waived.
- (e) The request for waiver shall be granted by the commissioner of the department or his or her designee within 30 days if the alternative proposed by the requesting entity 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 affect the quality of services to the individual(s).
- (f) The determination on the request for a waiver shall be made within 30 days of the receipt of the request.
- (g) Upon receipt of approval of a waiver request, the area agency's, individual's, or provider 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.
- (h) Waivers shall be granted in writing for a specific duration not to exceed 5 years.
- (i) All waivers related to certified settings shall end with the termination of certification.
- (j) An area agency, provider agency or individual may request a renewal of a waiver from the department. Such request shall be made at least 90 days prior to the expiration of a current waiver.
- (k) A request for renewal of a waiver shall be approved in accordance with the criteria specified in (e) above.

APPENDIX A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-M 1201.01(o),	Health Risk Screening Tool (HRST) (2015 edition)	DTECH Computerists, Inc. PO Box 480942. Tulsa, OK 74148-0942. Voice: (918) 585-9988 x110. Toll free: (800) 800-4278 x110. Website: www.dtechgroup.com . Email: HRSTinfo@dtechgroup.com. Cost: 1–100 consumers = \$699.00 each; 1–200 consumers = \$899.00 each; 1–1000 consumers = \$999.00 each

APPENDIX B

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-M 1201.01-1201.02	RSA 171-A:4; 126-A:19; 20; RSA 326-B:28
He-M 1201.03	RSA 171-A:4; 126-A:19; 20
He-M 1201.04	RSA 171-A:4; 126-A:19; 20, RSA 326-B:28
He-M 1201.05-1201.14	RSA 171-A:4; 126-A:19; 20; RSA 326-B:28
He-M 1201.01-1201.13	RSA 126-A:19; RSA 135-C:3