

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____ Rule Number He-A 304.07 and He-A 304.18

1. Agency Name & Address:
**Dept. of Health & Human Services
 Bureau of Drug & Alcohol Services
 Clinical Services Unit
 105 Pleasant Street, 3rd Floor
 Concord, NH 03301**

2. RSA Authority: RSA 318-B:10, VII(b) and VIII(b)
 3. Federal Authority: _____
 4. Type of Action:
 Adoption _____
 Repeal _____
 Readoption _____
 Readoption w/amendment X

5. Short Title: **Certification and Operational Requirements for Opioid Treatment Programs**

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

He-A 304 describes the requirements necessary to be certified as an approved opioid treatment program.

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-A 304.07 on inspections and He-A 304.18 on client record systems. Proposed changes to this rule, as compared to the existing rule include:

- **Updating He-A 304.07 by updating when the Department shall conduct an inspection; and**
- **Updating He-A 304.18 to allow opioid treatment programs (OTPs) to use and document within their own electronic medical record (EMR) systems without having to double-document in the New Hampshire Web Information Technology System (WITs) and updating the information to be documented.**

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

Groups affected by this rule included providers of opioid treatment programs, and the clients they serve.

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

Rule	RSA/Federal Citation
He-A 304	RSA 172:2-a; RSA 172:8-b, II; RSA 318-B:10, VII & VIII

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, 2nd Floor E-mail: 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: **Thursday, June 8, 2023**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, June 1, 2023 at 10:00am**

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

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

FIS # 23:089, dated April 24, 2023

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 decrease state general fund costs and costs to independently-owned businesses by indeterminable amounts.

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:

The Department of Health and Human Services states the proposed rule may result in an employee cost savings by reducing the amount of time needed to perform audits of opioid treatment programs (OTP).

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

The proposed rules may benefit OTPs by reducing the staff time needed to document within the state’s Web Information Technology System (WITS).

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-A 304 CERTIFICATION AND OPERATIONAL REQUIREMENTS FOR OPIOID TREATMENT PROGRAMS

Statutory Authority: RSA 318-B:10, VII(b) and VIII(b)

Readopt with amendment He-A 304.07, effective 2-16-18 (Document #12476), to read as follows:

He-A 304.07 Inspections.

(a) For the purpose of determining compliance with He-A 304, the certificate holder shall admit and allow any representative from the department at any time during regular business hours to inspect the following:

- (1) The facility premises;
- (2) All programs and services provided by the certificate holder; and
- (3) Any records required by He-A 304.

(b) The department shall conduct inspections prior to, and/or during:

- (1) Issuance of an initial certification;
- (2) Renewal of a certification;
- (3) A change of ownership; ~~and~~
- (4) A change of physical location; and
- (5) An investigation of submitted complaint.

(c) In addition to (b) above, an OTP shall be subject to inspection by the department to verify the implementation of any POC accepted or issued by the department.

(d) A notice of deficiencies shall be issued when, as a result of any inspection, the department determines that the certificate holder is in violation of any of the provisions of He-A 304.

(e) If the notice identifies deficiencies to be corrected, the applicant shall submit a POC in accordance with He-A 304.09 within 21 days of the date on the letter that transmits the notice of deficiencies.

Readopt with amendment He-A 304.18, effective 2-16-18 (Document #12476), to read as follows:

He-A 304.18 Client Record System.

(a) Each OTP shall have policies and procedures to implement a comprehensive client record system that complies with this section.

(b) In addition to (a) above, the OTP shall enter client information into the client record system no later than 3 days for any of the following client interactions or changes made via in-person or telemedicine: department's Web Information Technology System (WITS), at <https://nh.witsweb.org/>, or subsequent web based database, as follows:

- (1) Initial intake transaction, including and as applicable: No later than 3 days following admission to the OTP, the OTP shall complete the following WITS modules:

- a. Client ~~names(s); information (profile), including:~~
- ~~b.1. Address;~~
- c. Telephone number ~~Name(s);~~
- d. Sex assigned at birth;
- ~~e.2. Gender identity;~~
- f. Sexual orientation, if provided by the client;
- ~~g.3. Date of birth;~~
- ~~h.4. Last 4 digits of the client's social security number;~~
- ~~i.5. Ethnicity, if provided by the client;~~
- ~~j.6. Race, if provided by the client;~~
- ~~k.7. Special accommodations needs, if any;~~
-
- ~~8. Sexual orientation, if provided by the client;~~
-
- ~~l.9. Preferred language;~~
- ~~m.10. Veteran status;~~
- ~~n.11. Family member veteran status; and~~
- ~~o.12. Name and contact information of all client's health insurance(s);~~
- ~~p. Name, address, and telephone number of the person to contact in the event of an emergency;~~
- ~~q. If either have been appointed for the client, the name, address, and telephone number of the clients guardian and/or representative payee;~~
- ~~r. Name, address, and telephone number of the client's primary care provider;~~
- ~~s. Name, address, and telephone number of the client's behavioral health provider;~~
- ~~b. Intake transaction, including:~~
-
- ~~t.1. Intake facility;~~
- u. Intake date;
- ~~v.2. Intake staff;~~
- ~~w.3. Method of initial contact;~~
-

~~4. Town of residence;~~

-

~~x.5. Referral source, including contact information;~~

~~y.6. Case status; and~~

~~z.7. Initial contact date;~~

~~8. Intake date;~~

-

~~9. Pregnancy status, if applicable;~~

-

~~10. HIV testing history, if provided by the client;~~

-

~~11. History of injection drug use;~~

-

~~12. Information on court mandates for treatment;~~

-

~~13. Presenting problem; and~~

-

~~14. Service domain;~~

~~(2)e. Admission, including and as applicable;~~

~~a1. Admission type;~~

~~b2. Admission staff;~~

~~c3. Admission date;~~

~~d. Presenting problem;~~

~~e4. Codependent status;~~

~~f. Client's physical health history;~~

~~g. Client's behavioral health history;~~

~~h5. Treatment history;~~

~~i6. Emergency department utilization;~~

~~j. Presence of a co-occurring mental health disorder;~~

~~7. Mental health status, if provided by the client;~~

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~~8. Planned opiate replacement therapy;~~

~~k9. Education level;~~

~~l10. Community based support group utilization;~~

~~m11. Employment status;~~

~~n~~12. Income;

~~l~~3. ~~Payer information;~~

~~o~~14. Living situation;

~~p~~15. Marital status;

~~q~~16. Number of dependents;

~~r~~. ~~History of injection drug use;~~

~~s~~17. Substance use information;

~~t~~. ~~Current medications;~~

~~u~~18. Arrest history, if provided by the client; and

~~v~~19. Diagnostic information;

~~w~~. ~~Planned opiate replacement therapy;~~

~~x~~. ~~Information on court mandated treatment;~~ and

~~y~~. ~~Service domain;~~

~~d~~. ~~Program enrollment, including:~~

~~1~~. ~~Program name;~~

~~2~~. ~~Enrolling staff;~~

~~3~~. ~~Program start date;~~

~~(2) No later than 3 days following discharge from the OTP, the OTP shall complete the following WITS modules:~~

~~a~~. ~~Program disenrollment, including:~~

~~1~~. ~~Program end date; and~~

~~2~~. ~~Termination reason; and~~

~~b~~. ~~Discharge, including:~~

~~1~~. ~~Discharge date;~~

~~2~~. ~~Date of last contact;~~

~~3~~. ~~Discharge staff;~~

~~4~~. ~~Discharge reason;~~

~~5~~. ~~Community based support group utilization;~~

- ~~6. Arrest history, if provided by the client;~~
-
- ~~7. Pregnancy status, if applicable;~~
-
- ~~8. Relationship status;~~
-
- ~~9. Living arrangement;~~
-
- ~~10. Employment status;~~
-
- ~~11. Emergency department utilization;~~
-
- ~~12. Town of residence;~~
-
- ~~13. Substance use information; and~~
-
- ~~14. Diagnosis information; and~~

~~(3) No later than 3 days following a change to any of the information in (1) and (2) above, the information shall be updated in WITS.~~

~~(c) The client record shall include, but not be limited to:~~

~~(3+) Treatment and continuity of care:~~

~~a. A record of all client screenings, including, and as applicable but not limited to:~~

~~a. The client name and/or unique client identifier generated by WITS;~~

~~b. Client demographic information, including but not limited to:~~

~~1. HIV testing;~~

~~2. HCV testing;~~

~~3. Pregnancy screening status;~~

~~42. Primary, secondary, and tertiary substance, severity frequency and method;~~

~~53. Age of first use of substances;~~

~~6. Past 14 day administration of Naloxone;~~

~~4. Intravenous drug use status;~~

~~5. Presence of a co-occurring mental health disorder;~~

~~6. Past 30 days arrests, if provided by the client;~~

~~7. Gender;~~

~~8. Veteran status;~~

~~9. Past 14 day administration of Narecan; and~~

~~740. Involvement with the criminal justice and/or child welfare protective protection systems;~~

~~e. The client referral source;~~

~~8d.~~ The date of initial contact from the client or referring provider;

~~9e.~~ The date of screening; and

~~10f.~~ The result of the screening, including the reason for denial of services if applicable;

~~(2) Identification data;~~

~~(3) The date of admission;~~

~~(4) If either of these have been appointed for the client, the name and address of the guardian and the representative payee;~~

~~(5) The name, address, and telephone number of the person to contact in the event of an emergency;~~

~~(6) Contact information for the person or entity referring the client for services, as applicable;~~

~~(7) The name, address, and telephone number of the primary health care provider;~~

~~(8) The name, address, and telephone number of the behavioral health care provider, if applicable;~~

~~(9) The name and address of the client's public or private health insurance provider(s), or both, if applicable;~~

~~(10) The client's personal health history;~~

~~(11) The client's mental health history;~~

~~(12) Current medications;~~

b. Components of all treatment records, including but not limited to:

~~1.(13)~~ Signed receipt of notification of client rights;

2. Client's name;

3. Client's unique identification number;

4. Release of information form, compliant with 42 CFR, Part 2;

5. Signed informed consent to treatment, including but not limited to an explanation of the department's access to client records;

~~6.(14)~~ Documentation of all elements of the initial screening and evaluation required by He-A 304.21;

~~7.(15)~~ The individual treatment plan, as required by He-A 304.23(e)-(g), updated at designated intervals in accordance with He-A 304.23(h)-(i);

~~8.(16)~~ Documentation that is consistent with SAMHSA’s “TAP 21: Addiction Counseling Competencies” (2015 edition), available as noted in Appendix A, of all client services, including, but not limited to:

~~(i)a.~~ Record of all doses provided to the client; and

~~(ii)b.~~ Progress notes detailing all services required in:

~~i.1.~~ He-A 304.15(c);

~~ii.2.~~ He-A 304.22(a)-(b);

~~iii.3.~~ He-A 304.23(c)-(d), (j), and (r);

~~iv.4.~~ He-A 304.24;

~~v.5.~~ He-A 304.25(b); and

~~vi.6.~~ He-A 304.27(a);

~~(17) A narrative discharge summary, as required by He A 304.28(f);~~

~~(18) Release of information forms compliant with 42 CFR, Part 2;~~

~~(19) Signed informed consent to treatment, including but not limited to an explanation of the department’s access to client records;~~

~~9.(20)~~ Any correspondence pertinent to the client; and

~~10.(21)~~ Any other information the OTP deems relevant; and

(4) Discharge, including but not limited to:

a. Discharge date;

b. Date of last contact;

c. Discharge staff;

d. Discharge reason;

f. Post discharge living arrangements;

g. Substance use information;

h. Diagnosis information;

i. Any information on transfer facility, if client is transferring; and

j. A narrative discharge summary, as required by He-A 304.28(f); and

~~(522)~~ For any client who is placed on a waitlist, as applicable:

a. All referrals to and coordination with interim services or reason that such referrals were not made;

- b. All client contacts between screening and removal from the waitlist; and
- c. The date the client was removed from the waitlist and the reason for removal.

(cd) All client records maintained by the OTP or its contractors shall be strictly confidential.

(de) All confidential information shall be maintained in compliance with 42 CFR, Part 2.

(ef) OTPs shall retain client records after the discharge or transfer of the client, as follows:

- (1) For a minimum of 7 years for an adult; and
- (2) For a minimum of 7 years after age of majority for children.

(g) In the event of an OTP closure, the OTP shall arrange for the continued management of all client records in the following measures:-

(1) The closing OTP shall notify the department in writing of the address where records will be stored and specify the person managing the records:-

~~(h) The closing OTP shall arrange for storage of each record through one or more of the following measures:-~~

- ~~(2)~~ Continue to manage the records and give written assurance to the department that it will respond to authorized requests for copies of client records within 10 working days;
- ~~(3)~~ Transfer records of clients who have given written consent to another certified OTP; or
- ~~(4)~~ Enter into a limited service organization agreement with a certified provider to store and manage records.

Appendix A: Incorporation by Reference Information

Rule	Title	Obtain at:
He-A 304.18(b)(3)b., 8.	TAP 21: Addiction Counseling Competencies, 2015 edition	Publisher: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment, www.samhsa.gov Available free of charge at: http://store.samhsa.gov/shin/content//SMA12-4171/SMA12-4171.pdf

APPENDIX B

Rule	RSA/Federal Citation
He-A 304	RSA 172:2-a; RSA 172:8-b, II; RSA 318-B:10, VII & VIII