

Readopt with amendment He-M 614, effective 3-16-22 (Document #13350), to read as follows:

PART He-M 614 PROCESS FOR INVOLUNTARY EMERGENCY ADMISSION

Statutory Authority: New Hampshire RSA 135-C:4, III; 135-C:61, II

He-M 614.01 Purpose. The purpose of this rule is to define the process for involuntary emergency admission (IEA) to a designated receiving facility or New Hampshire Hospital (NHH).

He-M 614.02 Definitions.

(a) “Certificate” means the document completed by a certifying practitioner pursuant to RSA 135-C:28, I, stating that the person to be admitted meets the criteria for IEA specified in RSA 135-C:27.

(b) “Certifying practitioner” means a licensed practitioner who has been approved by either a DRF or a CMHP to have the expertise and qualifications to complete an IEA certificate in accordance with RSA 135-C:28, I, and placed on a list of certifying practitioners by the commissioner.

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

(d) “Community mental health program” (CMHP) means “community mental health program” as defined in RSA 135-C:2, IV. The term includes the term community mental health provider.

(e) “Designated receiving facility” (DRF) means a “receiving facility” as defined in RSA 135-C:2, XIV and includes NHH.

(f) “Incapacitated” means that a person, as a result of the use of alcohol or substances, is in a state of intoxication, or mental confusion resulting from withdrawal, such that:

- (1) The person appears to need medical care or supervision to assure his or her safety; or
- (2) The person appears to present a direct active or passive threat to the safety of others.

(g) “Informed decision” means an “informed decision” as defined by RSA 135-C:2, IX.

(h) “Intoxicated” means a condition in which the mental or physical functioning of an individual is substantially impaired as a result of the presence of alcohol or substances in his or her system.

(i) “Involuntary admission” means an order of involuntary commitment made pursuant to RSA 135-C:34-54 by a probate court.

(j) “Involuntary emergency admission (IEA)” means admission to the state mental health system on an involuntary, emergency basis, pursuant to RSA 135-C:27-33, of a person who is in such mental condition as a result of a mental illness as to pose a likelihood of harm to self or others.

(k) “Licensed practitioner” means a physician, physician’s assistant (PA), or advance practice registered nurse (APRN) licensed to practice in this state.

(l) “Mental illness” means “mental illness” as defined in RSA 135-C:2, X.

(m) “Minor” means any person under the age of 18 years.

(n) “Parent” means a biological or adoptive legal custodian of a minor, or a person or agency appointed as a guardian of the person of a minor.

(o) “Petition” means a written document that requests the IEA of a person and that is completed in accordance with the requirements in RSA 135-C:27-28.

(p) “Petitioner” means any individual who has petitioned for an examination of a person for the purpose of an IEA, which may include a certifying practitioner who has conducted or caused to be conducted an examination or completed a certificate for purposes of IEA.

He-M 614.03 Criteria for Involuntary Emergency Admission.

(a) A person shall be eligible for an IEA if the person is in such mental condition as a result of mental illness to pose a likelihood of danger to himself or others. A mental condition that is a result of a mental illness requires that the mental condition be directly linked to mental illness and not the result of any other ailment.

(b) A person shall be considered a danger to himself if any one of the following sets of circumstances exists:

(1) Within 40 days of the completion of a petition, the person has inflicted serious bodily injury on himself or has attempted suicide or serious self-injury and there is a likelihood the act or attempted act will recur if admission is not ordered;

(2) Within 40 days of the completion of a petition, the person has threatened to inflict serious bodily injury on himself and there is likelihood that an act or attempt of serious self-injury will occur if admission is not ordered;

(3) The person's behavior demonstrates that he so lacks the capacity to care for his own welfare that there is a likelihood of death, serious bodily injury, or serious debilitation if admission is not ordered; or

(4) The person meets the following criteria:

a. The person has been determined to be severely mentally disabled in accordance with rules authorized by RSA 135-C:61 for a period of at least one year;

b. The person has had at least one involuntary admission, within the last 2 years, pursuant to RSA 135-C:34-54;

c. The person has no guardian of the person appointed pursuant to RSA 464-A;

d. The person is not subject to a conditional discharge granted pursuant to RSA 135-C:49, II;

e. The person has refused the treatment determined necessary by a mental health program approved by the department; and

f. A psychiatrist at a CMHP has determined, based upon the person's clinical history, that there is a substantial probability that the person's refusal to accept necessary treatment

will lead to death, serious bodily injury, or serious debilitation if admission is not ordered.

(c) A person shall be considered a danger to others if, within 40 days of the completion of the petition, the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another.

(d) For persons on a conditional discharge from New Hampshire Hospital, when a condition or circumstance exists which may create a potentially serious likelihood of danger to the person or to others, a psychiatrist, psychiatrist-supervised PA, or APRN at the CMHP providing the person's outpatient care shall be authorized to revoke the conditional discharge in accordance with RSA 135-C:51 and He-M 609.06.

(e) The CMHP providing outpatient care to a person on a conditional discharge shall be authorized to disclose protected health information as necessary, consistent with the treatment exception in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR §164.502(a)(1)(ii), to a CMHP, hospital emergency department, or designated receiving facility providing treatment to the person.

(f) When it is not known whether a person is on a conditional discharge, an IEA petition shall be authorized.

(g) If, prior to the completion of an IEA certificate, it is discovered that a conditional discharge exists and the CMHP providing outpatient care is available, the CMHP shall be authorized to proceed with a revocation of the conditional discharge.

He-M 614.04 Procedure for Involuntary Emergency Admission.

(a) A petitioner may petition for the IEA of a person if the petitioner reasonably believes the criteria in He-M 614.03 are satisfied.

(b) The petition and certificate for IEA shall be completed by using the State of New Hampshire, Judiciary Branch, Form NHJB-2826-D, (03/17/2022), which is a form that consists of the following parts:

- (1) Involuntary emergency admission cover sheet;
- (2) A petition for IEA;
- (3) Certificate of examining physician, physician assistant or APRN for IEA;
- (4) Notice of hearing; and
- (5) Notice of rights of person sought to be admitted.

(c) The petitioner and certifying practitioner may be the same person.

(d) The petitioner shall attend the hearing, in-person or by telephone or video, and must be available to testify.

(e) If a witness is available to testify, the witness's statement shall be completed by a witness who has observed dangerous acts or behaviors by the person sought to be admitted and the witness shall provide the following information on page 5 of the petition:

- (1) Information identifying the witness; and

(2) A statement or statements as to specific dangerous acts or behaviors within the last 40 days by the person sought to be admitted observed by the witness.

He-M 614.05 Completing the Petition and Certificate.

(a) The petition shall be completed by the petitioner and include the petitioner's statement;

(b) The certificate shall be completed in accordance with the following;

(1) A statement by a witness (witness' statement) if a witness is necessary and available to testify;

(2) A physical examination, if indicated and circumstances permit, conducted by a licensed practitioner; and

(3) A mental examination, conducted by a licensed practitioner.

(c) The petitioner's statement in (a) above shall be completed as follows:

(1) The petitioner shall review the instructions to petitioner on page 2, and provide the following information on pages 3 and 4 of the petition:

a. The name of the person sought to be admitted and the date;

b. Information identifying the person sought to be admitted and whether the petitioner believes the person is or has been a danger to self or others; and

c. Information identifying the petitioner and a description of specific dangerous acts or behaviors within the last 40 days by the person sought to be admitted; and

(2) The petitioner shall sign the petition.

(d) If a witness is available to testify, the witness's statement in (b)(1) above shall be completed by a witness who has observed dangerous acts or behaviors by the person sought to be admitted and the witness shall provide the following information on page 5 of the petition:

(1) Information identifying the witness; and

(2) A statement or statements as to specific dangerous acts or behaviors within the last 40 days by the person sought to be admitted observed by the witness.

(e) The physical examination shall be conducted within 3 days of the date of the completion of the petition, as follows:

(1) A licensed practitioner or their designee shall conduct a physical examination of the person sought to be admitted and provide the following information on page 6 of the petition:

a. The name of the person sought to be admitted;

- b. Information identifying the licensed practitioner or designee such as name, title, phone number, and address;
- c. A detailed description of the nature of the physical examination, including a list of known past or present medical conditions, positive physical findings, and other pertinent medical information that the mental health facility may need to know; and
- d. A signed statement that the person sought to be admitted is medically approved for admission to a DRF; and

(2) The licensed practitioner or designee shall perform such physical examination in accordance with the standard of practice applicable to the practitioner pursuant to RSA 326-B, RSA 328-D, or RSA 329 and the rules promulgated thereunder to ensure that:

- a. The person sought to be admitted is medically stable for the level of medical care that the DRF is able to provide; and
- b. The individual's medical problems are not impacting their mental status in a way that interferes with diagnosing the mental illness.

(f) The mental examination shall be conducted within 3 days of the completion of the petition, as follows:

(1) A licensed practitioner or designee shall conduct a mental examination of the person sought to be admitted and provide the following information on page 7 of the petition and certificate:

- a. The name of the person sought to be admitted;
- b. Information identifying the licensed practitioner or designee such as name, title, phone number, and address;
- c. A detailed description of the nature of the examination, including a list of any past or present mental condition, hospitalizations for psychiatric reasons, psychotropic medications, current mental status, orientation, memory, judgment, speech productiveness, coherence, emotional tone, insight, activity level, appearance and any other pertinent information on the person's mental state; and
- d. The signature of the licensed practitioner or designee; and

(2) The licensed practitioner or designee shall perform such mental examination in accordance with their standard of practice pursuant to RSA 326-B, RSA 328-D or RSA 329 and the rules promulgated thereunder.

(g) Upon request for IEA by a petitioner, if the person sought to be admitted refuses to consent to a mental examination, a petitioner or a law enforcement officer may request a justice of the peace to order the examination as follows:

(1) The request shall be in the form of a complaint and prayer for compulsory mental examination pursuant to RSA 135-C:28, II and NHJB-2826-D (03/17/2022), which shall be signed and sworn to before a justice of the peace; and

- (2) The complaint shall be submitted to the justice of the peace along with the petition.
- (h) The certifying practitioner shall not sign the certificate if:
 - (1) The person has untreated medical ailments that may be the cause of the person's mental health concerns;
 - (2) The person has medical ailments that cannot be safely treated by the medical services available at the DRF; or
 - (3) The person is incapacitated from alcohol or substance use.

He-M 614.06 List of Licensed Practitioners Approved to Certify Involuntary Emergency Admissions.

- (a) The commissioner or designee shall maintain a list of certifying practitioners who are approved by either a DRF or a CMHP to certify an IEA.
- (b) To be approved as a certifying practitioner, the practitioner shall:
 - (1) Have experience with the laws and rules governing the mental health services system; and
 - (2) Attend annual training on involuntary emergency admissions, non-emergency involuntary admissions, and voluntary admissions.
- (c) Certifying practitioners approved in accordance with (a) and (b) above who are on the list are authorized to certify individuals under both RSA 135-C:27-33 and RSA 135-C:36.
- (d) DRFs and CMHPs in each mental health region of the state shall provide the names of all certifying practitioners they have approved to the department.
- (e) When a DRF or CMHP accepts or removes approval for a certifying practitioner, it shall provide the names of the new or removed certifying practitioner to the commissioner.
- (f) The department may remove a certifying practitioner from the list if the certifying practitioner fails to comply with these rules in accordance with the following process:
 - (1) Prior to removing a certifying practitioner from the list, the commissioner shall provide a warning to the certifying practitioner that specifies the non-compliance with this rule and gives the certifying practitioner an opportunity to come into compliance;
 - (2) After receiving the warning, if the certifying practitioner continues to not comply with the rules, the department shall remove the certifying practitioner from the list; and
 - (3) Upon removal of a certifying practitioner, the department or designee shall inform the DRF or CMHP that approved the certifying practitioner that the certifying practitioner has been removed.
- (g) The DRF or CMHP may reapprove the certifying practitioner after the certifying practitioner receives additional training on involuntary emergency admissions, non-emergency admissions, and

voluntary admissions and it is determined that the certifying practitioner has had sufficient education to perform IEAs in accordance with the requirements of this rule.

(h) If the DRF or CMHP reapproves a certifying practitioner, it shall inform the department of the new approval.

He-M 614.07 Completion of Certificate by Certifying Practitioner.

(a) The certificate portion of the petition and certificate form shall be completed in accordance with the following:

(1) Within 3 days of completion of the petition, a certifying practitioner shall state the following on page 8 of the petition and certificate:

- a. He or she is a licensed practitioner who is on the list identified in He-M 614.06 as approved to certify IEAs;
- b. He or she is not a relative of the person named in the petition who is alleged to be mentally ill;
- c. He or she has conducted or has designated a licensed practitioner to conduct a physical examination of the individual;
- d. He or she has conducted or has designated a licensed practitioner to conduct a mental examination of the individual;
- e. The time and date that he or she personally examined the person sought to be admitted and that this time and date are within three (3) days of completion of the attached petition;
- f. Certify that as a result of the physical and mental examinations that the certifying practitioner has completed and/or reviewed, and the acts or behaviors the licensed practitioner has observed or which were reported by the petitioner and/or witness, the criteria of RSA 135-C:27 are satisfied, as the person is in such mental condition as a result of mental illness as defined above that he or she poses a serious likelihood of danger to self or others as described in He-M 614.03(b);
- g. He or she understands they may be required to appear in court for a hearing;
- h. The DRF which can best provide the degree of security and treatment required by the person sought to be admitted;
- i. That the certifying practitioner informed the person of the DRF to which the person will be or will likely be transported;
- j. All statements are true; and
- k. The certifying practitioner's signature, printed name, address and phone number.

(2) A certifying practitioner shall not complete a certificate for a person:

- a. Who consents to voluntary mental health treatment at any time the individual is under the care of the certifying practitioner, unless the individual withdraws that consent and the practitioner subsequently determines that an IEA is necessary;
- b. Unless the certifying practitioner has determined that the dangerous behavior(s) is not caused by an untreated physical ailment;
- c. Unless the certifying practitioner has determined that the dangerous behavior(s) is not caused by the influence or acute withdrawal from alcohol or other substances;
- d. Unless the certifying practitioner has determined that the dangerous behavior(s) is not caused by an intellectual disability as defined in RSA 135-C:2, X; or
- e. Unless the certifying practitioner has determined that the dangerous behavior(s) is not caused by a neurocognitive disorder, such as Alzheimer's disease or dementia; and/or
- f. Unless the certifying practitioner has reviewed and considered a less restrictive voluntary option for treatment in accordance with He-M 614.10(a).

(b) The petition and certificate are not complete until:

- (1) All requirements of He-M 614.04 through 614.07 are met;
- (2) The DRF to which the individual is transferring is identified on the certificate. If a DRF bed is not available, the certifying practitioner must identify on the certificate the DRF which best meets the needs of the patient; and
- (3) Be signed and dated by the certifying practitioner.

(c) The individual shall be admitted to the state mental health system as soon as the petition and certificate are complete.

(d) Treatment of individuals within the state mental health system shall be administered in accordance with all applicable federal and state laws and rules, such as:

- (1) All practitioner or clinical standards of practice such as RSA 329, RSA 328-D and RSA 326-B and the rules promulgated thereunder;
- (2) All health facility standards such as RSA 151, NH Administrative Rule He-P 802, and Center for Medicare and Medicaid Services (CMS) conditions of participation;
- (3) The Emergency Medical Treatment and Labor Act (EMTALA); and
- (4) Any other federal and state laws and rules that govern the treatment of individuals seeking and receiving mental health treatment from a medical provider.

He-M 614.08 Filing of Completed Petition and Certificate for Involuntary Emergency Admission.

(a) Immediately upon completion of the certificate, the certifying practitioner or designee shall transmit the petition and certificate in its entirety to the DRF identified on the certificate.

(b) If NHH is identified as the DRF on the petition and certificate, the completed petition and certificate shall be sent directly to NHH.

(c) If another DRF is identified on the petition and certificate, the completed petition and certificate shall be sent to that DRF with a copy of the petition and certificate sent to NHH.

(d) If NHH determines prior to filing with the court that the petition and certificate is not completed in accordance with the requirements of this rule, the petition and certificate shall be considered invalid.

(e) If a certificate is determined invalid, the individual subject to the certificate shall not be considered in the state mental health services system until a certificate is complete.

(f) The certifying practitioner shall be responsible for completing the certificate fully prior to resubmitting to NHH.

(g) NHH shall contact the certifying practitioner to notify them that the certificate is invalid and that the individual is not in the custody of the state mental health system.

(h) The completed petition and certificate shall be filed with the circuit court that shall schedule a probable cause hearing, even if the individual has yet to be transferred to the DRF.

(i) If the person is transferred from the hospital to a different DRF than the one originally identified on the certificate, or discharged to another non-DRF location, the hospital shall notify the original DRF of the transfer immediately upon knowledge of the change.

(j) The DRF shall then notify the court in which the petition was filed and inform the court of the disposition and location, if known, of the individual.

(k) Only the DRF originally identified on the petition and certificate shall be responsible for filing the completed petition and certificate with the court but any DRF shall consider for admission any completed petition and certificate received by any DRF.

(l) The transmission of the petition and certificate to other medical providers as well as the court system shall be done in accordance with HIPAA and any other applicable privacy and confidentiality laws.

He-M 614.09 Delivery to Receiving Facility. Delivery to a DRF shall be in accordance with RSA 135-C:29.

He-M 614.10 Rescission of Involuntary Emergency Admission.

(a) Following completion of a certificate pursuant to RSA 135-C:28 and before custody of the person is accepted by a law enforcement officer pursuant to RSA 135-C:29, the certificate shall be rescinded if the individual no longer meets the criteria of RSA 135-C:27.

(b) Following completion of a certificate pursuant to RSA 135-C:28 and before custody of the person is accepted by a law enforcement officer pursuant to RSA 135-C:29, the certificate may be rescinded and the person who is the subject of the certificate released in any of the following circumstances:

(1) A mobile crisis team under contract with the department accepts transfer of the person's care;

- (2) An assertive community treatment team operated by a CMHP accepts transfer of the person's care;
- (3) A community-based provider accepts transfer of the person's care;
- (4) Clinical reasons preclude the continuation of an IEA; or
- (5) Any other circumstance exists that the certifying practitioner believes addresses the individual's needs and the individual's care can be conducted safely outside of inpatient treatment.

(c) A rescission shall be completed on form "Involuntary Emergency Admission Invalidation Form" (August 2022) and sent to the DRF identified on the completed petition and certificate, the court, and to NHH.

(d) Pursuant to RSA 135-C:29-a, no civil action shall be maintained against a person who rescinds an involuntary admission in accordance with (a) or (b) above, provided that the practitioner is acting in good faith within the limits of their authority.

He-M 614.11 Notice Pursuant to RSA 135-C:30.

(a) Upon completion of the certificate, the certifying practitioner or designee shall provide the patient the notice of rights of person sought to be admitted, included in the IEA Form NHJB-2826-D (03/17/2022) to the individual in custody.

(b) The notice identified in (a) above does not replace the notice required to be given by the DRF in accordance with RSA 135-C:30.

He-M 614.12 IEA Probable Cause Hearings.

(a) Within 3 days after completion of the certificate, not including Sundays and holidays, and subject to the notice requirements of RSA 135-C:24, there shall be a probable cause hearing in the circuit court having jurisdiction over the matter to determine if there is probable cause for involuntary emergency admission in accordance with RSA 135-C.

(b) For 48 hours prior to the hearing, the person sought to be admitted shall not be given medication or treatment that would adversely affect their judgment or limit their ability to prepare for the hearing unless the person sought to be admitted makes an informed decision to consent to treatment or unless a medical or psychiatric emergency exists in accordance with the following:

- (1) A person's judgment is adversely affected or their ability to prepare is limited if they are unable to work with their counsel and unable to understand the reasons why an involuntary emergency admission is sought; and
- (2) If medication or treatment is given to the person sought to be admitted prior to the probable cause hearing, the physician prescribing the medication shall advise the district court of the nature of the medication, the reason for it, and its probable effect upon the person in writing, prior to the hearing or if at the hearing, presented by the physician.

(c) If an individual has received medications within the 48 hour period prior to the hearing, the certifying provider or designee shall complete “48 Hour Rule-MEDICATION LISTING FORM” (August 2022).

(d) The medication form identified in (c) above shall be sent to NHH or DRF identified on the certificate so that it can be sent to the court for its review.

(e) For good cause, the person or the person’s attorney may file a motion requesting a change of venue or transfer.

(f) The hospital or DRF having custody of the person at the time the probable cause hearing is scheduled is responsible for ensuring the person has transportation to the hearing, if transportation is necessary.

He-M 614.13 Ten-Day Limitation Period for Involuntary Emergency Admission.

(a) The 10-day limitation period for IEAs shall be in accordance with RSA 135-C:32, which states that the 10-day period excludes Saturdays and Sundays.

(b) The 10-day period begins at the time the petition and certificate are complete.

(c) A subsequent petition for IEA containing allegation of specific facts or actions which occurred subsequent to the initial IEA may be completed and certified if necessary in accordance with RSA 135-C:32.

APPENDIX

| RULE | SPECIFIC STATE STATUTE THE RULE IMPLEMENTS |
|-------------|---|
| He-M 614 | RSA 135-C:4, III; 135-C:61, II |