

**Adopt Plc 500 to read as follows:****CHAPTER Plc 500 PROFESSIONALS' HEALTH PROGRAM**

Statutory Authority: RSA 310:6, IV

**PART Plc 501 PURPOSE AND APPLICABILITY****Plc 501.01 Purpose.**

(a) The purpose of this chapter is to implement a professionals' health program (PHP) in accordance with RSA 310:5, III.

(b) The purpose of the PHP is to:

- (1) Protect the public while providing assistance and monitoring to licensees so as to facilitate a return to productive service of highly trained professionals eligible to work in New Hampshire;
- (2) Encourage licensee self-reporting, early intervention, and entry into treatment and monitoring; and
- (3) Provide assessment, referral for treatment, and monitoring of licensees having impairing or potentially impairing conditions that could interfere with the licensee's ability to practice with reasonable skill and safety, such as substance or alcohol use disorders, mental health conditions, behavioral health issues including disruptive behavior, or physical illness.

**Plc 501.02 Applicability.** This chapter shall apply to:

(a) Any individual who is required by an applicable board to receive intervention or monitoring as a condition of receiving, renewing, or retaining a license, certification, registration, or other form of approval required by law to engage in a profession that is regulated by the applicable board;

(b) Any individual who recognizes the need to self-refer and agrees to a monitoring or treatment plan via a confidential track established pursuant to Plc 503.09; and

(c) Any entity that is or that seeks to become an approved provider.

**PART Plc 502 DEFINITIONS**

**Plc 502.01** "Applicable board" means "applicable board" as defined in Plc 302.01, reprinted in Appendix B.

**Plc 502.02** "Approved provider" means an organization that has been approved by the executive director pursuant to Plc 503 to provide case-management services, coordinate continuing care, and document appropriate illness management for treatment and monitoring plans for licensees who have or who potentially have an impairment.

**Plc 502.03** "Confidential track" means a pathway whereby an individual can seek guidance on, or assistance with finding, treatment for an impairment or potential impairment from an approved provider without the knowledge of the applicable board or any other regulatory authority.

**Plc 502.04** "Evaluative report" means a report that evaluates the success of an approved provider's treatment and monitoring plans, that includes success and failure rates, updates on continuing education provided, and any quality improvement measures implemented in the reporting period.

**Plc 502.05** "Executive director" means the executive director of the OPLC or designee.

Plc 502.06 “Impairment” means a condition that could cause a licensee to be unable to practice his or her profession in compliance with applicable professional standards and without an increased risk of harm to clients, colleagues, themselves, or the public. The term includes but is not limited to physical or mental illness including addiction to alcohol or other drugs, or diminished capacity from any cause.

Plc 502.07 “License” means “license” as defined in RSA 541-A:1, VIII, namely “the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.” For purposes of this chapter, the term includes any similar form of approval to practice a regulated profession in any jurisdiction.

Plc 502.08 “Licensed health care provider”, for purposes of the definition of “program director”, means a New Hampshire licensee in a profession regulated by any of the following boards:

- (a) Board of licensing for alcohol and other drug use professionals;
- (b) Board of medicine;
- (c) Board of nursing;
- (d) Board of mental health practice; or
- (e) Board of psychology.

Plc 502.09 “Licensee” means an individual who holds, or who has applied for, an initial, renewal, or reinstatement license required by law to engage in a regulated profession.

Plc 502.10 “Participant” means an individual who is participating in a treatment and monitoring plan, whether as an alternative to discipline or a condition of discipline or on a confidential track.

Plc 502.11 “Person” means an individual or a legal entity, including but not limited to a for-profit or non-profit public or private corporation, limited liability corporation, general or limited partnership, professional corporation, and professional association. The term includes the duly-authorized representative of a legal entity.

Plc 502.12 “Program agreement” means a document that details the recommended treatment and monitoring plan, including the consequences for non-compliance, that is prepared by an approved provider in accordance with Plc 503.06 and, if applicable, Plc 503.07, to which a participant voluntarily agrees to adhere.

Plc 502.13 “Program director” means a licensed health care provider who is qualified by reason of education, skill, and experience and has been designated by an approved provider to administer one or more program agreements.

Plc 502.15 “Regulated profession” means “regulated profession” as defined in Plc 302.25, reprinted in Appendix B.

Plc 502.16 “Standard track” means a track that is not a confidential track.

Plc 502.17 “Treatment and monitoring plan” means a specific course of action tailored to the specific needs and circumstances of a participant, which may include education, intervention, ongoing care or treatment, or post-treatment monitoring, or any combination thereof.

Plc 502.18 “Working day” means any Monday through Friday, excluding days on which state offices are closed in observance of holidays.

Plc 502.19 “Workplace monitor” means a supervising professional who is charged with providing oversight of a licensee’s work performance and behavior in the workplace and who submits reports as provided in the program agreement.

## PART Plc 503 APPROVAL OF PROVIDERS; APPLICABLE STANDARDS

Plc 503.01 Providers Already Approved. The following organization shall be deemed to be an approved provider under this chapter:

(a) The New Hampshire Professionals' Health Program, <http://www.nhphp.org/>, a New Hampshire-incorporated non-profit corporation.

Plc 503.02 Requests to Approve Other Providers.

(a) Any person who believes that an entity that is not listed in Plc 503.01 as an approved provider offers treatment and monitoring programs that meet the standards in Plc 503.04 may request the executive director to approve the entity as an approved provider.

(b) The person requesting approval shall provide the following information to the executive director in writing:

- (1) The requestor's name, mailing address, daytime telephone number, and email address;
  - (2) The requestor's relationship with the entity, such as a member of the entity's board of directors or an individual who is otherwise affiliated with the entity;
  - (3) The full formal name of the entity as shown on the documents that created the entity, and each name under which the entity does business;
  - (4) The entity's mailing address and the address of the entity's physical location in New Hampshire;
  - (5) The legal form of the entity, such as a corporation or partnership, the jurisdiction in which the entity was formed, and the month and year of the entity's formation;
  - (6) For any entity formed in a jurisdiction other than New Hampshire, the date on which the entity became authorized to do business in New Hampshire;
  - (7) The URL of the entity's website;
  - (8) Whether the entity is a parent or subsidiary of, or is otherwise legally affiliated with, any organization that provides treatment or rehabilitation services, and if so the full legal name of each such organization and the specific relationship to the entity seeking approval;
  - (9) Whether the entity wants to be an approved provider for all regulated professions or only certain regulated professions, and if the latter, the profession(s) for which the entity wants to be an approved provider;
  - (10) An explanation of the entity's qualifications and resources which clearly demonstrates that the entity meets the standards specified in Plc 503.04; and
  - (11) Any other information the requestor believes is relevant to the request.
- (c) The person submitting the request shall sign and date the request.
- (d) The signature provided pursuant to (c), above, shall constitute certification that:
- (1) The information provided is true, complete, and not misleading to the best knowledge and belief of the signer; and
  - (2) The signer has been duly authorized by the entity to submit the request.

Plc 503.03 Approval of Other Providers.

(a) The executive director shall:

- (1) Review the information submitted and verify the information to the extent possible;
- (2) If the entity has identified one or more specific professions for which it wishes to be an approved provider, consult with the applicable board(s) for the identified profession(s); and
- (3) If the entity has not identified one or more specific professions for which it wishes to be an approved provider, provide an opportunity for all boards to review and comment on the proposal.

(b) The executive director shall approve an entity as an approved provider if the information provided pursuant to Plc 503.02, as verified by the executive director and after consultation if required pursuant to (a)(2), above, demonstrates that the entity meets the standards in Plc 503.04.

(c) Upon approving an entity as an approved provider, the executive director shall:

- (1) Provide a notice on the OPLC website in a location likely to be found by individuals who might be interested in the services offered by the organization that the entity has been approved as an approved provider; and
- (2) Initiate a rulemaking under RSA 541-A to list the entity in Plc 503.01.

Plc 503.04 Standards for Approved Providers. To qualify as an approved provider, an entity shall:

- (a) Be a legally-constituted corporation, non-profit corporation, professional corporation, professional association, partnership, or other legal entity;
- (b) Be in good standing and authorized to do business in New Hampshire and in the jurisdiction of its formation, if other than New Hampshire;
- (c) Have a physical presence in New Hampshire that is:
  - (1) More than merely incidental to the entity's primary place of business in another jurisdiction; and
  - (2) Staffed with individuals who, if practicing in a regulated profession, are licensed to practice in New Hampshire;
- (d) Not have any material financial interest in any organization that provides treatment or rehabilitation services directly;
- (e) Meet the program-related standards in Plc 503.05;
- (f) Meet the program agreement standards in Plc 503.06;
- (g) Meet the treatment and monitoring plan requirements in Plc 503.07; and
- (h) Meet the personnel-related standards in Plc 503.08.

Plc 503.05 Program-Related Standards for Approved Providers. To qualify as an approved provider, an entity shall:

(a) Maintain records regarding the success and failure rates of its treatment and monitoring programs and, if approved, provide quarterly evaluative reports to the OPLC for review and distribution to the applicable board(s);

(b) Ensure there are staff at its New Hampshire location who have a working knowledge of insurance and self-pay treatment options locally, regionally, and nationally, for the types of treatment likely to be required in its program agreements;

(c) Have in place a policy and practice for periodic systematic evaluation of the services it offers that requires review of, and modifications to as necessary, its treatment and monitoring programs as a whole as well as individual components of treatment and monitoring programs, including but not limited to the goals and objectives of facilitated meetings and what services are being requested by licensees;

(d) Have a conflict of interest policy for officers, directors, committee members, executive staff, and volunteers acting on behalf of the provider to ensure that those in positions of responsibility or influence have no personal or outside financial, business, or professional interests or responsibilities that conflict with their duties to the provider that could create a bias or predisposition on an issue that may compromise the interests of the provider or unduly influence the treatment or monitoring of a participant;

(e) Require, to the maximum extent possible, that participants:

(1) Make full disclosure of all relevant facts to the program director; and

(2) Provide the program director with continuing, unrestricted access to the participant's medical records and any other records of the participant that are relevant to the condition or conduct being addressed by the treatment and monitoring program, exclusive of records pertaining to the participant's clients or patients that contain protected confidential health information;

(f) Require a written program agreement for each participant that meets the requirements of Plc 503.06; and

(g) Not include in any advertising, informational website or brochure, or program agreement any language or representations to any person that explicitly or implicitly indicates that:

(1) The program director is an agent of the applicable board or is performing functions of the applicable board;

(2) Participation in the approved program will determine whether disciplinary action is taken by the applicable board or the severity of such discipline; or

(3) The applicable board is financially or otherwise responsible for any aspect of the participant's involvement in the program.

Plc 503.06 Standards for Program Agreements. To qualify as an approved provider, an entity shall meet the following standards relative to its program agreements:

(a) A program agreement shall be developed for each participant based on the participant's specific conditions and circumstances that contains specific and objectively-determinable requirements to be met by the participant that are designed to ensure safe practice and public safety;

(b) Each program agreement and any amendments or modifications thereto shall be in writing and signed by the participant and the program director;

(c) Each program agreement shall:

- (1) Require the program director to keep detailed records of the participant's involvement in all aspects of the treatment and monitoring program;
- (2) For participants who are not in the confidential track, require the program director to inform the applicable board within 2 working days when he or she verifies that the participant has failed to meet any of the treatment and monitoring program requirements contained in his or her program agreement;
- (3) For confidential track participants, clearly inform the participant that the approved program shall report the failure of the participant to adhere to the terms of a program agreement if it determines there is clear and convincing evidence that not reporting the participant would jeopardize the health and safety of the public or the participant;
- (4) Authorize and require the program director to keep records concerning the participant's involvement in the program confidential except to the extent the records are released by the participant, except in cases where the participant has been reported to the applicable board pursuant to the program agreement for violating a requirement of the program agreement;
- (5) Require the program director to:
  - a. Except for records relating to participants on a confidential track, make his or her records available to the applicable board if requested for purposes of a pending or potential disciplinary proceeding; and
  - b. Except as relating to participants on a confidential track, cooperate with the applicable board in any disciplinary action undertaken by the applicable board that relates to the condition or conduct addressed by the participant's program agreement;
- (6) If the treatment and monitoring plan for a specific participant addresses a treatable or modifiable condition of the participant, include a detailed plan that contains the elements listed in Plc 503.07.

Plc 503.07 Necessary Elements for Certain Treatment and Monitoring Plans. As required by Plc 503.06(c)(6), a treatment and monitoring plan for a participant with a treatable or modifiable condition shall contain the following:

- (a) Identification of the assessment made and the condition diagnosed;
- (b) A clear statement of the treatment required, including the frequency of treatment and the licensing requirements for each treatment provider;
- (c) A clear statement of the details of any license restrictions that apply to the participant, including the circumstances under which the restrictions will be removed and the circumstances, such as a relapse, that will extend the program agreement;
- (d) For participants who are not on a confidential track, a requirement for the program director to report relapse or other violations of the program agreement to the applicable board;
- (e) Details of any required physical monitoring, such as testing for drugs or alcohol, included in the plan, the participant's obligations thereunder, and the consequences of positive test results;
- (f) A clear statement of any continuing education requirements and, if applicable, the specific topics to be covered;
- (g) A requirement for the participant to abstain from psychoactive substances that are not prescribed by the participant's health care provider and pre-approved by the program director;

- (h) A requirement for the participant to participate in a monthly facilitated meeting with other participants with emphasis on work stress mitigation and recovery topics;
- (i) A requirement for the participant to submit a monthly self-assessment report;
- (j) Identification of a support group requirement based on diagnosis;
- (k) Language that:
  - (1) Specifically describes any applicable employment requirements or limitations relative to hours, duties, and work settings; and
  - (2) Identifies the workplace monitor(s) and requires the monitor(s) to submit 30-day and quarterly reports to the program director;
- (l) Requires full release collaboration and discussion between the program director and treatment providers and workplace monitors at all times; and
- (m) Provides avenues for grievance if a participant disagrees with the terms or implementation of the program agreement.

Plc 503.08 Personnel-Related Criteria for Approved Organizations. To qualify as an approved organization, the entity shall:

- (a) Ensure that each program director it engages for its treatment and monitoring programs:
  - (1) Is licensed to practice in New Hampshire and carries professional liability coverage for the type of work to be done;
  - (2) Has fully disclosed in writing any disciplinary action, including reprimand or restriction, taken against him or her by any licensing, certifying, or credentialing agency or professional society in any jurisdiction;
  - (3) Has experience working with professionals in one or more of the professions to be served by the approved provider regarding drug and alcohol issues, behavioral health impairment, physical impairment, random testing, use and expertise with biologic specimen and toxicology testing, and intervention, interviewing, and monitoring;
  - (4) Will adhere to applicable professional standards and ethical obligations at all times; and
  - (5) Will be accessible to the participant at all reasonable times, wherein “reasonable” shall be determined in relation to the participant’s reason(s) for being subject to a program agreement;
- (b) Have in place policies and practices that:
  - (1) Do not allow a program director or any treatment provider to be assigned to a participant’s case if there is any question of that individual’s objectivity, dependability, or commitment;
  - (2) Require program directors to verify that any treatment provider who is included in a program meets the same standards as those established for program directors in (a), above; and
  - (3) Disqualify an individual from serving as a program director or treatment provider for a particular treatment and monitoring program if any discipline was for conduct similar in nature to the issues being monitored, if the discipline occurred within 5 years of the date the individual would provide services to the participant under the treatment and monitoring program.

Plc 503.09 Establishment of Confidential Track.

(a) An approved provider may develop a confidential track for individuals who wish to obtain guidance on, or assistance with, treatment for an impairment or potential impairment without the knowledge of the applicable board.

(b) A confidential track shall differ from a standard track only in that reports relative to the participant's involvement in a treatment and monitoring program shall not be provided to the applicable board by the approved program or anyone associated with the approved program, except as provided in the program agreement pursuant to Plc 503.06(c)(3).

(c) The approved program shall report the failure of a participant on a confidential track to adhere to the terms of a program agreement if it determines there is clear and convincing evidence that not reporting the participant would jeopardize public health and safety.

PART Plc 504 IMPLEMENTATION OF PROFESSIONALS' HEALTH PROGRAM

Plc 504.01 Advertising by Approved Providers Allowed. An approved provider may advertise its approved status and that it is an appropriate vehicle for licensees who:

(a) Have been directed to participate in a treatment and monitoring program by a disciplinary order from, or agreement with, an applicable board;

(b) Wish to propose to an applicable board that his or her participation in a treatment and monitoring program be considered by the applicable board in disposing of pending or potential disciplinary actions; or

(c) Wish to obtain assistance via a confidential track.

Plc 504.02 Use of Approved Providers.

(a) Only treatment and monitoring programs that are offered by approved providers shall be recognized by an applicable board as an acceptable vehicle for providing a treatment and monitoring program to a licensee for purposes of disciplinary orders or other agreements between an applicable board and a licensee.

(b) Approval of a provider under Plc 503.03 shall not constitute approval of the appropriateness of a specific treatment and monitoring program for any given licensee, which shall be determined by the approved provider based on the licensee's specific circumstances.

Plc 504.03 Participation in Treatment and Monitoring Programs by Licensees.

(a) Subject to (c) and (d), below, the details of a licensee's participation in a treatment and monitoring program shall not be disclosed to the applicable board unless:

(1) Such disclosures are required by the applicable board's order that the licensee participate in a treatment and monitoring program; or

(2) The licensee:

a. Is not on a confidential track and violates the terms of his or her program agreement; or

b. Requests such disclosure by motion or signed authorization.

(b) Individual treatment and monitoring programs, and motions requesting approval of such programs, shall be kept confidential except to the extent they are incorporated into public settlement



agreements or disciplinary actions, or become evidence in disciplinary hearings in situations where a violation of the terms of the program agreement is relevant to the misconduct or disciplinary action at issue.

(c) Licensees who are participating in a treatment and monitoring program shall not be relieved of their obligation, if any, to provide relevant information regarding their treatment for physical or mental illness or substance use disorder on their license renewal applications.

(d) A licensee's participation on a confidential track shall not be disclosed by the approved provider or any representative thereof to the applicable board except as required by Plc 503.08(c), provided however that if the licensee is investigated by the applicable board after the licensee has entered a confidential track, the licensee may request that the licensee's participation in the treatment and monitoring program be disclosed to the applicable board and agree to participate under new program agreement that is not for the confidential track.

#### Plc 504.04 Obligations of Approved Providers; Termination of Approval.

(a) Each approved provider shall continue to meet the standards specified in Plc 503.04 for so long as it offers treatment and monitoring programs to New Hampshire licensees.

(b) If the executive director receives credible information that an approved provider is failing to meet one or more of the standards specified in Plc 503.04, the executive director shall commence an investigation in accordance with Plc 200.

(c) If the investigation conducted pursuant to (b), above, produces credible evidence that an approved provider is not meeting one or more applicable standards, the executive director shall:

(1) Notify the approved provider in writing of the standard(s) that are allegedly not being met;

(2) If the deficiencies that are alleged do not jeopardize the health, safety, and well-being of NH licensees or the public, allow the approved provider 30 days in which to cure the identified deficiencies; and

(3) If an opportunity to cure is not provided pursuant to (2), above, or if the deficiencies are not cured, commence an adjudicative proceeding to determine whether the approval should be suspended or revoked.

(d) If the proceeding conducted in accordance with (c), above, proves by a preponderance of the evidence that the failure to meet the standard(s) on which the proceeding was based did in fact occur, the executive director shall:

(1) Place the approved provider on probationary status if, for each standard not met:

a. The failure had no substantial potential to, and in fact did not, jeopardize the health, safety, and well-being of NH licensees or the public;

b. The failure was negligent or unknowing, such that additional attention to the standards and the provider's policies and practices should help to ensure that it will not be repeated; and

c. The provider has not been the subject of an adjudicative proceeding for the same or a similar failure within the preceding 2 years.

(2) Suspend the approval conditional on corrective actions being taken if:

- a. Any failure had a substantial potential to, or actually did, jeopardize the health, safety, and well-being of NH licensees or the public;
- b. For each standard not met, the failure was negligent or unknowing, such that additional attention to the standards and the provider's policies and practices should help to ensure that it will not be repeated; and
- c. The provider has not been the subject of an adjudicative proceeding for the same or a similar failure within the preceding 2 years.

(e) If an approved program is put on probationary status or if an approval is suspended pursuant to (d), above, the provider may request the probationary status to be removed or the approval to be reinstated, as applicable, after documenting that it has implemented new policies and procedures or modified its existing policies and procedures to minimize the likelihood that a failure to meet the standard(s) will recur.

(f) If the proceeding conducted in accordance with (c), above, proves by clear and convincing evidence that the failure to meet the standard(s) on which the proceeding was based did in fact occur, the executive director shall revoke the approval if, for any such failure:

- (1) The failure was reckless or knowing;
- (2) The failure resulted in harm to a licensee or the public; or
- (3) The provider has been the subject of 3 or more adjudicative proceedings for the same or any similar failure within the preceding 2 years.

(g) If an approval is revoked pursuant to (f), above, the provider:

- (1) Shall work with any licensees currently in a treatment and monitoring program to transition them to another provider if possible; and
- (2) Shall not apply again for approval under this chapter for at least one year from the date of the revocation.

(h) If the hearing conducted in accordance with (c), above, proves by a preponderance of the evidence that the failure to meet the standard(s) on which the proceeding was based did in fact occur, the executive director shall impose limitations on the scope of the approval to minimize the opportunities for the provider to commit additional or repeat failures or impose requirements for other corrective actions if:

- (1) The failure had no substantial potential to, and in fact did not, jeopardize the health, safety, and well-being of NH licensees or the public;
- (2) The failure was negligent or unknowing; and
- (3) The provider has been the subject of one or more investigations that did not lead to action being taken under this section for the same or a similar violation within the preceding 2 years.

(i) If limitations on the scope of the approval are imposed pursuant to (h), above, the provider may request the limitations to be removed upon presenting proof to the executive director that:

- (1) The provider has complied with all terms of the limitations for not less than 1 year; and
- (2) The provider has implemented new policies and procedures or modified its existing policies and procedures to minimize the likelihood that a failure to meet the standard(s) will recur.

**APPENDIX A: STATE STATUTES IMPLEMENTED**

| <b>Rules</b> | <b>State Statutes Implemented</b>                          |
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| Plc 500      | RSA 310:5, III; RSA 329:13-b; RSA 326-B:36-a; RSA 318:29-a |

**APPENDIX B: INCORPORATED DEFINITIONS**

Plc 302.01 “Applicable board” means the board that regulates the profession for which an application for initial or renewal licensure, reinstatement of licensure, or temporary licensure is made, or in which a disciplinary or non-disciplinary remedial proceeding is initiated, provided that for those professions for which the applicable board is advisory, the term means the executive director in consultation with the advisory board, and for any profession for which no board exists, the term means the executive director.

Plc 302.25 “Regulated profession” means an occupation or profession for which a license is required to be obtained from the OPLC prior to engaging in the occupation or profession in New Hampshire.