

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

PART He-P 813 ADULT FAMILY CARE RESIDENCE

He-P 813.01 Purpose. The purpose of these rules is to define the standards and procedures for the licensure of adult family care.

Source. #8595, eff 4-1-06

He-P 813.02 Scope. This part shall apply to any individual, agency, partnership, association or other legal entity offering 2 residents adult family care consisting of social or health services in a home-like environment. Such services may include, but are not limited to, providing supervision, medical monitoring, including supervision of medications and assistance with daily living activities. Any necessary clinical services and supports required by the residents may be offered or obtained by the provider. These rules shall apply to adult family care residences through June 30, 2007 when the pilot program will terminate.

Source. #8595, eff 4-1-06

He-P 813.03 Definitions.

- (a) "Abuse" means "abuse" as defined in RSA 161-F:43, II.
- (b) "Activities of daily living (ADL)" means basic daily routine tasks common to the average individual, such as personal hygiene, transfers and walking.
- (c) "Admission" means when a resident, who has been accepted by a licensee for the provision of services, physically moves into the home.
- (d) "Adult family care (AFC)" means a combination of personal care, homemaking and other services that are provided to a person in the licensed home of another individual in accordance with a care plan.
- (e) "Adult family care residence (AFCR)" means the dwelling in which AFC is provided for 2 residents.
- (f) "Applicant" means an individual, agency, partnership, corporation, federal, state, county or local government entity, association, or other legal entity seeking a license to operate an AFCR pursuant to RSA 151:2, IV.
- (g) "Assessment" means an evaluation of the resident to determine what care and services are needed.
- (h) "Care plan" means a written guide developed by the licensee and oversight agency, in consultation with the resident or their representative, as a result of the assessment process for the provision of care and services which shall address the resident's:
 - (1) Ability to manage ADL;
 - (2) Physical health, including impairments of mobility, sight, hearing and speech;
 - (3) Intellectual functioning and mental health;
 - (4) Need for supervision;
 - (5) Need for medication assistance;
 - (6) Need for family and community involvement; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(7) Need for community, social or health services.

(i) "Caregiver" means an individual age 18 years or older who has been approved by the oversight agency, licensee and the resident or the resident's representative to provide care and assistance to the resident in an AFCR.

(j) "Commissioner" means the commissioner of the New Hampshire department of health and human services, or his or her designee.

(k) "Deficiency" means any action, failure to act or other set of circumstances that cause a licensee or oversight agency to be out of compliance with RSA 151 or He-P 813.

(l) "Department" means the New Hampshire department of health and human services.

(m) "Directed plan of correction" means a plan developed and written by the department that specifies the necessary actions the licensee is required to take to correct identified deficiencies.

(n) "Emergency plan" means a document outlining the responsibilities of caregivers in an emergency.

(o) "Exploitation" means "exploitation" as defined in RSA 161-F:43, IV.

(p) "Household member" means the caregiver and all family members and any other individuals age 17 or older that reside at the licensed premises.

(q) "In-service" means an educational program, which is designed to increase the knowledge, skills, and overall effectiveness of caregivers.

(r) "Inspection" means the process used by the department to determine a licensee's compliance with RSA 151 and He-P 813.

(s) "Investigation" means the process used by the department to respond to allegations of non-compliance with RSA 151 and He-P 813.

(t) "Licensed practitioner" means any of the following disciplines acting within their relevant scope of practice:

- (1) Medical doctor;
- (2) Physician's assistant;
- (3) Advanced registered nurse practitioner;
- (4) Doctor of osteopathy; or
- (5) Doctor of naturopathic medicine.;

(u) "Licensed premises" means the building that comprises the physical location that the department has approved for the licensee to conduct operations in accordance with its license.

(v) "Licensing classification" means the specific category of services authorized by a license.

(w) "Licensee" means any individual age 21 years or older who lives in an AFCR and is under contract with an oversight agency to provide AFC pursuant to RSA 151:2, IV and RSA 151:9, VII(a)(2).

(x) "Medication" means a substance available with or without a prescription, which is used as a curative or remedial substance.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(y) "Neglect" means "neglect" as defined in RSA 161-F:43, II.

(z) "Orders" means prescriptions, instructions for treatments, special diets or therapies, signed by a licensed practitioner, or other individual authorized by law.

(aa) "Oversight agency" means an area agency designated by the department to provide oversight of AFCRs.

(ab) "Over-the-counter medications" means non-prescription medications for use by a resident at the licensed premises.

(ac) "Placement" means the process whereby the oversight agency determines the suitability of a particular AFCR for a specific individual.

(ad) "Plan of correction (POC)" means a plan developed and written by the licensee or oversight agency, which specifies the actions that will be taken to correct identified deficiencies identified by the department.

(ae) "Pro re nata (PRN) medication" means medication taken as circumstances may require.

(af) "Procedure" means a licensee or oversight agency's written, standardized method of performing duties and providing services.

(ag) "Protective care" means the provision of resident monitoring services, including but not limited to:

(1) Supervision of self-directed administration of medicine;

(2) Knowledge of resident whereabouts; and

(3) Minimizing the possibility of accident or injury through observation of resident activities.

(ah) "Representative" means an individual granted authority by law to represent the person, including a legal representative as defined in RSA 161-F:11, VII, and a resident's personal representative as defined in RSA 151:19, V.

(ai) "Resident" means any person admitted to a home licensed in accordance with RSA 151 and He-P 813 who has been or who would be determined eligible for nursing facility level of care, including services under the medicaid home and community-based care program for the elderly and chronically ill.

(aj) "Resident record" means a separate file maintained for each person receiving care and services, which includes all documentation required by RSA 151 and He-P 813 and as required by other federal and state law.

(ak) "Respite care" means "respite care service" as defined in RSA 161-F:66, IV.

(al) "Self administered with supervision" means an act whereby the resident is prompted by a caregiver to take his or her own medication(s) without requiring physical assistance from others.

(am) "Self administration of medication" means an act whereby the resident is able to take his or her own medication(s) without the verbal or physical assistance of another person.

(an) "Self directed medication administration" means an act whereby a resident, who has a physical or cognitive limitation that prohibits him or her from self-administering, directs the caregiver to physically assist in the medication process.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(ao) “Service” means a specific activity performed by the licensee or oversight agency, either directly or indirectly, to benefit or assist a resident.

(ap) “Therapeutic diet” means a diet ordered by a licensed practitioner or other licensed professional with prescriptive authority as part of treatment of a disease or clinical condition.

(aq) “Unusual incident” means an occurrence of any of the following while a resident is in the care of the licensee or other caregiver:

(1) There is an unexplained absence of a resident when a resident leaves the premises of an AFCR in a manner inconsistent with his or her care plan;

(2) Any incident that requires examination or treatment by a licensed practitioner, including but not limited to:

a. An error involving medication, diet or other activity ordered by a licensed practitioner or other licensed professional with prescriptive authority;

b. A negative outcome;

c. An accident; or

d. The death of a resident.

(ar) “Wander” means moving about without a discernible or rational purpose.

Source. #8595, eff 4-1-06

He-P 813.04 Initial License Application Submission.

(a) Each applicant for a license shall comply with the requirements of RSA 151:4, I-III-a and submit the following to the department:

(1) A completed application form entitled “Application for Residential or Health Care License,” including the following:

a. Name, mailing address, and telephone number of the applicant and the prospective AFCR;

b. Name of the primary caregiver, if different from applicant;

c. Copies of transcripts, certificates, diplomas or degrees of the applicant, as applicable;

d. A resume or other documentation of the previous 5 years of employment of the applicant, including any experience working with the elderly or disabled;

e. The name and contact information of 3 references for the applicant;

f. The name, address and telephone number of the oversight agency;

g. A detailed description of how the licensee will provide services in accordance with the requirements in He-P 813.14(c), (d), (e) and (f);

h. The number of beds requested;

i. An indication as to whether the application is for a new license or the renewal of an existing license;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- j. An indication that the classification being sought is for an AFCR; and
- k. The signatures of the applicant and the authorized individual at the oversight agency, affirming the following written statement:

“I affirm that I am familiar with the requirements of RSA 151 and the rules adopted thereunder and that the premises are in full compliance. I understand that providing false information shall be grounds for denial, suspension, or revocation of my license, and the imposition of a fine.”

(b) With the application, the following shall be provided:

(1) Medical information for the applicant and all other individuals residing in the home from a licensed practitioner, which includes the following:

- a. The date of the most recent tuberculosis (TB) test and the date of interpretation and findings;
- b. For the applicant, a statement that he or she was found free of physical or mental impairment that would impact his or her ability to care for residents; and
- c. The signature of the licensed practitioner and the date signed;

(2) The full name, date of birth and relationship to the applicant of all household members;

(3) Documentation that all family pets have current vaccinations and are licensed, if required;

(4) The applicable fee of \$2.50 per licensed bed, in accordance with RSA 151:5, I(a), payable in cash in the exact amount of the fee or, if paid by check or money order, the exact amount of the fee made payable to the “Treasurer, State of New Hampshire;”

(5) Verification from the fire chief that the applicant complies with all applicable state and local fire ordinances for a single or two family dwelling, including verification that the AFCR:

- a. Has smoke detectors that are:
 - 1. Placed on every level of the AFCR;
 - 2. Placed in every bedroom;
 - 3. Interconnected and hardwired or a wireless system approved by the New Hampshire state fire marshal’s office; and
 - 4. Powered by the AFCR’s electrical service;
- b. Has at least one ABC type fire extinguisher on every level of the AFCR; and
- c. Is free from fire hazards;

(6) For AFCRs not served by a public water system, as defined by Env-Ws 302.61, an analysis report completed within the previous 12 months by a certified laboratory that verifies the water supplied to or used in the prospective home is suitable for human consumption and in compliance with Env-Ws 313.01 and Env-Ws 314.01;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(7) For all caregivers that may transport a resident in their car, proof of a valid driver's license and current automobile liability insurance, which shall be in the following amounts and coverage:

- a. \$100,000 coverage for any single person injured; and
- b. \$300,000 coverage for personal injuries per accident;

(8) Documentation of current registration and inspection for any automobile used to transport residents;

(9) The results of a criminal record check for the applicant, caregivers and all household members age 17 years or older as completed by the oversight agency, pursuant to He-P 813.14(x).

(10) A written disclosure from the applicant, caregivers and all household members containing a list of any:

- a. Convictions, in this or any other state;
- b. Adjudications of juvenile delinquency;
- c. Permanent restraining or protective orders;
- d. Findings by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation;
- e. Current investigations by any law enforcement agency;
- f. Current investigations by the department for abuse, neglect or exploitation; or
- g. An explanation of the circumstances surrounding disclosure of matters described in a. through f. above.

(c) Information disclosed regarding adjudication of juvenile delinquency, as required by (b)(10)(b) above, shall be confidential and shall not be released except in a proceeding involving the question of licensure or revocation of a license, or pursuant to court order.

(d) The applicant shall mail or hand-deliver the documents to:

Department of Health and Human Services
Health Facilities Administration
129 Pleasant Street
Concord, NH 03301

Source. #8595, eff 4-1-06

He-P 813.05 Processing of Applications and Issuance of Licenses.

(a) The department shall process applications in accordance with RSA 541-A:29.

(b) An application for an initial license shall be deemed to be complete when the department determines that all items required by He-P 813.04(a) and (b) have been received.

(c) If an application does not contain all of the items required by He-P 813.04(a) and (b) the department shall notify the applicant in writing of the items required before the application can be processed.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) Any licensing fee submitted to the department in the form of a check or money order and returned to the state for any reason, shall be processed in accordance with RSA 6:11-a.

(e) Licensing fees shall not be transferable to any other application(s).

(f) The department shall deny a licensing request after reviewing the information in He-P 813.04(b)(9) and (10) above if after investigation it determines that the individual:

(1) Has been convicted of a sexual assault or other violent crime; or

(2) Poses a threat to the health, safety or well-being of a resident.

(g) All licenses issued in accordance with RSA 151 shall be non-transferable by person or location.

(h) An inspection shall be completed by the department in accordance with He-P 813.09 prior to the issuance of a license.

Source. #8595, eff 4-1-06

He-P 813.06 License Expirations and Procedures for Renewals.

(a) A license shall be valid on the date of issuance and expire the following year on the last day of the month it was issued.

(b) Each licensee shall complete and submit to the department an application form entitled "Application for Residential or Health Care License," for license renewal at least 120 days prior to the expiration of the current license.

(c) The licensee shall submit with the renewal application:

(1) The information required by He-P 813.04(b)(1), (4), (6), (7), (8) and (9);

(2) The current license number;

(3) The fee of \$2.50 per licensed bed licensing fee prescribed by RSA 151:5, I(a);

(4) Documentation that the water supply is suitable for human consumption, as required by He-P 813.04(b)(6);

(5) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 813.10(f), if applicable; and

(6) A statement identifying any variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03 - Saf-C 6005.04.

(d) Prior to issuing a license, the department shall review any of the information submitted in He-P 813.04(b)(9) and (10) above and shall deny a license renewal in accordance with He-P 813.05(f).

(e) Following an inspection as described in He-P 813.09, a license shall be renewed if the department determines that the licensee:

(1) Submitted an application containing all the items required by (c) above, prior to the expiration of the current license;

(2) If deficiencies were cited at the last inspection or investigation, has submitted a POC which has been accepted by the department and has been implemented by the licensee; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) Is otherwise in compliance with He-P 813 and RSA 151.

(f) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license shall be required to submit an application for initial license pursuant to He-P 813.04.

(g) If a licensee chooses to cease operation of the AFCR, the licensee shall submit written notification to the department at least 45 days in advance of closure.

Source. #8595, eff 4-1-06

He-P 813.07 AFCR Construction, Alterations or Additions. A licensee or applicant doing construction, renovations, or modifications to an AFCR shall comply with the following:

- (a) The state fire code Saf-C 6000 as adopted under RSA 153; and
- (b) The state building code as adopted under RSA 155-A:2.

Source. #8595, eff 4-1-06

He-P 813.08 AFCR Requirements for Organizational Changes.

(a) When there is to be a change in the street address of the AFCR, without a change in the physical location, as a result of local, state or federal action, the licensee shall inform the department in writing of the change.

(b) When a licensee wishes to close an AFCR, the licensee shall:

- (1) Notify the department in writing, at least 45 days in advance of closing of the following:
 - a. The names of the residents currently living in the AFCR; and
 - b. The locations to which each resident is transferred; and
- (2) Submit to the department copies of the discharge notice given to each resident.

Source. #8595, eff 4-1-06

He-P 813.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 813, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services being provided by the AFCR; and
- (3) Any records required by RSA 151 and He-P 813.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 813 prior to:

- (1) The issuance of an initial license;
- (2) A change in the licensing classification; or
- (3) The renewal of a license.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) The department shall conduct an inspection to verify the implementation of any POC accepted or issued by the department as part of an annual inspection, or as a follow-up inspection focused on confirming the implementation of a POC.

(d) Following the inspections described in (b) and (c) above, the department shall provide the licensee with a written inspection report.

Source. #8595, eff 4-1-06

He-P 813.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 813 shall submit a written request for a waiver to the commissioner, that includes:

- (1) The specific reference to the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health and residents as the rule from which a waiver is sought; and
- (4) The period of time for which the waiver is sought.

(b) A waiver shall not exceed 12 months or the current license expiration date.

(c) A request for waiver shall be granted if the commissioner determines that the alternative proposed by the applicant or licensee:

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health or safety of the residents; and
- (3) Does not affect the quality of resident services.

(d) Waivers shall not be transferable.

(e) When a licensee wishes to renew the waiver beyond the approved period of time, the licensee shall apply for a new waiver at least 60 days prior to the expiration of the existing waiver by submitting the information required by (a) above.

(f) The request to renew a waiver shall be subject to (b) through (d) above.

Source. #8595, eff 4-1-06

He-P 813.11 Complaints and Investigations.

(a) The department shall accept and investigate complaints that allege:

- (1) A violation of RSA 151 or He-P 813;
- (2) That an individual or entity is operating as an APCR without being licensed; or
- (3) That an individual or entity is advertising or otherwise representing the APCR as having or performing services for which they are not licensed to provide, pursuant to RSA 151:2, III.

(b) When practicable, the complaint shall be in writing containing the following information:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) The name and address of the AFCR, or the alleged unlicensed individual or entity;
- (2) The name, address and telephone number of the complainant; and
- (3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151 or He-P 813.

(c) The department shall not investigate a complaint unless the commissioner determines that, if the allegations are proven to be true, it would constitute a violation of the provisions of RSA 151 or He-P 813.

(d) For a licensed AFCR, the departments shall:

- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if deficiencies were found as a result of the investigation; and
- (2) Notify any other state or local agencies of suspected violations of their statutes or rules based on the results of the investigation.

(e) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall take no further action.

(f) If the investigation results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 813.12(d).

(g) For an unlicensed individual or entity, the department shall provide written notification to the owner or person responsible that includes:

- (1) The date of investigation;
- (2) The reasons for the investigation; and
- (3) Whether or not the investigation revealed that the services being provided require licensing under RSA 151:2, IV.

(h) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 days from the date of the notice required by (g) above to respond to any findings cited by the department.

(i) The department shall accept the response in (f) and (h) above if it includes:

- (1) For licensed programs, a POC to achieve compliance with RSA 151 and He-P 813 within 30 days; or
- (2) For unlicensed programs, a complete application for licensure.

(j) If the owner of an unlicensed home does not provide a response as described in (h) above, the department shall:

- (1) Issue a written warning to immediately comply with RSA 151 and He-P 813; and
- (2) Provide information stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.

(k) Any person or entity who fails to comply after receiving a warning as described in (j) above shall be subject to an action by the department for injunctive relief under RSA 151:17.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(1) Except for any deficiency reports issued or POC's received, the name of the complainant and the information contained in the investigation file shall be kept confidential as required by RSA 151:13, but shall be released by the department on written request only:

- (1) To the department of justice when relevant to a specific investigation;
- (2) To law enforcement when relevant to a specific criminal investigation;
- (3) To appropriate professional licensing boards, as authorized by RSA 151:13, if the information contained in the complaint file appears contrary to professional practices;
- (4) During any adjudicative proceeding that concerns:
 - a. The issuance of a warning in accordance with RSA 151:7-a;
 - b. The imposition of an administrative fine in accordance with RSA 151:16-a; or
 - c. The suspension, denial or revocation of a license under RSA 151:8 and RSA 151:9, I(f);
- (5) After the department suspends, denies or revokes a license under RSA 151:7, II; or
- (6) When a court of competent jurisdiction orders the department to release such information.

Source. #8595, eff 4-1-06

He-P 813.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 813 or other applicable licensing rules, including:

- (1) POC's upon a licensee;
- (2) Directed POC's upon a licensee; and
- (3) Fines upon an unlicensed individual, an applicant or a licensee.

(b) When administrative remedies are imposed, the department shall provide the unlicensed individual, applicant or licensee the following written notice, as applicable, which:

- (1) Identifies each deficiency;
- (2) Identifies the specific remedy(s) that has been imposed; and
- (3) Provides the following information:
 - a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to imposition of the fine; and
 - b. The automatic reduction of a fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the deficiency has been corrected or a POC has been accepted and approved by the department.

(c) A licensee shall implement and continue to comply with all POC's that have been accepted or issued by the department.

(d) A POC shall be developed and enforced in the following manner:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a written POC containing:
 - a. How the licensee intends to correct each deficiency;
 - b. What measures will be put in place, or what system changes will be made, to ensure that the deficiency does not recur; and
 - c. The date by which each deficiency shall be corrected;
- (2) The licensee shall submit a written POC to the department within 21 days of the date on the letter that transmitted the inspection report;
- (3) The department shall review and accept each POC that:
 - a. Achieves compliance with RSA 151 and He-P 813;
 - b. Addresses all deficiencies as cited in the inspection report;
 - c. Prevents a new violation of RSA 151 or He-P 813 as a result of this implementation; and
 - d. Specifies the date upon which the deficiencies will be corrected;
- (4) If the POC is acceptable, the department shall notify the licensee to implement the POC with:
 - a. The issuance of a license certificate; or
 - b. Written notification of acceptance;
- (5) The department shall reject any POC that does not meet the requirements of (3) above;
- (6) If the POC is not acceptable, the department shall notify the licensee in writing of the reason for rejecting the POC;
- (7) The licensee shall develop and submit a revised POC within 21 days of the date of the written notification from the department that states the original POC was rejected;
- (8) The revised POC shall comply with (1) and (2) above and be reviewed in accordance with (3) above;
- (9) If the revised POC is not acceptable to the department, or is not submitted within 21 days of the date of the written notification from the department that states the original POC was rejected, the department shall issue:
 - a. A fine in accordance with He-P 813.12(f)(4); and
 - b. A directed POC in accordance with He-P 813.12(e); and
- (10) The department shall verify the implementation of any POC that has been submitted and accepted by:
 - a. Reviewing materials submitted by the licensee;
 - b. Conducting a follow-up inspection; or
 - c. Reviewing compliance during the next inspection.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) The department shall develop and impose a directed POC that specifies corrective actions for the applicant or licensee to implement when:

- (1) An inspection or investigation has found deficiencies that require immediate corrective action to protect the health and safety of the residents and caregiver;
- (2) A revised POC is not submitted within 21 days of the written notification from the department; or
- (3) A revised POC submitted by the licensee has not been accepted.

(f) If, at the time of the next inspection, the directed POC referenced in (e) above has not been implemented by the completion date stated in the directed POC, the department shall:

- (1) Impose a fine;
- (2) Deny an application for a renewal of a license; or
- (3) Suspend or revoke a license.

(g) The department shall impose fines on an unlicensed individual, applicant or licensee as follows:

- (1) For failure to cease operations after a denial or revocation of license, or after receipt of an order to cease and desist immediately, in violation of RSA 151:2, the fine shall be \$2000.00;
- (2) For advertising services not provided or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III and He-P 813.14(q), the fine shall be \$500.00;
- (3) For failure to submit a renewal application prior to the expiration of the current license, in violation of He-P 813.06(b), the fine shall be \$100.00;
- (4) For failure to submit an acceptable POC or revised POC, within 21 days of the date on the letter that transmits the inspection report, in violation of He-P 813.12(d)(2) and (7), the fine shall be \$100.00;
- (5) For failure to implement any POC that has been accepted or issued by the department, in violation of He-P 813.12(c), the fine shall be \$50.00 per day, not to exceed a total of \$1000.00;
- (6) For falsification of information contained on an application or of any records required to be maintained for licensure, in violation of He-P 813.14(p), the fine shall be \$1000.00;
- (7) For failure to meet the needs of a resident, in violation of He-P 813.14(a), the fine shall be \$50.00 per day, not to exceed a total of \$1000.00;
- (8) For exceeding capacity, in violation of He-P 813.14(i), the fine shall be \$500.00;
- (9) For failure to allow access to an APCR's premises, programs and services, in violation of He-P 813.09(a), the fine shall be \$2000.00;
- (10) For failure to provide to the department any records maintained by the licensee and required by He-P 813.14(m), the fine shall be \$2000.00; and
- (11) When there is a repeat violation of a previously cited violation within 2 years of the date of the original deficiency, the fine shall be \$2000.00.

(h) Payment of any imposed fine to the department shall meet the following requirements:

- (1) Payment shall be made in the form of check or money order made payable to the “Treasurer - State of New Hampshire” or cash in the exact amount due; and
- (2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

Source. #8595, eff 4-1-06

He-P 813.13 Enforcement Actions and Hearings.

(a) Prior to taking action against an applicant or licensee, the department shall send to the applicant or licensee a written notice that sets forth:

- (1) The reasons for the proposed action;
- (2) The action to be taken by the department; and
- (3) The right of an applicant or licensee to a hearing in accordance with RSA 151:8 and RSA 541-A.

(b) The department shall deny an application or revoke a license if:

- (1) An applicant or a licensee has a violation of RSA 151 or He-P 813 which poses a risk of harm to a resident’s health, safety or well-being;
- (2) An applicant or licensee has failed to pay a fine imposed under administrative remedies;
- (3) An applicant or licensee had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order or certified check;
- (4) After being notified of and given an opportunity to supply missing information, the applicant or licensee fails to submit an application that meets the requirements of He-P 813.04;
- (5) The applicant, licensee or any representative or employee of the applicant or licensee:
 - a. Provides false information to the department;
 - b. Prevents or interferes with any inspection or investigation conducted by the department;
or
 - c. Fails to provide requested files or documents to the department;
- (6) The licensee failed to fully implement or continue to comply with a POC that has been accepted or imposed by the department in accordance with He-P 813.12(c);
- (7) The licensee is cited a third time under RSA 151 or He-P 813 for the same violation;
- (8) A licensee or a current household member of a previous licensee who has had a license revoked and submits an application during the 5 year prohibition period; or
- (9) The department makes a determination under He-P 813.05(f) that the individual has been convicted of a sexual assault or other violent crime; or poses a threat to the health, safety or well-being of a resident.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) The department shall immediately suspend a license when an inspection or investigation has found the health, safety and welfare of residents is in jeopardy and emergency action is required.

(d) If an immediate suspension of a license is ordered:

(1) The licensee shall immediately cease to operate; and

(2) The department shall hold an administrative hearing within 10 working days of the date the order was issued.

(e) If an immediate suspension is upheld at the hearing described in (d)(2) above, the licensee shall not operate until the department determines through inspection that compliance with RSA 151 and He-P 813 is achieved.

(f) If an applicant or licensee fails to submit a written request for a hearing within 30 days of receipt of the notice to deny or revoke a license, as described in (a) above, the action of the department shall become final.

(g) Hearings under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(h) RSA 541-A shall govern further appeals of department decisions under this section.

(i) When a license has been revoked or denied, the department has refused to renew a license, or an application has been denied by the department, the applicant, former licensee or caregiver shall not be eligible to reapply for a license for at least 5 years from:

(1) The date of the department's decision to revoke or deny the license, if no appeal is filed; or

(2) The date an order is issued upholding the action of the department, if that action has been appealed.

(j) Notwithstanding (i) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, only under the following circumstances:

(1) The applicant or licensee, when licensed, did not demonstrate a pattern of repeat violations of licensing rules or statute;

(2) The denial was based on the applicant or licensee's inability or failure to correct a violation caused by a temporary condition which has been corrected; or

(3) The applicant who was denied an initial application or the licensee whose license was revoked demonstrates that circumstances have changed such that the department now has good cause to believe that the applicant or former licensee has the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 813.

(k) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under law, including but not limited to RSA 151, RSA 541-A or He-P 813.

Source. #8595, eff 4-1-06

He-P 813.14 Duties and Responsibilities of the Licensee.

(a) The licensee shall meet the needs of residents and shall follow their care plan, fire safety assessment and personal safety assessment.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) The licensee shall make prior arrangements for a substitute caregiver to provide care in the event of an emergency or during planned absences by the licensee or caregiver.

(c) The licensee shall provide the following services:

- (1) Health and safety services to minimize the possibility of accident or injury, with protective care and oversight 24 hours a day;
- (2) Medication services in accordance with He-P 813.17;
- (3) Food services in accordance with He-P 813.19;
- (4) Housekeeping, laundry and maintenance services;
- (5) Activities designed to engage all residents within the home to sustain and promote physical, intellectual, social and spiritual well being;
- (6) Assistance in arranging appointments for the resident, including:
 - a. Providing transportation to and from the appointment; and
 - b. Reminding the resident of the appointments; and
- (7) Supervision of residents with cognitive deficits that may pose a risk to the resident or others if the resident is not supervised.

(d) The licensee shall provide access to the following services pursuant to RSA 151:2, IV and RSA 151:9, VII(a)(2):

- (1) Nursing services, which shall include:
 - a. Supervision and instruction to all caregivers by a licensed nurse, relative to the delivery of nursing care;
 - b. Nursing assessment and development of a nursing care plan;
 - c. Nursing care and monitoring; and
 - d. Resident education needs, as identified by the resident assessment;
- (2) Rehabilitation services, including documentation of the licensed practitioner's order for the service, such as physical therapy, speech therapy or occupational therapy; and
- (3) Behavioral health care services.

(e) The licensee shall provide or arrange for access to community programs, such as:

- (1) Religious services;
- (2) Social and cultural events;
- (3) Educational activities;
- (4) Recreational activities; and
- (5) Opportunities for the resident to have contact with family and friends.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(f) The licensee shall provide or arrange for sufficient supplies, including but not limited to toiletries and clean linens and towels, to ensure that the needs of residents are met.

(g) Licensees shall:

(1) Provide the following information to the department immediately by telephone or fax and in writing within 72 hours of any unusual incident:

- a. The AFCR name;
- b. A description of the incident, including identification of injuries, if applicable;
- c. The name of the licensee(s) or caregivers involved in the unusual incident;
- d. The name of resident(s) involved in the unusual incident;
- e. The date and time of the unusual incident;
- f. The action taken in response to the unusual incident, including any follow-up;
- g. If medical intervention was required, by whom and the date and time;
- h. If the resident's representative or emergency contact person was notified; and
- i. The signature of the person reporting the unusual incident;

(2) Use restraints only in accordance with RSA 151:21 IX;

(3) Notify the department and the resident's emergency contact by phone, and the department in writing within 72 hours, of the death of any resident;

(4) Notify the local police department and the resident's representative or emergency contact immediately when a resident has an unexplained absence;

(5) Notify the department by a written report within 72 hours describing the action taken by the licensee when a resident has an unexplained absence; and

(6) Notify the resident in advance when a substitute caregiver, when known, will provide care.

(h) The licensee shall comply with the patient's bill of rights as set forth in RSA 151:19-30.

(i) The licensee shall not exceed the maximum number of residents or beds licensed by the department.

(j) In addition to the posting requirements specified in RSA 151:29, the licensee shall post the following documents:

(1) The current license certificate issued in accordance with RSA 151:2;

(2) All inspection and investigation reports issued in accordance with He-P 813.09(d) and He-P 813.11(d) during the previous 12 months; and

(3) A copy of the patient's bill of rights specified by RSA 151:21.

(k) If smoking is to be allowed, the licensee shall develop and implement smoking policies and designate smoking areas in accordance with RSA 155:66, RSA 155:68 and RSA 155:69.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(l) A licensee shall provide a resident or their legal representative with a copy of his or her resident record pursuant to the provisions of RSA 151:21, X.

(m) All records required for licensing shall:

(1) Be available to the department during an inspection or investigation conducted in accordance with He-P 813, RSA 151:6 and RSA 151:6-a;

(2) Be legible, current and accurate; and

(3) Be maintained in a secure manner that safeguards confidentiality and prevents tampering of data.

(n) A licensee that maintains electronic records shall develop a system with written policies and procedures to assure that the requirements in (m) above are met and maintained.

(o) The licensee shall hold or manage a resident's personal funds and possessions in accordance with RSA 151:24 and the following:

(1) A resident's personal funds shall not be used for the benefit of the licensee or household members; and

(2) A resident's personal funds shall be used only as authorized by the resident or representative.

(p) The licensee shall not falsify any documentation or records required by RSA 151 or He-P 813.

(q) The licensee shall not advertise or otherwise represent themselves as performing services which they are not licensed to provide, pursuant to RSA 151:2, III and He-P 813.

(r) The licensee shall obtain information and training from the oversight agency regarding the needs of the residents under their care.

(s) The licensee shall give a resident a written notice 30-days in advance of any changes in services or fees.

(t) The licensee shall obtain insurance in accordance with He-P 813.04(b)(7);

(u) The licensee shall be responsible for day-to-day management of the AFCR.

(v) The licensee shall provide sufficient caregivers to meet the needs of residents during all hours of operation.

(w) There shall be at least one licensee or caregiver present at all times while residents are in the home, except when allowed by the care plan, fire safety assessment and personal safety assessment.

(x) The licensee shall obtain and provide both the oversight agency and the department with a national criminal records check, for the following:

(1) The licensee or applicant, pursuant to RSA 151:3-c;

(2) The caregiver(s); and

(3) All household members ages 17 years or older, pursuant to RSA 151:9, I(a).

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(y) If the information identified in (x) above regarding any of the persons specified in (x)(1) through (3) above is learned after the person is initially approved for contact with residents, the licensee or caregiver shall submit the information to the department immediately upon discovery.

(z) The licensee shall not contract with an oversight agency if the department has made a determination under He-P 813.05(f).

(aa) All licensees shall:

- (1) Be at least 21 years of age and be a high school graduate or possess a general equivalency diploma GED;
- (2) Obtain at least 6 hours of continuing education related to the operation and services of the APCR each calendar year; and
- (3) Be capable of providing care to residents in accordance with their care plan.

(ab) All licensees shall follow the orders of the licensed practitioner or other licensed professional with prescriptive authority for each resident and encourage residents to follow the practitioner's orders.

(ac) All licensees shall:

- (1) Prior to the start of performing the duties of their position, for the licensee and caregivers, submit to the oversight agency the results of a physical examination or a health screening completed within the past 12 months by a licensed practitioner;
- (2) Submit results of a 2-step tuberculosis (TB) test, Mantoux method, conducted not more than 12 months prior to employment;
- (3) Be allowed to work while waiting for the results of the second step of the TB skin test when the results of the first step are negative for TB;
- (4) Comply with the Center For Disease Control's "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings 2005;" and
- (5) Possess a valid New Hampshire driver's license.

(ad) Prior to a placement of a resident with a licensee, the licensee shall participate in an orientation, as provided by the oversight agency, which explains at a minimum, the following:

- (1) The residents' rights in accordance with RSA 151:21;
- (2) The APCR's complaint procedures;
- (3) The services provided by the APCR in accordance with He-P 813.16;
- (4) The medical emergency procedures;
- (5) The emergency and evacuation procedures;
- (6) The infection control procedures as required by He-P 813.20;
- (7) The procedures for food safety regarding preparation, serving and storing of food; and
- (8) The mandatory reporting requirements including RSA 161-F:46-50 and RSA 169-C:29.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(ae) The licensee shall participate in an annual continuing education or in-service training, as conducted by the oversight agency, which at a minimum, contains the following:

- (1) Resident's rights and complaint procedures;
- (2) Infection control program; and
- (3) The written emergency plan.

(af) The licensee shall request and obtain from the oversight agency an annual review of each resident's capabilities for self-administration of medication with supervision or for self-directed medication administration, as applicable.

(ag) Personnel files shall be available at the licensed premises for review by the department and shall include the following:

- (1) A completed application for employment;
- (2) Proof that the individual meets the minimum age requirements;
- (3) A statement signed by each licensee that he or she has received a copy of and received training in the implementation of the policy and procedures setting forth the resident's rights and responsibilities as required by RSA 151:20;
- (4) A copy of the results of the criminal record check as described in (e) above;
- (5) A job description signed by the individual that shall contain:
 - a. Position title;
 - b. Qualifications and experience; and
 - c. Duties required by the position;
- (6) Record of satisfactory completion of the orientation program required by (p) above;
- (7) Information as to the general content and length of all in-service or educational programs attended;
- (8) Record of satisfactory completion of all required education programs required by (q) and (r) above;
- (9) A copy of a current driver's license; and
- (10) Documentation that the required physical examinations, health screenings, TB test results, and radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals.

(ah) Licensee records for both residents and caregivers shall be:

- (1) Current and complete;
- (2) Maintained separately for each person;
- (3) Stored in locked containers or cabinets or in a locked room;
- (4) Protected by access restrictions if stored electronically; and

- (5) Available to the department within 30 minutes of being requested.

Source. #8595, eff 4-1-06

He-P 813.15 Resident Eligibility, Transfer and Discharge Criteria.

- (a) The licensee shall only admit residents:
- (1) Whose needs can be met under the current licensing classification;
 - (2) Whose needs can be met through the programs and services offered directly by the licensee or through arrangement with other providers;
 - (3) Who are able to evacuate the residence in compliance with Saf-C 6008.04;
 - (4) Who, if they have a pressure ulcer of stage 2 or less, have the written permission of their licensed practitioner;
 - (5) Who do not have a pressure ulcer of stage 3 or higher;
 - (6) Who are not a danger to themselves or others;
 - (7) Who do not require the use of restraints;
 - (8) Who would not place the health or safety of any resident in jeopardy.
- (b) The resident shall be transferred to another facility or discharged, pursuant to RSA 151:21, V and RSA 151:26 when:
- (1) The resident's medical or other needs exceed the services offered at the APCR;
 - (2) The APCR's inability to meet more stringent fire and safety codes, as established by Saf-C 6008.04, would endanger the welfare of the resident;
 - (3) The resident or the resident's representative determines that the resident should leave the APCR;
 - (4) The resident requires the use of restraints;
 - (5) The resident develops a stage 3 or higher pressure ulcer; or
 - (6) The resident places the health or safety of other residents in jeopardy.
- (c) The resident or representative and the licensee shall develop a discharge plan before any transfer or discharge takes place.
- (d) Copies of the following documents shall accompany the transferred or discharged resident:
- (1) The most recent resident assessment, care plan and quarterly progress notes;
 - (2) The most recent nursing assessment, if applicable;
 - (3) The most recent multi-disciplinary care plan, if applicable;
 - (4) Current medication records; and
 - (5) A licensed practitioner's order for transfer, if applicable.

(e) The licensee shall give a resident a written notice no less than 30 days in advance of transfers and discharges from the AFCR unless the transfer or discharge is required by the reasons listed in RSA 151:26, II (b), in which case the notice will be given as soon as is practicable.

Source. #8595, eff 4-1-06

He-P 813.16 Services at AFCRs.

(a) At the time of application for admission, the resident shall be provided with a written copy of the resident service agreement pursuant to RSA 161- J:4.

(b) The licensee shall provide a written a copy of the following to the resident or representative, and receive a signed receipt for the same, at the time of admission:

(1) An admissions contract including the following information:

- a. The basic daily, weekly and monthly fee;
- b. A list of the services required by He-P 813 that are covered by the basic fee;
- c. Information regarding the timing and frequency of cost of care increases;
- d. The time period covered by the admissions contract;
- e. The AFCR's house rules;
- f. The grounds for immediate termination of the agreement, pursuant to RSA 151:26, II(b);6
- g. The AFCR's responsibility for resident discharge planning;
- h. Information regarding services not provided by the AFCR, to include:
 1. Contact and other information regarding nursing and other health care services;
 2. The AFCR's responsibility for arranging services; and
 3. The fee and payment for services;
- i. The licensee's policies and procedures regarding:
 1. Providing transportation;
 2. Arranging for the provision of third party services, such as cable television;
 3. Third party services contracted directly by the resident and provided on the AFCR premises;
 4. Storage and loss of the resident's personal property; and
 5. Bed hold, in compliance with RSA 151:25; and
- j. The licensee's medication management services;

(2) A copy of the current version of the patients' bill of rights under RSA 151: 21 and the AFCR's policies and procedures for implementation of the patient's bill of rights pursuant to RSA 151:20, II;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) A copy of the resident's right to appeal an involuntary transfer or discharge under RSA 151:26, II(5), and the AFRCR's policy and procedure for assisting with the appeals process;

(4) The AFRCR's policy and procedure for handling reports of abuse, neglect or exploitation; and

(5) Information on contacting the long-term care ombudsman.

(c) A resident assessment shall be completed by the licensee and oversight agency using the most recent version of the department's approved resident assessment tool (RAT).

(d) The assessment in (c) above shall:

(1) Address the resident's preferences and needs;

(2) Be completed in consultation with the resident or representative;

(3) Be completed no more than 30 days prior to admission to the AFRCR;

(4) Be repeated every 6 months; and

(5) Be repeated following any improvement or decline in the resident's health status, behavior or cognitive or functional abilities that could result in a change in the quality of life or a change in service needs of the resident.

(e) If the resident assessment identifies the need for medical, nursing or other services, such services shall be rendered in accordance with the resident's care plan.

(f) A fire safety assessment to review a resident's ability to evacuate the building with or without assistance within 3 minutes shall be completed by the licensee or caregiver within 5 days of the resident's moving into an AFRCR.

(g) The fire safety assessment shall:

(1) Be based on an actual evacuation drill conducted at the residence; and

(2) Include the following individual risk factors:

a. Response to alarm;

b. Response to instruction;

c. Vision and hearing;

d. Impaired consciousness;

e. Mobility;

f. Resistance to evacuation;

g. Assess the resident's ability to independently exit and complete the evacuation from the house;

h. Whether the resident is capable of choosing a backup strategy; and

i. Whether the resident would be able to stay at a designated location.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(h) The fire safety assessment shall indicate the date completed and signature of the person documenting the resident's risk factors.

(i) For each resident unable to evacuate within 3 minutes, a fire safety plan shall be developed and approved by the resident or representative, the licensee or caregiver, and the oversight agency that identifies:

- (1) The cause(s) for such inability;
- (2) The specific assistance needed by the resident from the licensee or caregiver; and
- (3) Specific actions that the resident shall take to reduce the evacuation time to 3 minutes or less.

(j) A care plan shall be developed, reviewed every 6 months, and revised based on the resident's needs.

(k) The care plan shall include the following, as appropriate, based on the resident's needs:

- (1) A description of the problems or needs;
- (2) The date the problem or need was identified;
- (3) The goal or objective of the plan;
- (4) The action or approach to be taken;
- (5) The responsible person(s) or position; and
- (6) The date of reevaluation, review, or resolution.

(l) The care plan shall be:

- (1) Completed in consultation with the resident and or their representative and the oversight agency;
- (2) Completed within 7 days after completion of the assessment;
- (3) Reviewed and updated following the completion of each future assessment; and
- (4) Made available to all licensees.

(m) Monthly progress notes for every resident shall be recorded by the licensee, including, at a minimum:

- (1) Observations regarding care plan outcomes;
- (2) Observations regarding changes in the resident's physical, functional and cognitive abilities;
- (3) Observations regarding changes in behavior, such as eating habits, sleeping patterns, and relationships;
- (4) A summary of protective care that has been provided; and
- (5) A summary of assistance provided with ADL.

(n) The licensee and oversight agency shall meet quarterly to review the progress notes required in (i) above.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(o) At the time of admission the licensee, with the assistance of the oversight agency, if necessary, shall obtain orders from a licensed practitioner for medications and therapeutic diets, if needed.

(p) Each resident shall have a health examination not more than 6 months prior to admission and at least one health examination, as described in (q) below, every 12 months unless the licensed practitioner determines it is not required, or the resident refuses in writing.

(q) The documentation of the resident's health examination as required in (p) above shall include the resident's:

- (1) Diagnoses, if any;
- (2) Medical history, including the presence of communicable disease, if applicable;
- (3) Vital signs;
- (4) Prescribed and over-the-counter medications;
- (5) Allergies; and
- (6) Dietary needs.

(r) A resident may refuse all care and services.

(s) When a resident refuses care or services, the licensee shall:

- (1) Inform the resident of the potential results of their refusal;
- (2) Notify the licensed practitioner if the resident's refusal of care may result in a threat to health, safety or well being of the resident or others;
- (3) Document the refusal of care and the resident's reason for the refusal in the resident's record; and
- (4) Notify the oversight agency.

(t) The licensee shall maintain an emergency data sheet in the resident's file and promptly give a copy to emergency medical personnel in the event of an emergency transfer to another medical facility, which includes:

- (1) The resident's full name and the name the resident prefers to be called by, if different;
- (2) The name, address and telephone number of the resident's next of kin or representative;
- (3) The resident's diagnoses;
- (4) The resident's allergies, if any;
- (5) The resident's functional limitations, if any;
- (6) The resident's date of birth;
- (7) The resident's insurance information;
- (8) The resident's advanced directives; and
- (9) Any other pertinent information not specified in (1)-(8) above.

Source. #8595, eff 4-1-06

He-P 813.17 Medication Services.

- (a) All medications shall be administered in accordance with the orders of the resident's prescribing licensed practitioner or other licensed professional with prescriptive authority.
- (b) Medications, treatments and therapeutic diets ordered by the licensed practitioner or other licensed professional with prescriptive authority shall be available to give to the resident within 8 hours of being ordered.
- (c) The licensee shall have a system in place to:
 - (1) Obtain any medication ordered for immediate use at the AFCR;
 - (2) Re-order medications for use at the AFCR; and
 - (3) Receive new medication orders.
- (d) For each prescription medication being taken by a resident, the licensee shall have a copy of the signed order in the resident's record.
- (e) Only a pharmacist shall make changes to the label of prescription medication container.
- (f) Any change or discontinuation of medications taken at the AFCR shall be pursuant to a written order from a licensed practitioner or other individual authorized by law.
- (g) When the licensed practitioner or other licensed professional with prescriptive authority changes the dose of a medication and the licensee is unable to obtain a new prescription label, a professional from the oversight agency acting within their scope of practice shall clearly and distinctly mark the medication container in a manner that does not cover the pharmacy label, such as with a colored sticker on the container, indicating that there has been a change in the medication order.
- (h) The professional from the oversight agency acting within their scope of practice at the oversight agency shall cross out the previous order on the daily medication record, indicating that the dose has been changed and write the new order in the next space available on the medication record.
- (i) The change in dosage, without a change in prescription label as described in (g) above, shall be allowed for a maximum of 30 days from the date of the new medication order.
- (j) On an annual basis, the licensee shall obtain from a licensed practitioner written approval for the specific over-the counter medications requested by, or on behalf of, the resident.
- (k) All over-the-counter medications shall be stored in a secure area to restrict access by other residents, household members and children residing in the home.
- (l) All over-the-counter medication containers shall be:
 - (1) Marked by the licensee with the name of the resident using the medication; and
 - (2) Taken in accordance with the directions on the medication container or as ordered by a licensed practitioner.
- (m) The medication storage area for medications not stored in the resident's room shall be:
 - (1) Locked and accessible only to the authorized caregiver;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Clean, organized and lit in a fashion to ensure correct identification of each resident's medication(s); and
 - (3) Equipped to maintain medication at the proper temperature.
- (n) Except as allowed by RSA 318:42, all medication at the AFRCR shall be kept in the original containers as dispensed by the pharmacy and properly closed after each use.
- (o) Topical liquids, ointments, patches, creams, or powder forms of products shall be stored in such a manner that cross contamination with oral, optic, ophthalmic and parenteral products shall not occur.
- (p) Destruction of controlled drugs shall:
- (1) Be accomplished in the presence of at least 2 people, one of whom shall be from the oversight agency; and
 - (2) Be documented in the record of the resident for whom the drug was prescribed.
- (q) When a resident is going to be absent from the AFRCR at the time medication is scheduled to be taken, the medication container shall be given to the resident or to the person responsible for the resident's care during the absence.
- (r) Upon discharge or transfer, a resident or representative shall be offered the opportunity to take the resident's current medication(s) with them.
- (s) A written order from a licensed practitioner shall be required annually for any resident who is authorized to carry and self-administer without supervision emergency medications such as nitroglycerine.
- (t) Residents shall receive their medications in the following manner:
- (1) Self-administer medication as allowed by (u) below;
 - (2) Self-administer with supervision as allowed by (v) below;
 - (3) Self-directed administration as allowed by (x) and (y) below;
 - (4) Administered by individuals authorized by law; or
 - (5) Administered by an individual that a nurse has delegated the task of medication administration to.
- (u) For residents who self-administer medication, the primary caregiver shall:
- (1) Obtain on an annual basis a written order from a licensed practitioner authorizing them to self-administer medications without supervision;
 - (2) Have the resident receive quarterly evaluations by the oversight agency to ensure they maintain the physical and cognitive ability to self-administer;
 - (3) Have the resident store the medications in their room by locking them up to safeguard against unauthorized access and maintaining them at proper temperatures;
 - (4) Have a key to access the locked medication storage area in their room with a copy of the key being given to the licensee; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (5) Be authorized to fill and utilize a medication storage system, such as a pill planner, that does not require that medication remain in the same container as dispensed by the pharmacist.
- (v) If a resident self-administers medication with supervision, licensees shall be permitted to:
- (1) Remind the resident to take the correct dose of his or her medication at the correct time;
 - (2) Place the medication container within reach of the resident;
 - (3) Remain with the resident to observe them taking the appropriate dose and type of medication as ordered by the licensed practitioner;
 - (4) Record on the resident's daily medication record that they have supervised the resident taking their medication; and
 - (5) Document in the resident's record any observed or reported side effects, adverse reactions, and refusal to take medications or medications not taken.
- (w) If a resident self-administers medication with supervision, licensees shall not open the medication container or physically handle the medication in any manner.
- (x) The primary caregiver shall allow the resident to self-direct administration of their medication if the resident has a physical limitation and wishes to self-direct.
- (y) If a resident self-directs the administration of medication, the licensee or caregiver may, upon the request of the resident, physically assist the resident with his or her medication, including opening the medication container, handing the resident the medication and closing the container.
- (z) If individuals authorized by law administer medications, the medication shall be:
- (1) Prepared immediately prior to administration; and
 - (2) Prepared, identified, and administered by the same person pursuant to RSA 318 and RSA 326-B.
- (aa) When administering medication, the licensee or other individual authorized by law shall remain with the resident until the resident has taken all of the medication.
- (ab) If a nurse delegates the task of medication administration to an individual not licensed to administer medications, the nurse shall:
- (1) Determine that the resident is medically stable;
 - (2) Document in the individual caregiver's file the evaluation method, tools and results of the evaluation used to determine that the individual receiving the delegation of medication administration is competent;
 - (3) Document in the individual caregiver's file any notice that the delegation of medication administration has been rescinded, if applicable; and
 - (4) Document in the resident's record the:
 - a. Specific medication to be administered;
 - b. Dosage, route and specific time that the medication is to be administered;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

c. Names of the licensees or caregivers that the nurse has delegated the administration of medications to; and

d. The results of the nurse's assessment, completed no more than 30 days prior to the delegation occurring, that determined that the resident's condition is stable and that the resident is appropriate for receipt of medication administration via nurse delegation.

(ac) Except for those residents who self-administer medication, licensees shall maintain a written record for each medication taken by the resident at the AFCR, containing the following:

- (1) The name and strength of the medication;
- (2) The dose taken by the resident;
- (3) The date and the time the medication was taken;
- (4) The signatures, identifiable initials and job titles of the licensees or caregivers who supervise, assist with, or administer the medications;
- (5) The reason for any medication refused or omitted;
- (6) For PRN medications, the reason the resident required the medication and the effect of the PRN medication; and
- (7) Any allergies or allergic reactions to medications.

(ad) The registered nurse (RN) from the oversight agency shall provide, at a minimum, a 4-hour medication supervision education program to licensees and caregivers who assist residents with self administration with supervision, self-directed administration, or who administer medication, which shall cover the administration of both prescription and non-prescription medication.

(ae) On an annual basis licensees and caregivers who administer medication shall complete a minimum of 2 hours of in-service training on the medication supervision education program referenced in (ad) above.

(af) The medication supervision education program and annual in-service training required by (ad) and (ae) above shall include:

- (1) Infection control and proper hand washing techniques;
- (2) The 5 rights which are:
 - a. The right resident;
 - b. The right medication;
 - c. The right dose;
 - d. Administered at the right time; and
 - e. Administered via the right route;
- (3) Documentation requirements;
- (4) General categories of medications, such as anti-hypertensives and antibiotics;
- (5) Desired effects and potential side effects of medications; and

(6) Medication precautions and interactions.

(ag) The licensee shall develop and implement a system for immediately notifying the resident's prescribing, licensed practitioner and the oversight agency RN within 24 hours of the occurrence of any:

(1) Observed adverse reactions to medication; or

(2) Medication errors such as incorrect medications or omissions.

(ah) The written documentation of the notification in (ag) above shall be maintained in the resident's record.

Source. #8595, eff 4-1-06

He-P 813.18 Food Services.

(a) The licensee shall meet the nutritional needs of each resident, including special dietary needs associated with any health or medical conditions or religious requirements as specified in the care plan or medical orders.

(b) Each resident shall be offered at least 3 meals in each 24-hour period, with no more than 14 hours between the evening meal and breakfast unless contraindicated by the resident's care plan or medical orders.

(c) Snacks shall be available between meals and at bedtime if not contraindicated by the resident's care plan.

(d) The licensee shall provide therapeutic diets to residents only as directed by a licensed practitioner, other licensed professional with prescriptive authority, or registered dietician or dentist.

(e) If a resident has a pattern of refusing to follow a prescribed diet, the licensee shall:

(1) Document the reason for the refusal in the resident's medical record;

(2) Notify the resident's licensed practitioner; and

(3) Notify the oversight agency.

(f) For the purposes of emergency preparedness, each licensee shall have a supply of food and water sufficient for all household members and residents, including:

(1) Refrigerated, perishable foods for a 3-day period;

(2) Non-perishable foods for a 7-day period; and

(3) Drinking water for a 3-day period.

(g) All food and drink provided to the residents shall be safe for human consumption and free of spoilage, filth or other contamination.

(h) All food preparation and food service areas shall be maintained in a safe, clean and sanitary condition.

(i) The use of outdated food, or canned goods that have damage to their hermetic seals, shall be prohibited and such goods shall be immediately discarded.

(j) All work surfaces, dishes, utensils and glassware shall be in good repair and cleaned after each use.

- (k) Food service areas shall not be used to empty bedpans or urinals.
- (l) Soiled linen shall not be transported through food service areas when food is being eaten.
- (m) Garbage containers in the kitchen, food preparation or food service areas shall be covered.
- (n) All licensees and caregivers involved in preparing and serving food shall wash their hands and exposed portions of their arms with liquid soap and running water before preparing or serving food.

Source. #8595, eff 4-1-06

He-P 813.19 Infection Control.

(a) The licensee, with the assistance of the oversight agency, shall develop and implement an infection control program that provides for education of the licensee and procedures for the prevention, control and investigation of infectious and communicable diseases.

(b) The infection control program shall include written procedures for:

- (1) Proper hand washing techniques;
- (2) The utilization of universal precautions, as specified by the United States Centers for Disease Control Guidelines for Isolation Precautions in Hospitals (1993);
- (3) The management of residents with infectious or contagious diseases or illnesses;
- (4) The handling of infectious waste; and
- (5) Reporting of infectious and communicable diseases as required by He-P 301.

(c) Any caregiver or household member infected with a disease or illness transmissible through food, saliva or droplets, shall not work in food service or provide direct care in any capacity until they are no longer contagious.

(d) Any caregiver or household member with a newly positive mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the person is receiving tuberculosis treatment and has been determined to be noninfectious by a licensed practitioner.

(e) Any caregiver or household member with an open wound who works in food service or provides direct care in any capacity shall cover the wound at all times by an impermeable, durable, tight fitting bandage.

(f) Any caregiver or household member infected with scabies or lice shall not provide direct care to residents or work in food services until such time as they are no longer infected.

(g) All potentially infectious waste material shall be disposed of in accordance with the requirements of Env-Wm 2604 or removed by an approved waste control management agent.

Source. #8595, eff 4-1-06

He-P 813.20 Physical Environment.

(a) The physical environment shall be maintained, inside and outside, so as to provide for the safety and comfort of resident(s) and caregivers.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) At all times, including during any construction at the licensed premise, the licensee shall maintain the environment free of hazardous conditions, including but not limited to:

- (1) Electrical hazards;
- (2) Plumbing hazards;
- (3) Exposed insulation;
- (4) Tripping hazards, such as throw rugs, cords and construction debris;
- (5) Chemical fumes; and
- (6) Sawdust or sheetrock dust.

(c) The furniture, floors, ceilings, walls, and fixtures shall be clean, sanitary and in good repair.

(d) A supply of hot and cold running potable water shall be available for human consumption at all times.

(e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations, with precautions to prevent a scalding injury to the residents.

(f) All resident bathing and toileting facilities shall be cleaned and disinfected as often as necessary to prevent illness or contamination.

(g) Poisonous compounds, such as cleaning products and solutions and insecticides, shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place separate from food, medications and resident supplies.

(h) Only individuals authorized under RSA 430 may apply pesticides for rodent or cockroach control in food storage, food preparation or dining areas.

(i) Toxic materials shall not be used in a way that contaminates food, equipment or utensils, or in any way other than in full compliance with the manufacturer's labeling.

(j) Linens, clothing and other laundry shall be clean and sanitary.

(k) A supply of clean linens shall be provided as needed to each resident.

(l) Solid waste, garbage and trash shall be stored in a manner to make it inaccessible to insects and rodents, outdoor animals and house pets.

(m) Equipment providing heat to each APCR shall:

(1) Except where residents have control of the thermostat in their own rooms, be capable of maintaining temperatures of:

- a. At least 65 degrees Fahrenheit at night; and
- b. At least 70 degrees Fahrenheit during the day if the resident(s) are present; and

(2) Be maintained in good repair.

(n) When new plumbing is installed, it shall be sized, installed, and maintained in accordance with the state plumbing code as adopted under RSA 329-A:15.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(o) Ventilation shall be provided in all enclosed living areas by means of a mechanical ventilation system or one or more screened windows that can be opened.

(p) Each resident bedroom shall have at least one operable window with a tightly fitting screen to the outside.

(q) Tightly fitting screens shall be provided for all openings to the outside.

(r) Doors that are self-closing and remain closed when not in use are exempt from the requirement in (q) above.

(s) The licensee shall have sinks, toilets, tubs or showers in a minimum ratio of one of each for every 6 people living in the home, inclusive of residents, caregivers, household members and children.

(t) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.

(u) All bathroom, bedroom and closet door latches shall be designed for easy opening from the inside and easy opening of the locked door from the outside in the event of an emergency.

(v) All AFCRs shall provide the following:

(1) At least 100 square feet for each resident in each private bedroom; and

(2) At least 80 square feet for each resident in a semi-private bedroom;

(w) The space requirements in (v) above shall be exclusive of space required for closets, wardrobes, and bathroom.

(x) A resident having impaired mobility as determined by his or her licensed practitioner or care plan shall not be assigned a bedroom located above or below the level of exit discharge.

(y) Each bedroom shall:

(1) Contain no more than 2 beds;

(2) Have its own separate entry to permit the resident to reach his or her bedroom without passing through the room of another resident;

(3) Not be used simultaneously for other purposes;

(4) Be separated from halls, corridors and other rooms by floor to ceiling walls; and

(5) Be located on the same level as the bathroom facilities, if the resident has impaired mobility as determined by his or her licensed practitioner or care plan .

(z) The licensee shall provide the following for the resident's use:

(1) A bed appropriate to the needs of the resident, including a mattress, pillow, linens and blankets;

(2) A bureau;

(3) A mirror;

(4) A lamp;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (5) A closet or storage space for personal belongings;
- (6) Window blinds or curtains that provide privacy; and
- (7) A lockable container for the storage of medications.

(aa) The licensee shall allow a resident to use his or her own personal possessions, provided they do not pose a risk to the resident or others.

(ab) The licensee shall provide at least one living room or a multi-purpose room and a dining area to meet the needs of residents.

(ac) There shall be a system in place so that all residents can access caregivers when they need assistance.

(ad) Lighting shall be available to allow residents to participate in activities such as reading, needlework or handicrafts that require more lighting.

(ae) The AFCR shall have an operable telephone.

(af) Any firearms or ammunition kept at the AFCR shall be stored in a locked cabinet when not in use.

(ag) The building that houses the AFCR shall comply with all state and local fire codes.

Source. #8595, eff 4-1-06

He-P 813.21 Emergency and Fire Safety.

(a) An emergency and fire safety program shall be developed and implemented to provide for the safety of residents and licensees.

(b) Each licensee shall comply with all laws and rules designed to protect life and safety in the event of a fire or other emergency.

(c) Prior to providing services, the licensee shall develop a written emergency plan that:

- (1) Addresses any situation that requires evacuation of the AFCR;
- (2) Identifies the location of all evacuation routes and exits; and
- (3) Provides for and assures the safe evacuation of all persons from the premises.

(d) Each licensee shall annually review and revise, as needed, its emergency plan.

(e) Fire drills shall include all shifts, all residents of the AFCR and all staff.

(f) After the fire drill required by He-P 813.16(g)(1), fire drills shall be conducted at least once per month for the first 4 months after the admission of a new resident, and then every other month thereafter.

(g) At least 2 of the fire drills conducted in accordance with He-P 813.21(f) shall be conducted during the night, the first of which shall be during the first 4 months after the admission of a new resident.

(h) If a new resident moves into the AFCR, the AFCR shall:

- (1) Conduct monthly drills until all residents have evacuated the premises in 3 minutes or less for 4 consecutive monthly drills; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) Thereafter conduct drills every other month.

(i) Evacuation drills shall be held at varied times of the day and involve all residents and other individuals in the home at the time of the drill.

(j) The licensee shall maintain a report of each fire drill conducted, which shall include:

- (1) The names of the caregiver and residents involved;
- (2) The time, day, month, and year the drill was conducted;
- (3) The exits utilized;
- (4) The total time required to evacuate the APCR; and
- (5) Any problems encountered and corrective actions taken to rectify problems.

(k) Prior to the expiration of each license period, each APCR shall develop or update a fire safety packet, including the following components:

- (1) The name and address of the APCR;
- (2) The responsible oversight agency;
- (3) The name of the individual(s) served;
- (4) Whether 24-hour supervision is provided;
- (5) The caregiver to resident ratio during both sleep and non-sleep hours;
- (6) In the event of an emergency, the name and phone number of agency back-up;
- (7) The APCR's evacuation plan;
- (8) The record of the last 3 evacuation drills, as well as the last sleep drill;
- (9) The signatures of the licensee; and
- (10) A new fire safety assessment for each resident.

(l) If a resident living in an APCR is to receive less than 24-hour supervision, a personal safety assessment pursuant to (l) below shall be completed and approved by the resident or representative.

(m) The personal safety assessment shall identify a resident's knowledge of and ability to respond to each of the following:

- (1) Fire;
- (2) Medical emergency;
- (3) Unsafe conditions in the home and community;
- (4) Abuse and exploitation;
- (5) Being lost in one's community;
- (6) Severe weather and other natural disasters; and

(7) Building maintenance problems, such as power outages.

(n) If the personal safety assessment determines that the resident needs assistance to respond appropriately to situations outlined in (m) above, a personal safety plan shall be developed by the resident, the licensee or caregiver and the oversight agency and implemented.

(o) A personal safety plan shall:

(1) Identify the supports necessary for a resident to respond to each of the contingencies listed in (m) above;

(2) Indicate who will provide the needed supports;

(3) Describe how the supports will be activated in an emergency;

(4) Indicate approval of the resident or representative, the licensee and the oversight agency prior to the resident being left alone; and

(5) Be reviewed every 6 months and revised whenever there is a change in the resident's ability to respond to the contingencies listed in the plan or the resident moves to a new AFCR.

(p) The licensee shall maintain the smoke detection system in operable condition at all times.

Source. #8595, eff 4-1-06

He-P 813.22 Resident Records.

(a) The licensee shall maintain on site a legible, current and accurate record for each resident based on services provided at the AFCR.

(b) At a minimum, resident records shall contain the following:

(1) A copy of the resident service agreement and all documents required by He-P 813.16(b);

(2) Identification data, which shall include:

a. Vital information including the resident's name, date of birth, and marital status;

b. If a resident is present only for respite care as described in He-P 813.24, the resident's home address and phone number;

c. The resident's religious preference, if known;

d. The name, address and telephone number of an emergency contact person;

(3) The names and telephone numbers of the resident's licensed practitioners;

(4) The names, employers, business addresses, and telephone numbers of individuals contracted by the resident to provide services at the AFCR;

(5) The resident's insurance information;

(6) Copies of all executed legal directives, such as durable power of attorney and living will;

(7) A record of the health examination(s) conducted by a licensed practitioner, which includes the information required by He-P 813.16(p) unless the licensed practitioner or resident documents refusal;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (8) Written, dated and signed orders for the following:
 - a. All medications;
 - b. Treatments; and
 - c. Special diets;
- (9) All assessments and care plans;
- (10) Documentation that the resident or representative has participated in the development of the care plan;
- (11) All admission and progress notes;
- (12) If services are provided at the APCR by individuals not employed by the licensee, documentation, which shall include:
 - a. The name of the agency providing the services;
 - b. The date services were provided; and
 - c. The name of the person providing the services;
- (13) Documentation of any alteration in the resident's daily functioning such as:
 - a. Signs and symptoms of illness; and
 - b. Any action that was taken, including practitioner notification;
- (14) Documentation of specialized care;
- (15) Documentation of unusual incidents;
- (16) The resident's or representative's consent for release of information;
- (17) Transfer or discharge planning and referrals;
- (18) Notification to the resident or representative of involuntary room change, transfer or discharge;
- (19) The medication record, including:
 - a. The medication name, strength, dose, frequency and route of administration;
 - b. The date and time the medication was taken;
 - c. Effects of medication and treatments;
 - d. Documentation of medication errors or resident refusal to take the medication; and
 - e. Notice to the resident's licensed practitioner of any undesirable effects;
- (20) Emergency data sheet, which contains the information required by He-P 813;
- (21) Documentation of any resident refusal of care or services; and

(22) Documentation of nurse delegation as required by He-P 813.17(ab)(4), if applicable.

(c) Resident records shall be available to:

- (1) The resident;
- (2) The AFCR and oversight agency staff as required by their job responsibilities;
- (3) Any individual(s) given written authorization by the resident or representative; and
- (4) The department and its agents.

(d) The licensee shall arrange for retention of and access to resident records for 6 years from the date the resident leaves the AFCR or for 4 years from the date the AFCR ceases operation.

Source. #8595, eff 4-1-06

He-P 813.23 Respite Care in an AFCR.

(a) The licensee shall not admit a resident for respite services if the individual:

- (1) Has needs that exceed the AFCR services provided by the licensee or under contract with a third party;
- (2) Is a danger to themselves or others;
- (3) Requires the use of restraints;
- (4) Has a pressure ulcer;
- (5) Would place the health or safety of any resident in jeopardy; or
- (6) Does not meet the AFCR's admission criteria.

(b) When a temporary admission to an AFCR occurs and the resident is scheduled for a stay of no more than 14 consecutive days, as agreed upon by the resident and the licensee as part of a discharge plan, the licensee shall:

- (1) Provide a copy of the resident's rights and responsibilities signed by the resident or representative;
- (2) Obtain an admissions contract signed by the resident or representative and listing the services that shall be provided;
- (3) Be permitted to use the prescription label on the medication container as the licensed practitioner's order provided that:
 - a. The medication is in the original bottle as dispensed by the pharmacy;
 - b. The pharmacy label has not been altered in any manner;
 - c. The prescription label indicates that the medication is still current; and
 - d. The medication container contains all the same pills or has been labeled by the pharmacy that the bottle contains all the same prescription;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(4) Complete the following sections on the resident assessment prior to or immediately upon admission:

- a. Behaviors;
- b. Mental status;
- c. Cognition;
- d. Whether the use of restraints has been necessary in the past;
- e. Impairments;
- f. Medication management;
- g. Health management, including diagnosis, if available, therapeutic diet, nursing care and skin integrity;
- h. Mobility, transfers, ambulation and fall risk;
- i. Evacuation; and
- j. ADL, including grooming, toileting and eating;

(5) Identify the resident's allergies, diagnoses and history of unexplained absences; and

(6) Obtain advanced directives information, if available.

(c) If the resident exceeds the 14-day time period, the resident shall no longer be considered to be in respite care and a complete admission shall occur within 72 hours of the 14th day, following the licensee's protocol and the requirements of He-P 813.

Source. #8595, eff 4-1-06

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 813.01 - He-P 813.02	RSA 151:2 IV, 1915(c), Approved waiver of 1902 (a), control number 0060.90R3
He-P 813.03 - He-P 813.08	RSA 151:5
He-P 813.09	RSA 151:6-a
He-P 813.10	RSA 151:9 I (b)
He-P 813.11	RSA 151:2, III, 151:6
He-P 813.12 - He-P 813.13	RSA 151:7 – 8a, 151:16-a
He-P 813.14	RSA 151:9, VII (a)(2)
He-P 813.15	RSA 151:5-a, 151:26
He-P 813.16	RSA 151:19-22
He-P 813.16(c)	RSA 151:5-a, I (RAT-Form HFA-L #1)
He-P 813.17	RSA 318 and 326-B
He-P 813.18 - He-P 813.21	RSA 151:9, I (a)
He-P 813.22	RSA 151:13
He-P 813.23	RSA 151:2 IV, 1915(c), Approved waiver of 1902 (a), control number 0060.90R3