



OFFICE OF LEGISLATIVE SERVICES
ADMINISTRATIVE RULES
STATE HOUSE ANNEX
25 CAPITOL STREET, ROOM 234
CONCORD, NH 03301

Rulemaking Notice Form

Notice Number: 2026-46

Rule Number: He-M 309

1. **Agency:** Department of Health and Human Services
Bureau of Mental Health Services
105 Pleasant Street
Concord, NH 03301
2. **RSA Authority:** RSA 135-C:5, I(b); RSA 135-C:13; RSA 135-C:18; RSA 135-C:57;
RSA 135-C:61, VI & XI
3. **Federal Authority:**
4. **Action(s):** Readopt w/Amendment
5. **Short Title:** Rights of Persons Receiving Mental Health Services in the Community
6. **(a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:**

He-M 309 defines the rights of individuals applying for services or individuals who have been found eligible for services under RSA 135-C:12 and who are receiving services in the community. Individuals might have additional rights under RSA 151:21, patients' bill of rights, for residents of health care facilities. He-M 309 is currently an interim rule, scheduled to expire on February 22, 2026, but is subject to extension pursuant to RSA 541-A:14-a.

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-M 309. The proposed amendments include:

- Updating various provisions of the rule for better clarity and program integrity, including updating citations, terminology, acronyms, and correcting punctuation and grammar;
- Updating He-M 309.02 on definitions by:

- Amending the definitions of “client”, “community residence”, “individual”, “informed decision”, “neglect”, “program”, and “service delivery system”;
- Adding the definitions of “community mental health program (CMHP)” and “community mental health provider”; and
- Deleting the definition of “bureau”;
- Updating He-M 309.04 on fundamental rights and He-M 309.06 on treatment rights by removing reference to He-M 305, as those rules cover situations which do not occur in the community-based services and would never apply to He-M 309-covered situations;
- Updating He-M 309.05 on personal rights by making a change to the prohibition on audio and video recording to reflect current practices in these service settings, address the statutory requirements, and align with the requirements in the most recently adopted in He-M 311, adding language about access to an individual’s records to reflect recent case law which might be applicable in some circumstances, adding qualifying language to more accurately reflect which records a court-appointed attorney may have access, and update the rate structure for providing copies of the individual’s records to the individual to align with RSA 332-I and rules related to He-M 309 which have been recently amended. This change sets new caps for the rates that can be charged by providers. There is no minimum rate and the rule does not require the providers to charge fees; and
- Combining existing sections He-M 309.07 on termination of services and He-M 309.08 on suspension of services, removing the citations to He-M 401.14 and including the specific terms regarding the suspension and termination of services.

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

This rule affects individuals who have been found eligible for services under RSA 135-C:12 and who are receiving services in the community.

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 STATUTE OR REGULATIONS THE RULE IMPLEMENTS
He-M 309.01	RSA 135-C:13; RSA 135-C:18; RSA 135-C:56; RSA 135-C:57; and RSA 135-C:59
He-M 309.02	RSA 135-C:2; RSA 135-C:13; RSA 135-C:18; RSA 135-C:56; RSA 135-C:57; and RSA 135-C:59
He-M 309.03	RSA 135-C:59
He-M 309.04	RSA 135-C:56
He-M 309.05	RSA 135-C:56; RSA 135-C:57; RSA 135-C:19-a
He-M 309.06	RSA 135-C:57
He-M 309.07	RSA 135-C:18
He-M 309.08	RSA 135-C:58

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 Administrative Rules Unit 129 Pleasant Street, 2nd Floor Concord, NH 03301	Phone Number: (603) 271-9604
	FAX Number: (603) 271-5590
	Email: Allyson.E.Raadmae@dhhs.nh.gov

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

Wednesday, May 13, 2026

- Fax
- Email at Allyson.E.Raadmae@dhhs.nh.gov
- Other

9. **Public hearing scheduled for:**

Date: Wednesday, May 6, 2026

Time: 10:30 AM

Place: DHHS Brown Building, Auditorium, 129 Pleasant Street, Concord, NH 03301

Electronic Access, if applicable: N/A

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

FIS #: 26:001, dated: February 10, 2026

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 state citizens by an indeterminable amount and will have an indeterminable impact on independently-owned businesses.

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):

The proposed rules reflect the re-adoption of interim rules adopted in July 2025. No fiscal analysis was requested or performed at that time, so the analysis below compares the proposed rules to the rules as they existed prior to adoption of the interim rules.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

The Department of Health and Human Services states that under the rule in place prior to August 2025, a requestor for their hypothetical 60-page medical record to be produced in paper would be charged a maximum of \$8.75 (the first 25 pages would be free, the remaining would be no more than \$.25 per page). Under the interim rule, a requestor of the same 60-page paper copy would be charged a maximum of \$28.09. The first page would cost no more than \$5, pages 2-50 would cost no more than \$.41 per page, and pages 51-60 would cost no more than \$.30 per page.

For electronic copies, under the previous rule the cost would have been free for the first 25 pages and at the cost of producing the remaining 35 pages without guidance and without a cap. Under the interim rule, the same electronic copy of the 60-page record could be charged a reasonable fee up to a maximum of \$50.

The Department notes that a secondary cost is the addition of a requirement to post notice regarding audio and/or video recording if a program uses such equipment. These notices must be posted at any entrance to the building, and the program must develop a policy regarding the system's use. These costs would vary depending on choice of notice type and the individuals involved in developing the policy. This is not a mandatory cost; it only applies if the program chooses to use such equipment. The previous rule did not permit such audio and/or video recording, and therefore, it had no parallel costs.

C. To independently owned businesses:

The Department notes that the costs to any community mental health provider because of the interim rule will be the costs of adhering to the notification of rights requirements and recording of the same. If such a program chooses to use audio and/or video equipment in their public areas, the costs associated with posting notices and creating a policy would apply. The updated record production fees schedule would benefit such a program, as the new structure and maximums would allow the program to receive compensation for the administrative burden of production. Under the previous rule, the program was required to produce the first 25 pages via either paper or digital and absorb the cost of doing so.

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

The proposed rule modifies an existing program or responsibility, but 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.