#14682 (eff 8-26-26) EXPIRES: 2-22-27

Readopt with amendment He-M 612, effective 8-26-16 (Document #11168), to read as follows:

PART He-M 612 TRANSFERS BETWEEN RECEIVING FACILITIES

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

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

He-M 612.02 Definitions.

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

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

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

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

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

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

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

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

He-M 612.03 Status Transfers.

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

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

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

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

(b) Whenever a receiving facility has custody of a person for a period of an involuntary emergency admission or an involuntary admission but has not been so designated for that particular purpose, the administrator of the facility shall transfer the person to New Hampshire hospital, or another receiving facility which has been designated for that purpose, for any remaining period of involuntary emergency admission or involuntary admission.

(c) When a receiving facility is aware that it has custody of a person who requires a transfer pursuant to (b) above, the facility shall immediately notify New Hampshire hospital, or another appropriately designated receiving facility, of the need to transfer the person;

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

(1) State the reason for the transfer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) All transfers under this section shall only occur following the prior approval of the commissioner or the commissioner's designee;

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

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

(2) Determination that the transfer complies with this part;

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

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

(1) The person to be transferred:

a. A copy of the transfer order; and

b. A verbal explanation of:

1. The transfer order;

2. The transfer procedures; and

3. The right to object to the transfer; and

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

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

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

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

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

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

(j) Objections to transfers under this section shall require emergency action pursuant to He-M 204;

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

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

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

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

He-M 612.05 Transfers to Less Restrictive Settings.

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

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

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

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

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

(1) The person to be transferred:

a. A copy of the transfer order; and

b. A verbal explanation of:

1. The transfer order;

2. The transfer procedures; and

3. The right to object to the transfer; and

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

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

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

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

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

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

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

APPENDIX

Rule	**Specific State or Federal Statute the Rule Implements**
He-M 612.01 - 612.02, 612.03(c) (i), 612.05	RSA 135-C:31, V; RSA 135-C:48
He-M 612.03(a)-(b)	RSA 135-C:26
He-M 612.04	RSA 135-C:28