

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

Statutory Authority: RSA 151:9

PART He-P 818 ADULT DAY PROGRAMS

He-P 818.01 Purpose. The purpose of this part is to set forth the licensing requirements for all adult day programs pursuant to RSA 151:2, I(f).

Source. #5517, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9106, eff 3-18-08

He-P 818.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association or other legal entity operating an adult day program, except:

- (a) All facilities listed in RSA 151:2, II(a)-(g); and
- (b) All entities which are owned or operated by the state of New Hampshire, pursuant to RSA 151:2, II(h).

Source. #5517, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9106, eff 3-18-08

He-P 818.03 Definitions.

- (a) “Abuse” means “emotional abuse, “physical abuse” or “sexual abuse” as defined in this section.
- (b) “Activities of daily living (ADL)” means basic daily routine tasks such as eating, transferring, toileting, bathing, dressing and self-management of medications.
- (c) “Administer” means “administer” as defined by RSA 318:1, I, namely an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person for immediate consumption or use.
- (d) “Administrative remedy” means a corrective action imposed upon a licensee in response to non-compliance with RSA 151 and He-P 818.
- (e) “Administrator” means the licensee or individual appointed by the licensee to be responsible for all aspects of the daily operation of the licensed premises.
- (f) “Admission” means accepted by a licensee for the provision of services to a participant.
- (g) “Adult Day Program (ADP)” means a program that provides one or more of the following services, for fewer than 12 hours a day, to participants 18 years of age and older:
 - (1) Supervision;
 - (2) Assistance with ADL;
 - (3) Nursing care;
 - (4) Rehabilitation;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(5) Recreational, social, cognitive and physical stimulation; and

(6) Nutrition.

(h) “Agent” means an adult to whom authority to make health care decisions is delegated under an activated durable power of attorney for health care executed in accordance with RSA 137-J.

(i) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate an ADP pursuant to RSA 151:2, I(f).

(j) “Care plan” means a written guide developed by the licensee, in consultation with personnel, the participant, and the participant’s guardian, agent or personal representative, if any, as a result of the assessment process for the provision of care and services.

(k) “Change of ownership” means the transfer in the controlling interest of an established ADP to any individual, agency, partnership, corporation, government entity, association or other legal entity.

(l) “Chemical restraint” means any medication prescribed to control a participant’s behavior or emotional state without a supporting diagnosis or for the convenience of program staff.

(m) “Commissioner” means the commissioner of the New Hampshire department of Health and Human Services or his or her designee.

(n) “Core services” means those services provided by the licensee that are included in the basic rate.

(o) “Days” means calendar days unless otherwise specified in the rule.

(p) “Deficiency” means any action, failure to act or other set of circumstances that cause a licensee to be out of compliance with RSA 151 or He-P 818.

(q) “Department” means the New Hampshire department of health and human services.

(r) “Direct care personnel” means any person providing hands on care or services to a participant.

(s) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the licensee must take to correct identified deficiencies.

(t) “Emergency plan” means a document outlining the responsibilities of personnel in an emergency.

(u) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of a participant.

(v) “Exploitation” means the illegal use of a participant’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from a participant through the use of undue influence, harassment, duress, deception or fraud.

(w) “Guardian” means a person appointed in accordance with RSA 464-A to make informed decisions relative to the participant’s health care and other personal needs.

(x) “Household member” means the caregiver, all family members and any other individuals age 17 or older, who is not a participant, who resides at the licensed premises for more than 30 days.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(y) “Infectious waste” means those items specified by Env-Sw 103.28.

(z) “Inspection” means the process followed by the department to determine a licensee's compliance with RSA 151 and He-P 818 or to respond to allegations of non-compliance with RSA 151 and He-P 818.

(aa) “License” means the document issued to an applicant which authorizes operation of an ADP in accordance with RSA 151 and He-P 818, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

(ab) “License certificate” means the document issued by the department to an applicant or licensee that, in addition to the information contained on a license, includes the name of the administrator, the type(s) of services authorized and the number of beds that the ADP is licensed for.

(ac) “Licensed practitioner” means a:

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

(ad) “Licensed premises,” means the building, or portion thereof, that comprises the physical location the department has approved for the licensee to conduct operations in accordance with its license.

(ae) “Licensee” means any person or legal entity to which a license has been issued pursuant to RSA 151.

(af) “Licensing classification” means the specific category of services authorized by a license.

(ag) “Mechanical restraint” means locked, secured or alarmed ADPs or units within an ADP, or anklets, bracelets or similar devices that cause a door to automatically lock when approached, thereby preventing a participant from freely exiting the ADP or unit within.

(ah) “Medication” means a substance available with or without a prescription, which is used as a curative or remedial substance.

(ai) “Neglect” means an act or omission, which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of a participant.

(aj) “Nursing care” means assisting clients or groups of clients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medical treatment, and includes basic health care that helps both clients and groups of clients cope with difficulties in daily living associated with their actual or potential health or illness status.

(ak) “Orders” means prescriptions, instructions for treatments, special diets or therapies given by a licensed practitioner, or other professional with prescriptive powers.

(al) “Over-the-counter medications” means non-prescription medications.

(am) “Participant” means any person admitted to or in any way receiving care, services or both from an ADP licensed in accordance with RSA 151 and He-P 818.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(an) “Participant record” means a separate file maintained for each person receiving care and services, which includes all documentation required by RSA 151, He-P 818 and all documentation received relative to the participant as required by other federal and state requirements.

(ao) “Patient rights” means the privileges and responsibilities possessed by each participant provided by RSA 151:21.

(ap) “Personal assistance” means providing or assisting a participant in obtaining one or more of the following services:

(1) Assistance with ADL such as grooming, toileting, eating, dressing, getting into or out of a bed or chair, walking, or monitoring, supervision or administration of medications;

(2) Assistance with instrumental activities of daily living such as doing laundry, food preparation, obtaining appointments, or engaging in recreational or leisure activities;

(3) Supportive services such as recreational and leisure activities, transportation, social services, medical, dental, and other health care services, habilitation or rehabilitation services, day care, or other services required to meet a participant’s needs; or

(4) Monitoring a participant's activities to provide for the participant's and others' safety and well being including, general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain his or her participation in the facility or who needs assistance to manage his or her personal or financial affairs, regardless of whether a guardian has been appointed for the person.

(aq) “Personal representative” means a person designated in accordance with RSA 151:19 to assist the participant for a specific, limited purpose or for the general purpose of assisting a participant in the exercise of any rights.

(ar) “Personnel” means individual(s), either paid or volunteer, who provide direct or indirect care or services or both to a participant.

(as) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct identified deficiencies.

(at) “Physical abuse” means the use of physical force that results or could result in physical injury to a participant.

(au) “Physical restraint” means the use of hands-on or other physically applied technique to physically limit the participant’s freedom of movement, which includes but is not limited to forced escorts, holding, prone restraints or other containment techniques.

(av) “Pro re nata (PRN) medication” means medication taken as circumstances may require.

(aw) “Procedure” means a licensee's written, standardized method of performing duties and providing services.

(ax) “Protective care” means the provision of participant monitoring services, including but not limited to:

(1) Knowledge of participant whereabouts; and

(2) Minimizing the likelihood of accident or injury.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(ay) “Self administration of medication” means the participant is able to take his or her own medication(s) without the assistance of another person.

(az) “Self administration of medication with supervision” means the participant takes his or her own medication after being prompted by personnel but without requiring physical assistance from others.

(ba) “Self directed medication administration” means a participant, who has a physical limitation that prohibits him or her from self-administering, directs personnel to physically assist in the medication process.

(bb) “Senior center” means a facility that provides recreational activities for seniors but provides no services that require licensure under RSA 151.

(bc) “Service” means a specific activity performed by the licensee, either directly or indirectly, to benefit or assist a participant.

(bd) “Sexual abuse” means contact or interaction of a sexual nature involving a participant, which is being used without his or her informed consent.

(be) “Significant change” means a visible or observable change in functional, cognitive or daily activity ability or limitations of the participant.

(bf) “Unusual incident” means an occurrence of any of the following while the participant is either in ADP or in the care of ADP personnel:

- (1) The death of the participant;
- (2) An accident or other unanticipated circumstance that has resulted in an injury that requires treatment by a licensed practitioner; or
- (3) An elopement from the ADP or other circumstances that resulted in the notification and/or involvement of law enforcement.

Source. #5517, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9106, eff 3-18-08

He-P 818.04 Initial License Application Requirements.

(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,” signed by the applicant or 2 of the corporate officers affirming the following:

“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 the license, and the imposition of a fine.”

- (2) A floor plan of the prospective ADP;
- (3) If applicable, proof of authorization from the New Hampshire secretary of state to do business in New Hampshire in the form of one of the following:
 - a. “Certificate of Authority,” if a corporation;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- b. "Certificate of Formation," if a limited liability corporation; or
 - c. "Certificate of Trade Name," if a sole proprietorship or if otherwise applicable;
- (4) The applicable fee in accordance with RSA 151:5, I(c), 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) A resume identifying the name and qualifications of the ADP administrator;
- (6) Copies of applicable licenses and/or certificates for the ADP administrator;
- (7) Written local approvals as follows:
- a. For an existing building, the following written local approvals, shall be obtained no more than 90 days prior to submission of the application, from the following local officials or if there is no such official(s), from the board of selectmen or mayor:
 - 1. The health officer verifying that the applicant complies with all applicable local health requirements and drinking water and wastewater requirements;
 - 2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
 - 3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
 - 4. The fire chief verifying that the applicant complies with the state fire code, Saf-C 6000, including the health care chapter of NFPA 101 as adopted by the commissioner of the department of safety, and local fire ordinances applicable for a health care facility; and
 - b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and again upon completion of the construction project;
- (8) If the ADP uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Ws 313.01 and 314.01;
- (9) A written disclosure from the applicant, including the licensee, administrator, and each household member, as applicable, 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. Finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation; and
 - e. An explanation of the circumstances surrounding the disclosed matters described in a. through d. above; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(10) The results of a criminal records check from the NH department of safety for the applicant, including the licensee, administrator, and each household member, as applicable.

(b) Information disclosed regarding adjudication of juvenile delinquency, as required by (a)(9)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.

(c) 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. #5517, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9106, eff 3-18-08

He-P 818.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 818.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 818.04(a) the department shall notify the applicant in writing of the items required before the application can be processed.

(c) 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.

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

(e) Following an inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 818.

(f) The department shall deny a licensing request after reviewing the information in He-P 818.04(a)(9) and (10) above if, after review, it determines that the applicant, licensee or administrator:

(1) Has been convicted of any felony in this or any other state;

(2) Has been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;

(3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; or

(4) Otherwise poses a threat to the health, safety or well-being of participants.

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New. #9106, eff 3-18-08

He-P 818.06 License Expirations and Procedures for Renewals.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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 unless a completed application for renewal has been received.

(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 818.04(a)(1) at least 120 days prior to the expiration of the current license.

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

- (1) The materials required by He-P 818.04(a)(1), (4), and (9);
- (2) The current license number;
- (3) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 818.10(f), if applicable; and
- (4) A statement identifying any variances applied for or granted by the state fire marshal.

(d) In addition to (c) above, the licensee shall provide documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Ws 313.01 for bacteria and Env-Ws 314.01 for nitrates.

(e) Following an inspection as described in He-P 818.09, a license shall be renewed if the department determines that the licensee:

- (1) Submitted an application containing all the items required by (c) above, and (d) above as applicable, prior to the expiration of the current license;
- (2) If deficiencies were cited at the last licensing inspection or investigation, has submitted a POC that has been accepted by the department and implemented by the licensee; and
- (3) Is found to be in compliance with RSA 151 and He-P 818 at the renewal inspection.

(f) Prior to issuing a renewal license the department shall review any of the information submitted in accordance with He-P 818.04(a)(9) above and shall deny a license renewal in accordance with He-P 818.05(f).

Source. #5517, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9106, eff 3-18-08; ss by #9565, eff 10-16-09

He-P 818.07 ADP Construction, Modifications or Renovations.

(a) Sixty days prior to initiating construction, the ADP shall provide to the department notice and written plans drawn to scale for construction, renovation or structural alterations for the following:

- (1) A new building;
- (2) Alterations to any participants area;
- (3) Alterations that require approval from local or state authorities; and
- (4) Alterations that might effect compliance with the health and safety, fire or building codes, including but not limited to, fire suppression, detection systems and means of egress.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) The department shall review plans for construction, renovation or structural alterations of an ADP for compliance with all applicable sections of RSA 151 and He-P 818 and notify the applicant or licensee as to whether the proposed changes comply with these requirements.

(c) Department approval shall not be required prior to initiating construction, renovations or structural alterations however an applicant or licensee who proceeds prior to receiving approval does so at their own risk.

(d) The ADP shall comply with all applicable licensing regulations when doing construction, modifications or alterations.

(e) A licensee or applicant constructing, renovating, or modifying a building shall comply with the following:

- (1) The state fire code, Saf-C 6000, including but not limited to the day care chapter of NFPA 101 as adopted by the commissioner of the department of safety under RSA 153; and
- (2) The state building code as defined in RSA 155-A:1, IV, as amended by the Building Code Review Board pursuant to RSA 155-A:10, V.

(f) All ADPs newly constructed after the effective date of He-P 818 shall comply with the Adult Day Care chapter of the American Institute of Architects, 2006 edition of "Guidelines for Design and Construction of Health Care Facilities."

(g) The completed building shall be subject to an inspection pursuant to He-P 818.09 prior to its use.

Source. #5517, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9106, eff 3-18-08

He-P 818.08 ADP Requirements for Organizational Changes.

(a) The ADP shall provide the department with written notice at least 30 days prior to changes in any of the following:

- (1) Ownership;
- (2) Physical location;
- (3) Address;
- (4) Name; or
- (5) Capacity.

(b) When there is a change in the name, the ADP shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.

(c) The ADP shall complete and submit a new application and obtain a new or revised license, license certificate or both, as applicable, prior to operating, for:

- (1) A change in ownership;
- (2) A change in the physical location; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) An increase in the number of participants beyond what was authorized under the initial license.
- (d) When there is a change in address without a change in location the ADP shall provide the department with a copy of the notification from the local, state or federal agency that requires the change.
- (e) The ADP shall inform the department in writing as soon as possible prior to a change in administrator and provide the department with the following:
 - (1) The information specified in He-P 818.04(a)(9) and (10);
 - (2) A resume identifying the name and qualifications of the new administrator; and
 - (3) Copies of applicable licenses for the new administrator.
- (f) Upon review of the materials submitted in accordance with (e) above, the department shall make a determination as to whether the new administrator:
 - (1) Does not have a history of any of the criteria identified in He-P 818.13(b)(10); and
 - (2) Meets the qualifications for the position as specified in He-P 818.15(a).
- (g) If the department determines that the new administrator does not meet the qualifications as specified in He-P 818.15(a), it shall so notify the program in writing so that a waiver can be sought or the program can search for a qualified candidate.
- (h) The department shall review the information submitted under (g) above and determine if the added services can be provided under the ADP current license.
- (i) An inspection by the department shall be conducted prior to operation when there are changes in the following:
 - (1) Ownership, unless the current licensee has no outstanding administrative actions in process and there will be no changes made by the new owner in the scope of services provided;
 - (2) The physical location; or
 - (3) An increase in the number of participants beyond what was authorized under the initial license.
- (j) A new license and license certificate shall be issued for a change in ownership or a change in physical location.
- (k) A revised license and license certificate shall be issued for changes in the ADP's name.
- (l) A revised license certificate shall be issued for any of the following:
 - (1) A change of administrator;
 - (2) An increase in the number of participants beyond what was authorized under the initial license; or
 - (3) When a waiver has been granted.
- (m) Licenses issued under (i)(1) above shall expire on the date the license issued to the previous owner would have expired.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(n) The licensee shall return the previous license to the department within 10 days of the facility changing its ownership, physical location, address or name.

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New. #9106, eff 3-18-08; ss by #9565, eff 10-16-09

He-P 818.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 818, 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 provided by the ADP; and
- (3) Any records required by RSA 151 and He-P 818.

(b) The department shall conduct an inspection, including a clinical and life safety inspection, to determine full compliance with RSA 151 and He-P 818 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as all by He-P 818.08(j)(1);
- (3) A change in the licensee's physical location;
- (4) An increase in the number of participants beyond what was authorized under the initial license;
- (5) Occupation of space after construction, renovations or alterations; or
- (6) The renewal of a license.

(c) In addition to (b) above 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.

Source. #9106, eff 3-18-08

He-P 818.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 818 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 participants as the rule from which a waiver is sought; and
- (4) The period of time for which the waiver is sought.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) Waivers 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 participants; and
- (3) Does not affect the quality of participant services.

(d) The licensee's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

(e) Waivers shall not be transferable.

(f) When a licensee wishes to renew the waiver beyond the approved period of time, the licensee shall apply for a new waiver at by submitting the information required by (a) above:

- (1) When the licensee submits its application for license renewal pursuant to He-P 818.06(c); or
- (2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the licensing certificate.

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

Source. #9106, eff 3-18-08

He-P 818.11 Complaints.

(a) The department shall investigate complaints that allege:

- (1) A violation of RSA 151 or He-P 818;
- (2) That an individual or entity is operating as an ADP without being licensed; or
- (3) That an individual or entity is advertising or otherwise representing the ADP 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 and contain the following information:

- (1) The name and address of the ADP, 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 818.

(c) For the licensed ADP, the department 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 federal, state or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall so notify the unlicensed individual or licensee and take no further action.

(e) If the investigation results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 818.12(c).

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

- (1) The date of inspection;
- (2) The reasons for the inspection; and
- (3) Whether or not the inspection resulted in a determination that the services being provided require licensing under RSA 151:2, I(f).

(g) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 days from the date of receipt of the notice required by (f) above to respond to a finding that they are operating without a license or submit a completed application for a license.

(h) If the owner of an unlicensed facility does not comply with (g) above, or if the department does not agree with the owner's response, the department shall:

- (1) Issue a written warning to immediately comply with RSA 151 and He-P 818; and
- (2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.

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

(j) The fact that the department takes action for injunctive relief under RSA 151:17 shall not preclude the department from taking other action under RSA 151, He-P 818 or other applicable laws.

(k) Complaint investigation files shall be confidential in accordance with RSA 151:13, and shall not be disclosed publicly 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) When a court of competent jurisdiction orders the department to release such information; or
- (4) In connection with any adjudicative proceedings relative to the licensee;

Source. #9106, eff 3-18-08

He-P 818.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 818 or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC;
- (2) Imposing a directed POC upon a licensee;
- (3) Imposing fines upon an unlicensed individual, applicant or licensee;

- (4) Suspension of a license; or
 - (5) Revocation of a license.
- (b) When fines are imposed, the department shall provide a written notice, as applicable, which:
- (1) Identifies each deficiency;
 - (2) Identifies the specific remedy(s) that has been proposed; and
 - (3) Provides the licensee with the following information:
 - a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to imposition of a 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 POC shall be developed and enforced in the following manner:
- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a 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 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 818;
 - b. Addresses all deficiencies and deficient practices as cited in the inspection report;
 - c. Prevents a new violation of RSA 151 or He-P 818 as a result of the implementation of the POC; and
 - d. Specifies the date upon which the deficiencies will be corrected;
 - (4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever is applicable;
 - (5) If the POC is not acceptable, the department shall notify the licensee in writing of the reason for rejecting the POC;
 - (6) The licensee shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected, unless:
 - a. Within the 14 day period, the licensee requests an extension, either via telephone or in writing; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- b. The department grants the extension, based on the following criteria:
 - 1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and
 - 2. The department determines that the health, safety or well-being of a resident will not be jeopardized as a result of granting the waiver;
- (7) The revised POC shall comply with (1) above and be reviewed in accordance with (3) above;
- (8) If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, the licensee shall be subject to a directed POC in accordance with He-P 818.12(d) and a fine in accordance with He-P 818.12(f)(12);
- (9) 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 annual inspection;
- (10) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and
- (11) If the POC or revised POC has not been implemented by the completion date at the time of the next inspection the licensee shall be:
 - a. Notified by the department in accordance with He-P 818.12(b); and
 - b. Issued a directed POC in accordance with He-P 818.12(d) and a fine in accordance with He-P 818.12(f)(12).
- (d) The department shall develop and impose a directed POC that specifies corrective actions for the licensee to implement when:
 - (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the participants and personnel;
 - (2) A revised POC is not submitted within 14 days of the written notification from the department; or
 - (3) A revised POC submitted by the licensee or administrator has not been accepted.
- (e) If at the time of the next inspection the directed POC referenced in (d) above has not been implemented by the completion date stated in the directed POC the department shall, as appropriate:
 - (1) Impose a fine;
 - (2) Deny the application for a renewal of a license; or
 - (3) Revoke or suspend the license in accordance with He-P 818.13.
- (f) The department shall impose fines as follows:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00;
- (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2, the fine shall be \$2000.00;
- (3) For advertising services 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 818.14(h), the fine for an applicant, licensee or unlicensed provider shall be \$500.00;
- (4) For a failure to transfer a participant whose needs exceeds the services or programs provided by the ADP after being directed by the department to transfer the participant, in violation of RSA 151:5-a, the fine shall be \$500.00;
- (5) For a failure to comply with the directives of a warning issued by the department in violation of RSA 151:7-a and He-P 818.11(i), the fine shall be \$500.00;
- (6) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 818.06 (b), the fine shall be \$100.00;
- (7) For a failure to notify the department prior to a change of ownership, in violation of He-P 818.08(a)(1), the fine shall be \$500.00;
- (8) For a failure to notify the department prior to a change in the physical location, in violation of He-P 818.08(a)(2), the fine shall be \$500.00;
- (9) For a refusal to allow access by the department to the ADP's premises, programs, services or records, in violation of He-P 818.09(a), the fine for an applicant, individual or licensee shall be \$2000.00;
- (10) For a refusal to provide to the department any records maintained by the licensee and required by He-P 818.14(v), the fine for a licensee shall be \$2000.00;
- (11) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 818.12(c)(2) and (6), the fine for a licensee shall be \$100.00 unless an extension has been granted by the department;
- (12) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 818.12(c)(11), the fine for a licensee shall be \$1000.00;
- (13) For a failure to establish, implement or comply with licensee policies, as required by He-P 818.14(d), the fine for a licensee shall be \$500.00;
- (14) For a failure to provide services or programs required by the licensing classification and specified by He-P 818.14(c), the fine for a licensee shall be \$500.00;
- (15) For exceeding the maximum number of occupants, in violation of He-P 818.14(l), the fine for a licensee shall be \$500.00;
- (16) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 818.14(g), the fine shall be \$ 500.00 per offense;
- (17) For a failure to meet the needs of the participant, in violation of He-P 818.14(j)(2), the fine for a licensee shall be \$500.00;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(18) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 815.(a) the fine for a licensee shall be \$500.00;

(19) When an inspection determines that a violation of RSA 151 or He-P 818 has the potential to jeopardize the health, safety or well being of a participant, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:

a. If the same deficiency is cited within 2 years of the original deficiency the fine shall be double the original fine, but not to exceed \$2000.00; or

b. If the same deficiency is cited a third time within 2 years of being fined in a. above the fine for a licensee shall be triple the original fine, but not to exceed \$2000.00;

(20) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 818 shall constitute a separate violation and shall be fined in accordance with He-P 818.12; and

(21) If the applicant or licensee is making good faith efforts to comply with (4), (5) or (18) above the department shall not issue a daily fine.

(g) 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. #9106, eff 3-18-08; ss by #9565, eff 10-16-09

He-P 818.13 Enforcement Actions and Hearings.

(a) Prior to imposing a fine, or denying, revoking or suspending a license, 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 or RSA 541-A:30, III, as applicable.

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

(1) An applicant or a licensee violated RSA 151 or He-P 818 which poses a risk of harm to a participant's health, safety or well being.

(2) An applicant or a licensee has failed to pay a fine imposed under administrative remedies;

(3) An applicant or a licensee has 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, an applicant or licensee fails to submit an application that meets the requirements of He-P 818.04;

(5) An applicant, licensee or any representative or employee of the applicant or licensee:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. Provides false or misleading information to the department;
- b. Prevents or interferes, or fails to cooperate 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 implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 818.12(d) and 12(e);

(7) The licensee is cited a third time under RSA 151 or He-P 818 for the same violations within the last 5 inspections;

(8) A licensee, including corporation officers or board members, has had a license revoked and submits an application during the 5-year prohibition period specified in (j) below;

(9) Upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 818;

(10) The department makes a determination that one or more of the factors in He-P 818.05(f) is true; or

(11) The applicant or licensee fails to employ a qualified administrator.

(c) An applicant or licensee shall have 30 days after receipt of the notice of enforcement action to request a hearing to contest the action.

(d) If a written request for a hearing is not made pursuant to (c) above, the action of the department shall become final.

(e) The department shall order the immediate suspension of a license and the cessation of operations when it finds that the health, safety or welfare of participants is in jeopardy and requires emergency action in accordance with RSA 541-A:30, III.

(f) If an immediate suspension is upheld, the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 818 is achieved.

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

(h) When an ADP's license has been denied or revoked, the applicant, licensee or administrator shall not be eligible to reapply for a license or be employed as an administrator for at least 5 years, if the enforcement action pertained to their role in the ADP.

(i) The 5 year period referenced in (h) above shall begin on:

(1) The date of the department's decision to revoke or deny the license, if no request for an administrative hearing is requested; or

(2) The date a final decision upholding the action of the department is issued, if a request for a hearing is made and a hearing is held.

(j) Notwithstanding (i) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 818.

(k) RSA 541 shall govern further appeals of department decisions under this section.

(l) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A or He-P 818.

Source. #9106, eff 3-18-08

He-P 818.14 Duties and Responsibilities of all Licensees.

(a) The licensee shall comply with all federal, state and local laws, rules, codes and ordinances, as applicable, including RSA 161-F:49 and rules promulgated thereunder.

(b) The licensee shall comply with the patients' bill of rights as set forth in RSA 151:20, II.

(c) The licensee shall define, in writing, the scope and type of services to be provided by the ADP, which shall include at a minimum, the core services listed in He-P 818.15.

(d) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the ADP.

(e) All policies and procedures shall be reviewed annually and revised as needed.

(f) The licensee shall assess and monitor the quality of care and service provided to participants on an ongoing basis.

(g) The licensee or any personnel shall not falsify any documentation or provide false or misleading information to the department.

(h) The licensee shall not:

(1) Advertise or otherwise represent the program as operating an ADP, unless it is licensed; and

(2) Advertise that it provides services that it is not authorized to provide.

(i) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.

(j) Licensees shall:

(1) Meet the needs of the participants during those hours that the participants are in the care of the ADP;

(2) Initiate action to maintain the ADP in full compliance at all times with all relevant health and safety requirements contained in applicable federal, state and local laws, rules, regulations, and ordinances;

(3) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the ADP;

(4) Appoint an administrator;

(5) Verify the qualifications of all personnel;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(6) Provide sufficient numbers of personnel who are present in the ADP and are qualified to meet the needs of participants during all hours of operation;

(7) Provide the ADP with sufficient supplies, equipment and lighting to meet the needs of the participants; and

(8) Implement any POC that has been accepted or issued by the department.

(k) The licensee shall consider all participants to be competent and capable of making health care decisions unless the participant:

(1) Has a guardian appointed by a court of competent jurisdiction; or

(2) Has a durable power of attorney for health care that has been activated.

(l) The licensee shall not exceed the number of occupants authorized by NFPA 101 as adopted by the commissioner of the department of safety under Saf-C 6000 and identified on the licensing certificate.

(m) The licensee shall not admit a participant whose needs exceed the program and services offered by the ADP.

(n) If the licensee accepts a participant who is known to have a disease reportable under He-P 301 or an infectious disease, which is any disease caused by the growth of microorganisms in the body which might or might not be contagious, the licensee shall follow the required procedures and personnel training for the care of the participants, as specified by the United States Centers for Disease Control and Prevention 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings (June 2007).

(o) The licensee shall report all positive tuberculosis test results for personnel to the office of disease control in accordance with RSA 141-C:7, He-P 301.02 and He-P 301.03.

(p) Any licensee who admits or who has a participant with a diagnosis of dementia, Alzheimer's disease or a primary or secondary diagnosis of mental illness shall:

(1) Require all direct care personnel caring for the participant to be trained in the special care needs of participants with dementia, Alzheimer's disease or mental illness; and

(2) Provide a physical environment that has a safety and security system that prevents a participant from leaving the premises without the knowledge of staff, if the participant:

a. Has wandered from the ADP in the last 60 days;

b. Has had a change in their wandering behavior as determined by the nursing assessment completed in accordance with He-P 818.16(a)(4); or

c. Is a danger to self or to others.

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

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

(2) All inspection reports issued in accordance with He-P 818.11(c), for the previous 12 months;

(3) A copy of the patients' bill of rights specified by RSA 151:21;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) A copy of the licensee's policies and procedures relative to the implementation of patient rights and responsibilities as required by RSA 151:20; and
 - (5) The licensee's plan for fire safety, evacuation and emergencies identifying the location of, and access to all fire exits.
- (r) The licensee shall admit and allow any department representative to inspect the ADP and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 818 as authorized by RSA 151:6 and RSA 151:6-a.
- (s) Licensees shall:
- (1) Within 24 hours contact the department by telephone, fax or e-mail to report an unusual incident as defined in He-P 818.03(bf) and provide the following information:
 - a. The ADP name;
 - b. A description of the incident, including identification of injuries, if applicable;
 - c. The name of the licensee(s) or personnel involved in, witnessing or responding to the unusual incident;
 - d. The name of participant(s) involved in or witnessing the unusual incident;
 - e. The date and time of the unusual incident;
 - f. The action taken in direct response to the unusual incident, including any follow-up;
 - g. If medical intervention was required, by whom and the date and time;
 - h. Whether the participant's guardian or agent, if any, or personnel representative was notified; and
 - i. The signature of the person reporting the unusual incident;
 - (2) Provide the information required by (1) above in writing within 72 hours of the unusual incident if the initial contact was made by telephone or if additional information becomes available subsequent to the time the initial contact was made;
 - (3) Contact the department immediately by telephone, fax or e-mail to report the death of any participant or the death of any participant who dies within 10 days of an unusual incident as defined by He-P 818.03(bf);
 - (4) Provide the information required by (3) above in writing within 72 hours of the death of any participant if the initial contact was made by telephone or if additional information becomes available subsequent to the time the initial contact was made;
 - (5) Immediately notify the local police department, the department, guardian, agent or personnel representative if any, when a participant has an unexplained absence after the licensee has searched the building and the grounds of the ADP; and
 - (6) Submit additional information if required by the department.
- (t) A licensee shall, upon request, provide a participant or the participant's guardian or agent, if any, with a copy of his or her participant record pursuant to the provisions of RSA 151:21, X.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(u) All records required for licensing shall be legible, current, accurate and available to the department during an inspection or investigation conducted in accordance with RSA 151:6 and RSA 151:6-a;

(v) Any licensee that maintains electronic records shall develop written policies and procedures designed to protect the privacy of participants and personnel that, at a minimum, include:

- (1) Procedures for backing up files to prevent loss of data;
- (2) Safeguards for maintaining the confidentiality of information pertaining to participants and staff; and
- (3) Systems to prevent tampering with information pertaining to participants and staff.

(w) The licensee shall develop policies and procedures regarding the release of information contained in participant records.

(x) The licensee shall provide cleaning and maintenance services, as needed to protect participants, personnel, and the public.

(y) The building housing the ADP shall comply with all state and local:

- (1) Health requirements;
- (2) Building ordinances;
- (3) Fire ordinances; and
- (4) Zoning ordinances.

(z) If the ADP is not on a public water supply, the water used in the ADP shall be suitable for human consumption, pursuant to Env-Ws 315 and Env-Ws 316.

(aa) The licensee shall determine whether smoking will be allowed at the ADP.

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

(ac) If the licensee holds or manages a participant's funds or possessions it shall first receive written authorization in accordance with RSA 151:24 and RSA 151:21, VII, and such funds shall not be used for the benefit of the licensee, other participants or other household members.

(ad) At the time of admission the licensee shall give a participant and the participant's guardian, agent, or personal representative, if applicable, a listing of all ADP's charges and identify what care and services are included in the charge.

(ae) The licensee shall give a participant a 30-day written notice before any increase is imposed in the cost or fees, for any ADP services.

Source. #9106, eff 3-18-08

He-P 818.15 Required Services. Each ADP shall provide, at a minimum, the following core services and programs:

(a) Administrative services that include:

- (1) The appointment of a full time administrator who:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. Is at least 21 years of age;
 - b. Has one of the following combinations of education and experience:
 1. A bachelor's degree from an accredited institution and at least 2 years of experience working in a health related field;
 2. Be a registered nurse (RN), licensed in New Hampshire, or a registered nurse with a multi-state compact license, with at least 1 year of experience working in a health related field;
 3. A licensed practical nurse (LPN) with at least 2 years of experience working in a health related field; or
 4. An associate's degree from an accredited institution plus 4 years experience in a health related field;
 - c. Is responsible, directly or through delegation, for notifying the department as specified in He-P 818.14(s)(1) of any unusual incident involving the participant;
 - d. Shall be permitted to also hold the position of licensed nurse as specified in (b) below, if the person is a licensed nurse, or to hold the position of activities coordinator, if the ADP is limited by its license to 6 or fewer participants per day;
 - e. Designates, in writing, an alternate staff person who shall assume the responsibilities of the administrator in his or her absence; and
 - f. Hires support staff necessary to assist the administrator in maintaining regulatory compliance;
- (b) Nursing services that:
- (1) Include the employment or contracted services of a part-time or full-time licensed nurse who:
 - a. Is currently licensed in the state of New Hampshire pursuant to RSA 326-B, or licensed pursuant to the multi-state compact;
 - b. Has at least one year of experience working with geriatric participants or persons with disabilities;
 - c. Gives direction to the staff members that provide personal care, such as ADLs, to the participants; and
 - d. Shall be directly or indirectly supervised by an RN if the person is a licensed practical nurse (LPN);
 - (2) Include the provision of initial and ongoing assessments of the participant's pain level, vital signs, physical, cognitive and behavioral status as well as to how the participant is adapting psychologically to their social environment; and
 - (3) Provide the following:
 - a. Nursing care as authorized by RSA 326 that includes medication administration and wound care;
 - b. Nutritional monitoring;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- c. Care management or referral to a case manager;
 - d. Referrals to community service agencies when necessary; and
 - e. Assistance with therapeutic monitoring of capillary blood glucose levels and capillary blood Prothrombin Time, International Normalized Ratio (PT-INR) testing using a Clinical Laboratory Improvement Amendments (CLIA) approved waived testing system, per 42 CFR Part 493.15, however the ADP shall be exempt from licensing under He-P 808 and He-P 817 for performance of these 2 tests;
- (c) Recreational activity services that include:
- (1) The employment of an activities coordinator who has 2 years of experience working with geriatric participants or persons with disabilities; and
 - (2) Purposeful activities designed to meet the needs and interests of participants, including but not limited to activities that are cultural, economic, emotional, intellectual, physical, social and spiritual;
- (d) Personal care services that include:
- (1) Assistance with and supervision of ADLs when needed by participants; and
 - (2) Minimum staffing ratios, which may be met by both nursing and activities personnel, as follows:
 - a. When fewer than 8 participants are in attendance, at least one paid personnel member shall be present at all times;
 - b. When there are 8 to 16 participants in attendance, there shall be at least 2 personnel present at all times, at least one of which shall be a paid personnel member;
 - c. When there are in excess of 16 participants in attendance, there shall be a minimum of one personnel member for each additional 8 participants or part thereof; and
 - d. Notwithstanding a. through c. above, ratios shall be sufficient to meet the needs of all participants at all times;
- (e) Health and safety services to minimize the likelihood of accident or injury, with protective care and oversight while the participant is at the ADP, that include:
- (1) Monitoring the participants' functioning, safety and whereabouts;
 - (2) Monitoring the participants' health status, and providing intervention, if required; and
 - (3) Emergency response and crisis intervention;
- (f) Social services, which shall be provided by the administrator, licensed nurse or a social worker and include:
- (1) The compilation of a social history and conducting participant psychosocial assessments;
 - (2) The provision of emotional support to participants and families or caregivers as needed;
 - (3) Assistance with the participant's adaptation to the ADP and involvement in the plan of care;

- (4) Advocacy for the participant by assisting the participant to assert his or her human and civil rights; and
 - (5) The provision of discharge planning and assisting in participant transition to other programs or facilities; and
- (g) Dietary services that include:
- (1) A minimum of 1 meal equaling 1/3 of an adult's recommended dietary allowances as set forth by the US Department of Agriculture's 2005 "Dietary Guidelines for Americans";
 - (2) Diets that are in accordance with the orders of participants' licensed practitioners;
 - (3) Snacks and fluids that are offered and available to the participants throughout the day so that no more than 3 hours elapses between meals and offered snacks according to a participant's number of hours in attendance;
 - (4) Substitutions if a participant refuses the items offered; and
 - (5) Food and drink that is provided to the participants that is:
 - a. Safe for human consumption and free of spoilage or other contamination;
 - b. Stored, prepared and served in a manner consistent with safe food handling practices for the prevention of food borne illnesses, including those set forth in He-P 2300; and
 - c. Stored so as to protect it from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.

Source. #9106, eff 3-18-08; ss by #9565, eff 10-16-09

He-P 818.16 Participant Services.

- (a) At the time of admission, personnel of the ADP shall:
- (1) Provide, both orally and in writing, to the participant, guardian, agent and personal representative, as applicable:
 - a. The ADP's policies on participant rights and responsibilities;
 - b. The ADP's complaint procedure and rules; and
 - c. Obtain written confirmation acknowledging receipt of these policies and rules;
 - (2) Collect and record in the clinical record the following information:
 - a. Participant's name, home address, home telephone number and date of birth;
 - b. Name, address and telephone number of an emergency contact;
 - c. Participant's primary licensed practitioner's name, address and phone number;
 - d. Copies of any executed legal directives such as guardianship orders for health care issues under RSA 464-A, durable power of attorney, or a living will; and
 - e. The name of the participant's guardian, agent or personal representative, if any;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Require the participant to have a physical examination by a licensed practitioner that has been completed no more than 1 year prior to admission or within 72 hours after admission and includes:
- a. Diagnoses, if any;
 - b. The medical history;
 - c. Medical findings, including the presence of communicable disease;
 - d. Vital signs;
 - e. Prescribed and over-the-counter medications;
 - f. Allergies, if any;
 - g. Dietary needs, if any; and
 - h. Functional abilities and limitation;
- (4) Have the RN, or LPN who is directly or indirectly supervised by an RN, complete a nursing assessment within 7 days of attendance to determine the level of services required by the participant;
- (5) Have the administrator, licensed nurse or activities coordinator complete a recreational assessment;
- (6) Have the administrator, licensed nurse or social worker complete a social history;
- (7) Complete an emergency data sheet that, at a minimum, lists the following information:
- a. The participant's full name, address, telephone number and date of birth;
 - b. The name, address and telephone number of the participant's family or the person legally responsible for the participant;
 - c. The participant's diagnosis;
 - d. Medications administered to or by the participant at the ADP, including the last dose taken and when;
 - e. Any known allergies;
 - f. The participant's functional level and needs requirements as assessed by the ADP staff;
 - g. Copies of any advanced directives, guardianship or durable powers of attorney, if applicable;
 - h. The participant's health insurance information; and
 - i. Any other pertinent information not specified in a.-h. above; and
- (8) Obtain orders from a licensed practitioner for medications, prescriptions and diet.
- (b) A written daily medication record shall be utilized for all medication taken by participants at the ADP.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) A care plan shall be completed within the first 30 days of attendance based upon the results of all of the participant's assessments listed above and shall include:

- (1) The date any specific problem or need was identified;
- (2) A description of services to let providers know what problem(s) or need(s) was identified as a result of the assessments;
- (3) The goals for the participant;
- (4) The action or approach to be taken by the ADP;
- (5) The party responsible for implementing the action or approach to be taken;
- (6) The date the next re-evaluation is to occur; and
- (7) Written documentation to verify that the participant, family or caregiver were offered the opportunity to be involved in the development of the care plan and any revisions made thereafter.

(d) The licensed nurse and other personnel as deemed necessary by the licensed nurse shall review the care plan at least every 6 months and revise it whenever necessary.

(e) The care plan referenced in (c) above shall be:

- (1) Reviewed and updated within 5 business days following the completion of each future assessment; and
- (2) Made available to personnel who assist participants in the implementation of the plan.

(f) If the nursing assessment, developed in accordance with (a)(4) above, or the care plan, developed in accordance with (c) above, is completed by an LPN, the assessment and care plan shall be reviewed and co-signed by an RN or physician that is supervising the LPN prior to the implementation of the participant's care plan.

(g) The direct care personnel of the ADP shall implement the care plan.

(h) The participant's record shall contain written notes as follows:

- (1) Notes on all medical, nursing, rehabilitative or therapeutic care and services provided at the ADP shall include the:
 - a. Date and time that the care or services were provided;
 - b. Description of the care or services provided;
 - c. Participant's response to the care or services provided; and
 - d. Signature and title of the person providing the care or service;
- (2) Progress notes shall include at a minimum:
 - a. Care plan outcomes;
 - b. Changes in the participant's physical, functional and mental abilities;
 - c. Changes in behavior;

- d. Summary of protective care that has been provided; and
- e. Summary of assistance provided with ADLs; and

(3) Progress notes in (2) above shall be written at least every 30 days for the first 90 days and then quarterly thereafter.

(i) The use of chemical or physical restraints shall be prohibited except as allowed by RSA 151:21, IX.

(j) Immediately after the use of a physical or chemical restraint, the participant's guardian or agent, if any, and the department shall be notified of the use of restraints.

(k) The ADP shall:

(1) Have policies and procedures on:

- a. What type of emergency restraints may be used;
- b. When restraints may be used; and
- c. What professional personnel may authorize the use of restraints; and

(2) Provide personnel with education and training on the limitations and the correct use of restraints.

(l) The use of mechanical restraints shall be allowed only as defined under He-P 818.03(ag).

(m) The participant shall be discharged, as defined under RSA 151:19, I-a, in accordance with RSA 151:26 and RSA 151:21, V.

(n) The licensee shall develop a discharge plan with the input of the participant and the guardian or agent, if any.

(o) Transfers to a medical facility for emergency medical treatment may occur without prior notification to the guardian, agent pursuant to an activated POA or the licensed practitioner when the participant is in need of immediate emergency care.

(p) For each participant accepted for care and services at the ADP, a current and accurate record shall be maintained and include, at a minimum:

- (1) The written confirmation required by He-P 818.16(a)(1);
- (2) The identification data required by He-P 818.16(a)(2);
- (3) Consent and medical release forms, as applicable;
- (4) The record of a physical examination as required by He-P 818.16(a)(3);
- (5) All orders from a licensed practitioner, including the date and signature of the licensed practitioner;
- (6) All assessments;
- (7) All care plans, including documentation that the participant or person legally responsible participated in the development of the care plan if they chose to;

- (8) All written notes required by He-P 818.16(h);
 - (9) All daily medication records;
 - (10) A discharge plan as required by He-P 818.16(n)
 - (11) The emergency data sheet required by He-P 818.16(a)(7);
 - (12) Documentation of unusual incidents involving the participant, including the information required by He-P 818.14(s); and
 - (13) Documentation of the refusal of a participant to follow the prescribed orders of the licensed practitioner including the date and time the licensed practitioner was notified of the refusal.
- (r) Participant records shall be safeguarded against loss, damage or unauthorized use by being stored in locked containers, cabinets, rooms or closets except when being used by the ADP's personnel.
- (s) Participant records shall be retained for a minimum of 4 years after discharge.
- (t) Prior to the ADP cessation of operations, it shall arrange for the storage of and access to participant records for 4 years after the date of closure, which shall be made available to the department and past participants upon request.

Source. #9106, eff 3-18-08

He-P 818.17 ADP Located in Senior Centers, Nursing Homes or Assisted Living Residence – Supported Residential Health Care Facilities.

(a) In addition to complying with all other rules in He-P 818, an ADP that is physically located in a senior center, nursing home or assisted living residence – supported residential health care facility (ALR-SRHC) shall meet the following physical environment requirements:

- (1) At least one room in the senior center, nursing home or ALR-SRHC physical environment shall be designated as the licensed ADP; and
- (2) The room(s) in the senior center or nursing home that has been designated as the licensed ADP shall:
 - a. Be of a size no less than 200 square feet;
 - b. Be used exclusively by the participants and staff of the ADP;
 - c. Have a designated medication storage area;
 - d. Have a designated storage area for medical supplies and equipment; and
 - e. Have a bathroom that:
 - 1. Is handicapped accessible;
 - 2. Contains a toilet, hand-washing sink, paper towels or hand drying blower, soap dispenser and a shower; and
 - 3. Is located on the same floor as the ADP.

(b) In addition to the requirements in (a) above, all ADPs located in a senior center, nursing home or ALR-SRHC shall provide a recliner or a regular or twin sized bed that is designated specifically for rest or

sleep and available in an area that is used exclusively for ADP participants to accommodate each participant who requires rest or sleep during the time they are present throughout the day.

(c) All beds shall be changed with clean linens between uses when used by different participants or, if using recliners, sanitized and disinfected as needed if soiled.

(d) Required services provided by an ADP that is physically located in a senior center, nursing home or ALR-SRHC shall be provided by ADP personnel in the room(s) designated as the licensed ADP.

Source. #9106, eff 3-18-08

He-P 818.18 Medication Services.

(a) All medications shall be administered in accordance with the orders of the licensed practitioner or other professional with prescriptive powers.

(b) Medications, treatments and diets ordered by the licensed practitioner or other professional with prescriptive powers shall be available to give to the participant within 24 hours or in accordance with the licensed practitioner's direction.

(c) The licensee shall have a written policy and system in place instructing how to:

- (1) Obtain any medication ordered for immediate use at the ADP;
- (2) Reorder medications for use at the ADP;
- (3) Receive and record new medication orders; and
- (4) Report any observed adverse reactions to medication and side effects, or medication errors such as incorrect medications, within 24 hours of the adverse reaction or medication error.

(d) For each prescription medication being taken by a participant, the licensee shall maintain one of the following:

- (1) The original written order in the participant's record, signed by a licensed practitioner or other professional with prescriptive powers; or
- (2) A copy of the original written order in the participant's record, signed by a licensed practitioner or other professional with prescriptive powers.

(e) Each medication order shall display the following information:

- (1) The participant's name;
- (2) The medication name, strength, the prescribed dose and route of administration;
- (3) The frequency of administration;
- (4) The indications for usage of all PRN medications; and
- (5) The dated signature of the ordering practitioner.

(f) The label of all medication containers maintained in the ADP shall match the current written orders of the licensed practitioner.

(g) Pharmaceutical samples shall be used in accordance with the licensed practitioner's written order and labeled with the participant's name by the licensed practitioner, the licensee or their designee and shall be exempt from (e)(2)-(5) above.

(h) Only a pharmacist shall make changes to the labels on prescription medication container labels.

(i) Any change or discontinuation of medications taken at the ADP shall be pursuant to a written order from a licensed practitioner or other person with prescription power.

(j) When the licensed practitioner or other person with prescription power changes the dose of a medication and the personnel of the ADP are unable to obtain a new prescription label:

(1) The original container shall be clearly and distinctly marked, for example, with a colored sticker, that does not cover the pharmacy label, in a manner consistent with the ADP's written procedure indicating that there has been a change in the medication order;

(2) Personnel 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; and

(3) The change in dosage, without a change in prescription label as described in (1)-(3) above shall be allowed:

a. For a maximum of 90 days from the date of the new medication order;

b. Until the medications in the marked container are exhausted; or

c. In the case of PRN medication, until the expiration date on the container, whichever occurs first.

(k) If the ADP has a medical director, prescription medication that is not ordered, approved or labeled for a specific participant, including but not limited to pharmaceutical samples, may be kept at the ADP.

(l) The medication in (k) above shall be the responsibility of the medical director.

(m) Only a licensed nurse or other licensed health care professional shall take telephone orders for medications, treatments and diets, if such action is within the scope of their practice act.

(n) Telephone orders specified in (m) above shall be:

(1) Immediately transcribed and signed by the individual receiving the order; and

(2) Counter-signed by the authorized prescriber within 30 days.

(o) OTC medications shall be handled in the following manner:

(1) The licensee shall obtain written approval from the participant's licensed practitioner annually; and

(2) OTC medication containers shall be marked, with the name of the participant using the medication and taken in accordance with the directions on the medication container or as ordered by a licensed practitioner.

(p) The medication storage area for medications shall be:

(1) Locked and accessible only to authorized personnel;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) Clean and organized with adequate lighting to ensure correct identification of each participant's medication(s); and

(3) Equipped to maintain medication at the proper temperature.

(q) All medication taken by participants at the ADP shall be kept in the original containers as dispensed by the pharmacy and properly closed after each use.

(r) A licensed nurse may organize participant medications for use in the participant's home as allowed by RSA 318:42, XIV.

(s) 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.

(t) If controlled drugs, as defined by RSA 318-B:1, VI, are stored in a central storage area in the ADP they shall be kept in a separately locked compartment within the locked medication storage area accessible only to authorized personnel.

(u) The licensee shall develop and implement written policies and procedures regarding a system for maintaining counts of controlled drugs.

(v) Except as required by below, any contaminated, expired or discontinued medication shall be destroyed within 30 days of the expiration date, the end date of a licensed practitioner's orders or the medication becomes contaminated, whichever occurs first.

(w) Controlled drugs shall be destroyed only in accordance with state law.

(x) Destruction of controlled drugs under (w) above shall:

(1) Be accomplished in the presence of at least 2 people; and

(2) Be documented in the record of the participant for whom the drug was prescribed.

(y) Upon discharge, a participant, or the participant's guardian or agent, may take the participant's current medication(s) with them.

(z) Neither the licensee nor any other personnel working for the ADP shall accept money, goods, or services for free or below cost as compensation or inducement for supplying the participant's medications.

(aa) A written order from a licensed practitioner shall be required annually for any participant who is authorized to carry and self-administer without supervision emergency medications such as nitroglycerine or inhalers.

(ab) Participants shall receive their medications by one of the following manner:

(1) Self-administer medication as allowed by (ac) below;

(2) Self-directed administration of medication as allowed by (ad) below;

(3) Self-administer with supervision as allowed by (ae) and (af) below; or

(4) Administered by individuals authorized by law.

(ac) For participants who self-administer medication, as defined in He-P 818.03(ay), the licensee shall:

(1) Obtain a written order from a licensed practitioner on an annual basis:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- a. Authorizing the participant to self-administer medications without supervision;
- b. Authorizing the participant to store the medications in their possession; and
- c. Identifying the medications that may be kept by the participant;

(2) Evaluate the participant every 6 months or sooner, based on a significant change in the participant, to ensure they maintain the physical and mental ability to self-administer medications;

(3) Have the participant store the medication(s) in a manner that prohibits other people from accessing the medications and in a manner that will maintain the medications at proper temperatures; and

(4) Allow the participant to fill and utilize a medication system that does not require medication to remain in the container as dispensed by the pharmacist.

(ad) The licensee shall allow the participant to self-direct administration of medications, as defined in He-P 818.03(ba), if the participant:

(1) Has a physical limitation due to a diagnosis that prevents the participant from self-administration;

(2) Receives evaluations every 6 months or sooner based on a significant change in the participant, to ensure the participant maintains the physical and mental ability to self-direct administration of medications;

(3) Obtains an annual written verification of their physical limitation and self-directing capabilities from the participant's licensed practitioner and requests the ADP to file the verification in their participant record; and

(4) Verbally directs personnel to:

a. Assist the participant with preparing the correct dose of medication by pouring, applying, crushing, mixing or cutting; and

b. Assist the participant to apply, ingest or instill the ordered dose of medication.

(ae) If a participant self-administers medication with supervision, as defined by He-P 818.03(az), personnel shall be permitted to:

(1) Remind the participant to take the correct dose of his or her medication at the correct time;

(2) Open the medication container and place the medication container within reach of the participant;

(3) Remain with the participant to observe them taking the prescribed dose and type of medication as ordered by the licensed practitioner;

(4) Record on the participant's medication record that they have supervised the participant taking their medication; and

(5) Document in the participant's record any observed or reported side effects, adverse reactions, and refusal to take medications and or medications not taken, if any.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(af) If a participant self-administers medication with supervision, personnel shall not be permitted to physically handle the medication in any manner.

(ag) Medication administered by individuals authorized by law, to administer medication shall be:

- (1) Prepared immediately prior to administration; and
- (2) Prepared, identified, and administered by the same person in compliance with RSA 318 and RSA 326-B.

(ah) Personnel shall remain with the participant until the participant has taken all of the medication.

(ai) If a nurse delegates the task of medication administration to an individual not licensed to administer medications, the nurse shall:

- (1) Only delegate medications that are administered by mouth;
- (2) Document in the individual's personnel file the evaluation method and tools used to determine that the individual receiving the delegation of medication administration has the necessary skills to administer medication;
- (3) Document in the individual's personnel file that the individual continues to be delegated the task of administering medication, based on the nurse's ongoing evaluation;
- (4) Document in the individual's personnel file any notice that the delegation of medication administration has been rescinded, if applicable; and
- (5) Document in the participant's record the:
 - a. Specific medication to be administered;
 - b. Dosage, route and specific time that the medication is to be administered;
 - c. The names of personnel to whom the nurse has delegated responsibility for the administration of medications; and
 - d. The results of the nurse's assessment, completed no more than 30 days prior to the delegation occurring, that determined that the participant's condition is stable and that the participant is appropriate for receipt of medication administration via nurse delegation.

(aj) A licensed nursing assistant (LNA) may administer the following when under the direction of the licensed nurse employed by the ADP:

- (1) Medicinal shampoos and baths;
- (2) Glycerin suppositories and enemas; and
- (3) Medicated topical products to intact skin as ordered by the licensed practitioner.

(ak) Except for those participants who self-administer medication, the licensee shall maintain a written record for each medication taken by the participant at the ADP that contains the following information:

- (1) Any allergies or allergic reactions to medications;
- (2) The medication name, strength, dose, frequency and route of administration;
- (3) The date and time the medication was taken;

(4) The signature, identifiable initials and job title of the person who administers, supervises or assists the participant taking medication;

(5) For PRN medications, the reason the participant required the medication and the effect of the PRN medications; and

(6) Documented reason for any medication refusal or omission.

(al) Personnel who are not otherwise licensed practitioners, nurses or medication nursing assistants and who assist a participant with self administration with supervision, self directed administration or administration of medication via nurse delegation shall complete, at a minimum, a 4-hour medication supervision education program covering both prescription and non-prescription medication.

(am) The medication supervision education program shall be taught by a licensed nurse, licensed practitioner or pharmacist, or other person who has undergone training by a licensed nurse, licensed practitioner or pharmacist.

(an) The medication supervision education program required by (al) above shall include:

(1) Infection control and proper hand washing techniques;

(2) The “5 rights” of medication administration which are:

a. The right participant;

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 or antibiotics;

(5) Desired effects and potential side effects of medications; and

(6) Medication precautions and interactions.

(ao) The administrator may accept documentation of training required by (al) above if it was previously obtained by the applicant for employment at another licensed ADP.

(ap) Non-prescription stock medication may be kept at the ADP but shall be accessed and administered only by the licensed nurse or medication nurse assistant on duty.

(aq) An ADP shall use emergency drug kits only in accordance with board of pharmacy rules, Ph 705.03, under circumstances where the ADP:

(1) Has a director of nursing who is a registered nurse licensed in accordance with RSA 326-B;

(2) Has a contractual agreement with a medical director who is licensed in accordance with RSA 329 and a consultant pharmacist who is licensed in accordance with RSA 318; and

(3) Has the contents approved in writing by the licensed medical director.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(ar) The licensee shall conduct an annual review of its policies and procedures for self-administration of medication, self-administration of medication with supervision and self-directed medication administration.

Source. #9106, eff 3-18-08

He-P 818.19 Personnel.

- (a) The licensee shall develop a job description for each position in the ADP containing:
- (1) Duties of the position;
 - (2) Physical requirements of the position; and
 - (3) Education and experience requirements of the position.
- (b) All applicants for a license shall obtain a criminal record check from the New Hampshire department of safety in accordance with RSA 151:2-d.
- (c) For all applicants for employment and all household members 18 years of age or older, the licensee shall:
- (1) Obtain and review a criminal records check from the New Hampshire department of safety;
 - (2) Review the results of the criminal records check in accordance with (d) below; and
 - (3) Verify the qualifications of all applicants prior to employment.
- (d) Unless a waiver is granted in accordance with (e) below, the licensee shall not offer employment for any position or allow a household member to continue to reside in the ADP if the individual:
- (1) Has been convicted of any felony in this or any other state;
 - (2) Has been convicted for sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;
 - (3) Has been found by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; or
 - (4) Otherwise poses a threat to the health, safety or well-being of participants.
- (e) The department shall grant a waiver of (d) above if, after reviewing the underlying circumstances, it determines that the person does not pose a threat to the health, safety or well-being of participants.
- (f) If the information identified in (d) above regarding any employee is learned after the person is hired or an individual becomes a household member, the licensee shall immediately notify the department.
- (g) The department shall review the information in (d) above and notify the licensee that the individual can no longer be employed if, after investigation, it determines that the individual poses a threat to the health, safety or well-being of a participant.
- (h) All personnel shall:
- (1) Meet the requirements of the position as listed in the job description described in He-P 818.15(a)-(c), as applicable;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Not have been convicted of a felony, sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation of any person in this or any other state by a court of law or had a complaint investigation for abuse, neglect, or exploitation adjudicated and founded by the department;
- (3) Be licensed, registered or certified as required by state statute;
- (4) Be at least 18 years of age if working as direct care personnel unless they are:
 - a. A licensed nursing assistant working under the supervision of a nurse in accordance with Nur 700; or
 - b. Involved in an established educational program working under the supervision of a nurse;
- (5) Receive an orientation within the first 3 days of work including:
 - a. The ADP's policies on patient's rights and responsibilities and complaint procedures as required by RSA 151:20;
 - b. The duties and responsibilities of the position they were hired for;
 - c. The ADP's policies, procedures and guidelines;
 - d. The ADP's infection control program;
 - e. The ADP's fire and emergency plans; and
 - f. Mandatory reporting requirements such as those found in RSA 161-F:42-57 and RSA 169-C:29.
- (i) All personnel shall complete annual continuing education, including a review of the ADP's:
 - (1) Policies and procedures relative to participant rights and complaint procedure;
 - (2) Infection control program; and
 - (3) Education program on fire and emergency procedures.
- (j) There shall be at least 1 personnel member on duty that has current certification in adult cardio pulmonary resuscitation (CPR) equivalent to basic life support from either the American Red Cross or the American Heart Association whenever the ADP is in operation.
- (k) Prior to having contact with participants or food, personnel shall:
 - (1) Submit to the licensee the results of a physical examination or a health screening performed by a licensed nurse or a licensed practitioner and the results of a 2-step tuberculosis (TB) test, Mantoux method, or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;
 - (2) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first step are negative for TB; and
 - (3) Comply with the requirements of the Centers for Disease Control Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities/Settings (2005) if the person has either a

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

positive TB test, or has had direct contact or potential for occupational exposure to M. tuberculosis through shared air space with persons with infectious tuberculosis.

(l) Personnel, volunteers or independent contractors hired by the licensee who will have direct contact with participants, as defined by He-P 818.03(r), or food, that have a history of TB or a positive skin test shall have a symptomatology screen of a TB test.

(m) All licensees using the services of independent clinical contractors such as a podiatrist shall:

(1) Have a written agreement with each clinical contractor that describes the services that will be provided; and

(2) Maintain a copy of the clinical contractors' licenses as required by (h)(3) above if applicable.

(n) All personnel shall follow the orders of the licensed practitioner for each participant and encourage participants to follow the practitioner's orders.

(o) Current, separate and complete personnel files shall be maintained and stored in a secure and confidential manner at the licensed ADP premises for all personnel of the ADP.

(p) The personnel file required by (o) above shall include the following:

(1) A completed application for employment or a resume, including:

a. Identification data, including proof of being 18 years of age or older; and

b. The education and work experience of the employee;

(2) A signed statement acknowledging the receipt of the ADP's policy setting forth the participant's rights and responsibilities, and acknowledging training and implementation of the policy as required by RSA 151:20;

(3) A job description signed by the individual that identifies the:

a. Position title;

b. Qualifications and experience; and

c. Duties required by the position;

(4) Record of satisfactory completion of the orientation program required by (h)(5) above;

(5) A copy of each current New Hampshire license, registration or certification in health care field, if applicable;

(6) Documentation that the required physical examination, or health screening and, TB test results or radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;

(7) Copies of current CPR certifications;

(8) Information as to the general content and length of all continuing education or educational programs attended;

(9) Documentation of annual continuing education as required by (i) above;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(10) A statement that shall be signed at the time the initial offer of employment is made and then annually thereafter by all personnel stating that they:

- a. Do not have a felony conviction in this or any other state;
- b. Have not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;
- c. Have not been found by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; and
- d. Do not otherwise pose a threat to the health, safety or well-being of participants; and

(11) Documentation of the criminal records check.

(q) An individual need not re-disclose any of the matters in (p)(10) above if the documentation is available and the department has previously reviewed the material and determined that the individual can continue employment.

Source. #9106, eff 3-18-08; ss by #9565, eff 10-16-09

He-P 818.20 Quality Improvement.

(a) The ADP shall develop and implement a quality improvement program that reviews policies and services and maximizes quality by preventing or correcting identified problems.

(b) As part of its quality improvement program, a quality improvement committee shall be established.

(c) The licensee shall determine the size and composition of the quality improvement committee based on the size of the ADP and the care and services offered.

(d) The quality improvement committee shall:

- (1) Determine the information to be monitored;
- (2) Determine the frequency with which information will be reviewed;
- (3) Determine the indicators that will apply to the information being monitored;
- (4) Evaluate the information that is gathered;
- (5) Determine the action that is necessary to correct identified problems;
- (6) Recommend corrective actions to the licensee; and
- (7) Evaluate the effectiveness of the corrective actions.

(e) If the ADP utilizes nurse delegation for the task of medication administration to an individual not licensed to administer medications, a quarterly written report containing the following information shall be completed and submitted to the quality improvement committee for review, including:

- (1) The participant average daily census;
- (2) The number of unlicensed personnel administering medications via nurse delegation;
- (3) Categories of medications administered;

- (4) Route of administration; and
- (5) Any incidents or medication errors and actions taken.
- (f) The quality improvement committee shall meet at least quarterly.
- (g) The quality improvement committee shall generate dated, written minutes after each meeting.
- (h) Documentation of all quality improvement activities, including minutes of meetings, shall be maintained on-site for at least 2 years.

Source. #9106, eff 3-18-08

He-P 818.21 Infection Control.

- (a) The licensee shall develop and implement an infection control program that educates and provides 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 and Prevention 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings (June 2007);
 - (3) The management of participants with infectious or contagious diseases or illnesses who can safely participate in the program;
 - (4) The handling, transport and disposal of those items identified as infectious waste in Env-Sw 103.28; and
 - (5) Reporting of infectious and communicable diseases as required by He-P 301.
- (c) The infection control education program shall address at a minimum the:
 - (1) Cause of infection;
 - (2) Effect of infections;
 - (3) Transmission of infections; and
 - (4) Prevention and containment of infections.
- (d) Personnel 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.
- (e) Personnel infected with scabies or lice shall not provide direct care to participants or work in food services until such time as they are no longer infected.
- (f) Pursuant to RSA 141-C:1, personnel 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 employee is receiving tuberculosis treatment and has been determined to be noninfectious by a licensed practitioner.
- (g) Personnel with an open wound who work in food service or provides direct care in any capacity shall cover the wound at all times by an impermeable, durable, tight fitting bandage.

(h) In accordance with RSA 151:9-b, the licensee shall:

- (1) Arrange for or provide all consenting participants an immunization for influenza and pneumococcal disease;
- (2) Arrange for or provide all consenting personnel an immunization for influenza; and
- (3) Report immunization data to the department's immunization program.

Source. #9106, eff 3-18-08

He-P 818.22 Sanitation.

(a) The licensee shall maintain a clean, safe and sanitary environment throughout the licensed ADP premises.

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

(c) A supply of potable water shall be available for human consumption and food preparation.

(d) A supply of hot and cold running water shall be available at all times and precautions such as temperature regulation shall be taken to prevent a scalding injury to the participants.

(e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations.

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

(g) Cleaning solutions, compounds and substances considered hazardous or toxic materials, as defined in RSA 147-A:2, VII, shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place separate from food, medications and program supplies.

(h) 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.

(i) Only individuals authorized under RSA 430:33 may apply pesticides as defined by RSA 430:29, XXVI for rodent or cockroach control in food storage, food preparation or dining areas.

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

(k) In-house trash and garbage receptacles shall be emptied in a timely manner and lined, or cleaned and disinfected after emptying.

(l) Trash receptacles in food service area shall be covered at all time.

(m) If the ADP provides laundry services, the following requirements shall be met:

- (1) The laundry room shall be kept separate from kitchen and dining areas;
- (2) Clean linen shall be stored in a clean area and separated from soiled linens at all times;
- (3) Soiled materials, linens and clothing shall be transported in a laundry bag, sack or container and washed in a sanitizing solution used in accordance with the manufacturer's recommendations; and

- (4) Soiled linens and clothing which are considered contaminated with infectious waste under Env-Sw 103.28 shall be handled as infectious waste.
- (n) Laundry rooms and bathrooms shall have non-porous floors.
- (o) Sterile or clean supplies shall be stored in dust and moisture-free storage areas.
- (p) Any ADP that has its own water supply and whose water has been tested and has failed to meet the acceptable levels identified in this section, or as required by the department of environmental services shall notify the department upon receipt of notice of a failed water test.

Source. #9106, eff 3-18-08

He-P 818.23 Physical Environment.

- (a) The licensed premises shall be maintained so as to provide for the health, safety, well-being and comfort of participants and personnel, including reasonable accommodations for participants and personnel with mobility limitations.
- (b) Equipment providing heat within an ADP including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove or pellet stove shall:
 - (1) Maintain a temperature of at least 70 degrees Fahrenheit during the day if participant(s) are present; and
 - (2) Be serviced once a year or as recommended by the manufacturer with written documentation of such service retained for at least 4 years.
- (c) Electric heating systems shall be exempt from (b)(2) above.
- (d) Portable space heating devices shall be prohibited, unless the following are met:
 - (1) Such devices are used only in employees areas where personnel are present and awake at all times; and
 - (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.
- (e) Unvented fuel-fired heaters shall not be used in any ADP.
- (f) Plumbing shall be sized, installed, and maintained in accordance with the provisions of the International Plumbing Code, as specified in the State Building Code under RSA 155-A:1, IV, as amended by the Building Code Review Board pursuant to RSA 155-A:10, V.
- (g) Ventilation shall be provided by means of a mechanical ventilation system or one or more screened windows that can be opened.
- (h) Screens shall be provided for doors, windows or other openings to the outside.
- (i) Doors that are self-closing and remain closed when not in use are exempt from the requirement in (h) above.
- (j) Lighting shall be available to allow participants to partake in activities such as reading, needlework or handicrafts.
- (k) The ADP shall have dining facilities to accommodate each participant.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (l) The ADP shall have a telephone to which the participants have access.
- (m) All ADPs shall have at least one toilet and one hand sink and as many additional toilets and sinks as are necessary to meet the needs of the participants in the program.
- (n) Each bathroom shall be equipped with:
 - (1) Soap dispensers;
 - (2) Paper towels or a hand-drying device providing heated air; and
 - (3) Hot and cold running water.
- (o) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.
- (p) All bathroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.
- (q) All ADPs newly licensed after the effective date of these rules shall have at least one shower or bathing facility and as many additional showers or bathing facilities as are necessary to meet the needs of the participants in the program.
- (r) There shall be sufficient space and equipment for the services provided at the ADP, as follows:
 - (1) Furniture to allow for each participant to sit comfortably as necessary throughout the day;
 - (2) Tables and chairs to assure that each participant has a seat at a table for each meal or snack and for doing activities such as crafts or puzzles; and
 - (3) Supplies such as plates, cups, glasses, silverware, liquid soap for hand washing, toilet tissue and paper towels in a supply to accommodate the number of participants authorized by the license.
- (s) In addition to the requirements in (r) above, all ADPs shall provide a recliner, cot or bed available in an area designated specifically for rest or sleep to accommodate each participant who requires rest or sleep during the time they are present throughout the day.
- (t) All cots or beds shall be changed with clean linens between uses when used by different participants or, if using recliners, sanitized and disinfected as needed if soiled.

Source. #9106, eff 3-18-08

He-P 818.24 Emergency and Fire Safety.

- (a) All ADPs shall meet the requirements of the day care chapter of NFPA 101 as adopted by the commissioner of the department of safety in Saf-C 6000.
- (b) All ADPs shall have:
 - (1) Smoke detectors on every level that are interconnected and either hardwired, powered by the ADP's electrical service, or wireless, as approved by the state fire marshal;
 - (2) At least one ABC type fire extinguisher on every level; and
 - (3) A carbon monoxide monitor on every level.

(c) An emergency and fire safety program shall be developed and implemented to provide for the safety of participants and personnel.

(d) Immediately following any fire or emergency situation, licensees shall notify the department by phone and in writing notification within 72 hours, with the exception of:

- (1) A false alarm or emergency medical services (EMS) transport for a non-emergent reason; or
- (2) EMS transport related to known pre-existing conditions.

(e) The written notification required by (d) above shall include:

- (1) The date and time of the incident;
- (2) A description of the location and extent of the incident, including any injuries to participants or personnel or damage sustained by the ADP;
- (3) A description of events preceding and following the incident;
- (4) The name of any personnel or participants who were evacuated as a result of the incident, if applicable;
- (5) The name of any personnel or participants who required medical treatment as a result of the incident, if applicable; and
- (6) The name of the individual the licensee wishes the department to contact if additional information is required.

(f) All freestanding tanks of compressed gases shall be firmly secured to the adjacent wall or secured in a stand or rack.

(g) Flammable gases and liquids shall be stored in metal fire retardant cabinets.

(h) Pursuant to RSA 155:68 and 69, if the licensee has chosen to allow smoking, a designated smoking area shall be provided which has, at a minimum:

- (1) A dedicated ventilation system, so that smoke or odors cannot escape or be detected outside the designated smoking room;
- (2) Walls and furnishings constructed of non-combustible materials; and
- (3) Metal waste receptacles and safe ashtrays.

(i) Each licensee shall develop a written emergency plan that covers:

- (1) Loss of electricity, water or heat;
- (2) Bomb threat;
- (3) Severe weather;
- (4) Fire;
- (5) Gas leaks;
- (6) Unexplained participant absences; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (7) Any situation that requires evacuation or closure of the ADP.
- (j) Each licensee shall:
- (1) Annually review and revise, as needed, its emergency plan;
 - (2) Submit its emergency plan to the local emergency management director for review and approval when initially written and whenever the plan is revised; and
 - (3) Maintain documentation on-site which establishes that the emergency plan has been approved as required under (2) above.
- (k) Evacuation drills shall include the transmission of a fire alarm signal and simulation of emergency fire condition.
- (l) Evacuation drills shall be conducted monthly and vary in time to include all personnel:
- (m) All personnel shall participate in at least one drill quarterly.
- (n) For personnel who are unable to participate in the scheduled drill described in (m) above, on the day they return to work the administrator or designee shall, if applicable, instruct them as to any changes in the facility's fire and emergency plan and document such instruction in their personnel file.
- (o) Personnel who are unable to participate in a drill in accordance with (m) and (n) above shall participate in a drill within the next quarter.
- (p) Per-diem or temporary personnel shall not be the only person on duty unless they have:
- (1) Participated in at least 2 actual fire drills in the facility in the past year; and
 - (2) Participated in the facility's orientation program pursuant to He-P 818.18(t).
- (q) All emergency and evacuation drills shall be documented and include the following information:
- (1) The names of the personnel and participants involved in the evacuation;
 - (2) The time, date, month, and year the drill was conducted;
 - (3) The exits utilized if the ADP does not comply with the health care chapter of the state fire code;
 - (4) The total time necessary to evacuate the ADP, if required;
 - (5) The time needed to complete the drill; and
 - (6) Any problems encountered and corrective actions taken to rectify problems.

Source. #9106, eff 3-18-08

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 818.01	RSA 151:9, I(a)
He-P 818.02	RSA 151:9, I(b) and (f)
He-P 818.03	RSA 151:9, I
He-P 818.04 – 818.06	RSA 151:9, I(c) and (d)
He-P 818.07	RSA 151:9, I(a), RSA 151:9, III; RSA 153; RSA 155-a:I, IV
He-P 818.08	RSA 151:9, I(a)
He-P 818.09	RSA 151:9, I(e)
He-P 818.10	RSA 151:9, I(b)
He-P 818.11	RSA 151:9, I(e); RSA 151:6
He-P 818.12	RSA 151:6; RSA 151:6-a; RSA 151:7; RSA 151:7-a; RSA 151:8; RSA 151:8-a; RSA 159:9, I(a), (e)–(i), (l) and (m); RSA 151:16(a)