

NEW HAMPSHIRE

This summary of state regulations and policy represents only a snapshot at a point in time, is not comprehensive, and should not be taken to constitute legal advice or guidance. State Medicaid requirements are included at the end of this summary.

Types of Facilities

Mental Health (MH): New Hampshire regulates Acute Psychiatric Residential Treatment Programs (APRTPs), which are non-hospital-based programs that are a designated receiving facility for the bureaus of behavioral health and developmental services and provides 24 hour, voluntary and involuntary psychiatric treatment and care to persons experiencing acute psychiatric symptoms.

Substance Use Disorder (SUD): New Hampshire regulates Substance Use Disorder Residential Treatment Facilities (SUD-RTFs). "Residential treatment" is defined as clients receiving clinical treatment for SUD in a residential setting if they do not require limited or full medical withdrawal management. Clients may require medication supervision and general oversight but do not require medications for the signs and symptoms of withdrawal. The definition includes residential treatment facilities where the residence has paid staff who provide clinical services, 24-hour structure, staff available as needed, urine drug testing conducted, and clinical treatment services that are required as a condition of residency and provided by the person, owner, developer, business organization, or any subsidiary thereof.

Unregulated Facilities: New Hampshire does have unregulated residential treatment facilities. Residential Treatment and Rehabilitation Facilities (RTRFs) were regulated but those regulations (Part He-P 807) expired August 19, 2019. According to state staff, those regulations are under revision. The expired regulations defined an RTRF as "a place, excluding hospitals..., which provides residential care, treatment and comprehensive specialized services relating to the individual's medical, physical, psychosocial, vocational, or educational needs." The expired rules also included regulations regarding detoxification/withdrawal management facilities. State staff indicate, however, that New Hampshire statute does address the authority of DHHS to investigate if a complaint is received on an unlicensed facility to determine if services that require licensure are being provided. Also unregulated are MH or SUD facilities owned or operated by the state, including facilities owned or operated by the Department of Corrections.

We also exclude from this summary Recovery Houses, which do not include clinical treatment within the scope of this summary. We also exclude as not requiring clinical treatment Behavioral Health Community Residences (BHCRs).

Approach

The New Hampshire Department of Health and Human Services (DHHS) regulates and licenses AP RTPs and SUD-RFTs.

Processes of Licensure or Certification and Accreditation

Mental Health (MH) and Substance Use Disorder (SUD): Licensure by the DHHS is required for operation of all AP RTPs and SUD-RFTs.

- Accreditation is not required and does not confer deemed status.
- An inspection is required for licensure and renewal. The focus of the inspections is compliance with legal requirements.
- The state does not require a Certificate of Need.
- Licensure duration is one year.

Cause-Based Monitoring

Mental Health (MH) and Substance Use Disorder (SUD): The DHHS may inspect the facility at any time for the purpose of determining compliance with the applicable statutes and regulations and may impose remedies for non-compliance with applicable laws, including requiring submission of a plan of correction, imposing a plan of correction or fines, or denying, monitoring, suspending, or revoking a license.

Access Requirements

Mental Health (MH) and Substance Use Disorder (SUD): A licensee may not deny admission to any person because that person does not have a guardian or an advanced directive, such as a living will or durable power of attorney for health care. Requirements regarding wait times were not located.

Staffing

Mental Health (MH): The AP RTP is required to ensure that sufficient numbers of qualified personnel are present to meet the needs of clients at all times; there are at least 2 staff members on duty at all times while clients are in the facility, one of whom is a registered nurse;

and a psychiatrist is available 24 hours a day for face-to-face consultation. For all new hires involved in direct care, there are requirements for age, background, and other verifications of suitability and there are specific requirements for administrators, including age, education, experience, and responsibilities. Within the first 7 days of employment, all personnel must receive an orientation that [explains, among other things, clients rights, complaint procedures, duties, emergency procedures, mandatory reporting requirements. Among other things, personnel records must include a copy of any license or certification required by law, as applicable.

Substance Use Disorder (SUD): SUD-RTFs must, among other things, have an administrator, a medical director, medical staff, a clinical services director, clinical staff, and clinical supervisory staff, who meet specific requirements, including limits on the number supervised in given disciplines, credentials, and experience. Qualifications and licensure must be verified and the facility must provide sufficient numbers of personnel who are present in the SUD-RTF and are qualified to meet the needs of clients during all hours of operation. There must be at least one awake personnel member on duty at all times while clients are in the facility. Clinical staffing ratios are established. The facilities must ensure that all personnel receive required training. All administrators must obtain and document 12 hours of continuing education related to SUD services each annual licensing period. The facility must provide all personnel with an annual continuing education or in-service education training. Personnel must not be impaired while on the job by any substances including, but not limited to, legally prescribed medication, therapeutic cannabis, or alcohol. The SUD-RTF must have a written policy establishing procedures for the prevention, detection, and resolution of controlled substance misuse, and diversion, which applies to all personnel, and which is the responsibility of a designated employee or interdisciplinary team.

Placement

Mental Health (MH): An APRTP may only admit or retain an individual whose needs are compatible with the facility and the services and programs offered, and whose needs can be met by the APRTP and who are mobile and can self-evacuate. However, reasonable accommodation shall be made when possible to admit clients who have mobility impairment, if evacuation assistance needs can be met. Upon admission or within 24 hours following admission, the APRTP must perform a comprehensive assessment of each client's needs. Reasons for required transfer or discharge are specified.

Substance Use Disorder (SUD): An SUD-RTF may only admit or retain an individual who has been determined to need the level(s) of care that the facility offers, and whose needs can be met by the facility. The licensee shall provide access to: (1) A screening and assessment interview conducted or supervised by a licensed counselor to determine: (a) That the client meets the requirements for treatment of a SUD; and (b) A determination of the appropriate ASAM level of care needed. (2) If the interview indicates a need for a clinical evaluation, the clinical evaluation shall be conducted by a licensed counselor in accordance with "TAP 21:

Addiction Counseling Competencies,” (2017 revision) using an evidenced based evaluation tool and addressing all ASAM domains to make specific determinations of need and level of care required. The SUD-RTF must perform an evaluation of each client’s needs within 24 hours following admission. Reasons for required transfer or discharge are specified.

Treatment and Discharge Planning and Aftercare Services

Mental Health (MH): Within 24 hours of completing the initial assessment, the APRTP must develop a preliminary treatment plan. The treatment plan is reviewed at least every 30 days or as medically indicated and updated after every assessment. The licensee must develop a discharge plan with the input of the client and the guardian or agent, if any.

Substance Use Disorder (SUD): The SUD-RTF must develop a treatment plan upon admission or within 24 hours following admission that, among other things, includes discharge goals. Treatment plans must be updated weekly based on any changes in any ASAM domain or client status. A licensed counselor shall meet with the client at the time of discharge or transfer to establish a continuing care plan that: (1) Includes recommendations for continuing care in all ASAM domains; (2) Addresses the use of self-help groups including, when indicated, facilitated self-help; and (3) Assists the client in making contact with other agencies or services.

Treatment Services

Mental Health (MH): APRTP services must be age and developmentally appropriate. The treatment plan must include, among other things, psychiatric evaluation, including mental status and alcohol/substance abuse evaluations, as determined necessary by the treating licensed practitioner; individual and group therapeutic activity directed towards short-term stabilization of psychiatric crises; and family education, consultation, and brief therapy, as clinically indicated. All medications and treatments must be administered in accordance with the orders of the licensed practitioner.

Substance Use Disorder (SUD): SUD-RTF clinical services must, among other things, be evidence-based by meeting one of the following: (a) The service is included as an evidence-based MH and SUD intervention on the SAMHSA Evidence-Based Practices Resource Center; (b) The services are published in a peer reviewed journal and found to have positive effects; or (c) The provider is able to document the services effectiveness based on a theoretical model with validated research or a documented body of research generated from similar services that indicates effectiveness. Clinical services must be designed to acknowledge the impact of violence and trauma on client’s lives and be delivered in accordance with the following: (a) The American Society of Addiction Medicine (ASAM) Criteria, 2013 edition; or (b) The Treatment Improvement Protocols and Technical Assistance Publications promulgated by SAMSHA. Core services include, among others: (1) Emergency response and crisis intervention; (2) Assistance

with taking and ordering medications as needed; (3) Assistance in arranging medical and dental appointments, which shall include assistance in arranging transportation and reminding the clients of the appointments; (4) Supervision of clients when required to offset cognitive deficits that may pose a risk to self or others; and (5) Referral to, and assistance in accessing, medication-assisted SUD treatment, either on site or off site, when clinically appropriate. The SUD-RTF must provide access to behavioral health services on-site or through referral. Specific client education is required, including related to: (1) Substance use disorders; (2) Relapse prevention; (3) Infectious diseases associated with injection drug use; (4) Sexually transmitted diseases; (5) Emotional, physical, and sexual abuse; (6) Nicotine use disorder and cessation options; and (7) The impact of drug and alcohol use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of drug and alcohol use during pregnancy. Specific requirements for group education and counseling include but are not limited to group size and provider type. At a client's admission, the SUD-RTF must ensure that orders from a licensed practitioner are obtained for medications and that there is a health examination by a licensed practitioner within 30 days prior to admission or within 72 hours following admission.

Patient Rights and Safety Standards

Mental Health (MH) and Substance Use Disorder (SUD): The patient's statutory bill of rights for residential facilities includes, but is not limited to, the following rights: dignity, privacy, confidentiality, communication, nondiscrimination, to be informed of rights, to voice grievances, to be free of abuse, and to be free of chemical or physical restraint unless certain conditions are met. Additional regulations apply to all MH facilities and include provision for review of complaints.

Quality Assurance or Improvement

Mental Health (MH): An APRTP must establish an interdisciplinary quality assessment and improvement committee which, among other things, meets at least quarterly to evaluate quality assessment and improvement activities and makes recommendations to the governing body to improve the quality of care. Specific quality assessment and improvement activities are required, including among other things: (1) review of patterns and trends of activities which affect the quality of care; (2) ensuring that the medical staff client care recommendations are considered by the full quality assessment and improvement committee; and (3) reviewing and making recommendations for improvement in specific areas.

Substance Use Disorder (SUD): SUD-RTFs must develop and implement a quality improvement program that reviews policies and services and maximizes quality by preventing or correcting identified problems. As part of its quality improvement program, a quality improvement committee must be established, with specified responsibilities.

Governance

Mental Health (MH) and Substance Use Disorder (SUD): Specific requirements for a governing body were not located for adult residential treatment facilities but the application for licensure must include information about authorization to do business and the qualifications of the administrator and for SUD treatment, the medical director. Policies and procedures are required.

Special Populations

Mental Health (MH) and Substance Use Disorder (SUD): Requirements related to services for special populations were not found.

Location of Regulatory and Licensing Requirements

Department of Health and Human Services MH/SUD regulations¹; Patient's Bill of Rights statute²; MH rights regulations³; Residential Care and Health Facility Licensing statute⁴.
September 27, 2019.

Other Information Sources

M. Rogers & D. Shockley (BDAS DBH), P. Bradley (BMHS DHHS); National Conference of State Legislatures CON Program Overview, <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>

¹ See http://www.gencourt.state.nh.us/rules/state_agencies/he-p800.html.

² See <http://www.gencourt.state.nh.us/rsa/html/XI/151/151-21.htm>.

³ See http://www.gencourt.state.nh.us/rules/state_agencies/he-m200.html.

⁴ See <http://www.gencourt.state.nh.us/rsa/html/xi/151/151-mrg.htm>.

NEW HAMPSHIRE MEDICAID

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Approach

The New Hampshire Department of Health and Human Services (DHHS) oversees the state Medicaid program. New Hampshire also has a Section 1115 waiver permitting Medicaid expenditures for otherwise covered services furnished to otherwise eligible individuals who are primarily receiving treatment and withdrawal management services for substance use disorder (SUD) who are short-term residents in facilities that meet the definition of an institution for mental diseases (IMD), including residential treatment. The state also historically has relied on the in lieu of provision and on Disproportionate Share Hospital (DSH) payments for Medicaid coverage of some IMD services.

Types of Facilities

Mental Health (MH): Researchers found no evidence of Medicaid reimbursement for adult residential MH treatment services.

Substance Use Disorder (SUD): State regulations require that all SUD treatment and recovery support services providers must be enrolled as a New Hampshire Medicaid provider.

Under the Section 1115 waiver, Medicaid expenditures are authorized for otherwise covered services furnished to otherwise eligible individuals who are primarily receiving treatment and withdrawal management services for SUD who are short-term (objective of statewide average length of stay of 30 days) residents in facilities that meet the definition of an institution for mental disease (IMD) and that are residential facilities. Facilities included are:

- Residential Treatment.
- Medically Monitored/Supervised Withdrawal Management.

Under the waiver, MAT may be provided in residential settings.

Processes of Medicaid Enrollment

Substance Use Disorder (SUD): All residential SUD treatment providers must be licensed by the New Hampshire Department of Health and Human Services (DHHS) and all must be enrolled as Medicaid providers.

Staffing

Substance Use Disorder (SUD): Pursuant to the Section 1115 waiver, the state must establish residential treatment provider qualifications in licensure, policy or provider manuals, managed care contracts or credentialing, or other requirements or guidance that meet program standards in the ASAM Criteria or other comparable, nationally recognized, SUD-specific program standards regarding, in particular, credentials of staff for residential treatment settings. The state must assess the availability of providers in the key levels of care throughout the state, or in the regions of the state participating under this demonstration, including those that offer MAT.

Under state Medicaid regulations, rehabilitative services provided by a Medicaid enrolled comprehensive SUD program (which includes residential programs), as well as medically managed withdrawal treatment (Level 3.7-WM) in residential treatment facilities, must be delivered by psychotherapists, MLADCs, physicians, or advanced practice registered nurses (APRNs) meeting specific qualifications.

According to the New Hampshire Section 1115 SUD implementation plan, additional personnel requirements are included in state contracts with providers.

Placement

Substance Use Disorder (SUD): Pursuant to the Section 1115 waiver, the state must establish a requirement that providers assess treatment needs based on SUD-specific, multidimensional assessment tools, such as the American Society of Addiction Medicine (ASAM) Criteria or other comparable assessment and placement tools that reflect evidence-based clinical treatment guidelines. The state also must establish a utilization management approach such that beneficiaries have access to SUD services at the appropriate level of care and that the interventions are appropriate for the diagnosis and level of care, including an independent process for reviewing placement in residential treatment settings.

All substance use disorder treatment programs and insurance carriers in the state are required to utilize the ASAM Criteria for placement by state law. In addition, all state-funded treatment providers, are contractually obligated to use evidence based screening and assessment tools.

Treatment and Discharge Planning and Aftercare Services

Substance Use Disorder (SUD): Providers must develop a treatment plan that is updated at least every 4 sessions or 4 weeks, whichever is less frequent. All providers must adhere to continuing care and discharge guidelines, including but not limited to: (1) Closed loop referrals to community providers; (2) Providing active outreach to clients following discharge; and (3) Coordinating referrals, acceptance, and appointments for required services prior to discharge. All services must have continuing care, transfer and discharge plans that address all ASAM domains and must begin the process of discharge/transfer planning at the time of the client's intake into the program.

Treatment Services

Substance Use Disorder (SUD): Pursuant to the Section 1115 waiver, beneficiaries will have access to high quality, evidence-based OUD and other SUD treatment services ranging from medically supervised withdrawal management to on-going chronic care for these conditions in cost-effective settings while also improving care coordination and care for comorbid physical and mental health conditions. In addition, the state must establish residential treatment provider qualifications in licensure, policy or provider manuals, managed care contracts or credentialing, or other requirements or guidance that meet program standards in the ASAM Criteria or other comparable, nationally recognized, SUD-specific program standards regarding, in particular, the types of services and hours of clinical care for residential treatment settings. The waiver also requires the state to establish a requirement that residential treatment providers offer MAT on-site or facilitate access to MAT off-site.

Medicaid SUD services must be evidence-based and, when clinically appropriate, include referral to, and assistance in accessing, medication assisted SUD treatment either on site or off site. Services must include an assessment of all recipients for risk of self-harm at all phases of treatment, such as at initial contact, during screening, intake, admission, on-going treatment services, and at discharge; be consistent with the "Addiction Counseling Competencies, TAP 21"; be provided in accordance with the ASAM Level of Care service descriptions, as applicable; and be provided at a length of time and frequency of care based on individual client need in accordance with ASAM Criteria and not on predetermined time or frequency limits. Standards for services are established that require consistency with Levels 3.1, 3.5, and 3.7-WM of the ASAM Criteria, including hours of service.

Care Coordination

Substance Use Disorder (SUD): Pursuant to the Section 1115 waiver, beneficiaries will have access to improved care coordination and care for comorbid physical and mental health

conditions. The state must ensure establishment and implementation of policies to ensure residential facilities link beneficiaries with community-based services and supports following stays in these facilities.

Pursuant to the waiver implementation plan, language regarding collaboration of care coordination for all entities offering it to clients with SUD will be added to state contracts, He-W 513 rules, and updated managed care contracts. This will ensure continuity between various levels of care coordination provided to clients by multiple entities. The goal with this language change will be to reduce duplication and communication errors regarding care coordination responsibilities. Specific requirements and standards for care coordination for co-occurring physical and mental health conditions will be added to the regulations. These rules will apply to all SUD Medicaid providers and state-funded SUD treatment providers. This language will come from a modified model of care coordination that is supported by the state's 1115(a) DSRIP Transformation Waiver.

Quality Assurance or Improvement

Substance Use Disorder (SUD): Pursuant to the Section 1115 waiver, the state must establish a provider review process to ensure that residential treatment providers deliver care consistent with the specifications in the ASAM Criteria or other comparable, nationally recognized SUD program standards based on evidence-based clinical treatment guidelines for types of services, hours of clinical care, and credentials of staff for residential treatment settings.

Special Populations

Substance Use Disorder (SUD): No Medicaid requirements were located other than the requirement in the Section 1115 waiver that care for comorbid physical and mental health conditions be improved by the demonstration and indication in the waiver implementation plan that regulations will be amended to accomplish that.

Location of Medicaid Requirements

New Hampshire Medicaid Rules and Regulations⁵; New Hampshire Medicaid Provider Agreement⁶; New Hampshire 1115 Waiver⁷. Regulatory data collected December 2019.

⁵ See http://www.gencourt.state.nh.us/rules/state_agencies/he-w500.html.

⁶ See <https://nhmmis.nh.gov/portals/wps/wcm/connect/04c21d804ac7509c8aa9dfa36af9e3a5/NH+Medicaid+Provider+Participation+Agreement+20190806.pdf?MOD=AJPERES>.

⁷ See <https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/nh/nh-sud-treatment-recovery-access-ca.pdf>.

Other Information Sources

Kaiser Family Foundation. State Options for Medicaid Coverage of Inpatient Behavioral Health Services. KFF: San Francisco. November 2019. <http://files.kff.org/attachment/Report-Brief-State-Options-for-Medicaid-Coverage-of-Inpatient-Behavioral-Health-Services>

This state summary is part of the report **“State Residential Treatment for Behavioral Health Conditions: Regulation and Policy”**. The full report and other state summaries are available at <https://aspe.hhs.gov/state-bh-residential-treatment>.