

CHAPTER He-P 800 RESIDENTIAL AND HEALTH CARE FACILITY RULES

PART He-P 806 NON-EMERGENCY WALK-IN CARE CENTERS

He-P 806.01 Purpose. The purpose of this part is to set forth the licensing requirements for all non-emergency walk-in care centers (NEWCC) pursuant to RSA 151:2, I(d).

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; amd by #6427, eff 1-13-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99, paragraphs (c), (d), (m) and (s) EXPIRED: 1-13-03

New. #9655, eff 2-13-10

He-P 806.02 Scope. This part shall apply to any organization, business entity, partnership, corporation, government entity, association or other legal entity operating a NEWCC, except:

- (a) All facilities listed in RSA 151:2, II(a)-(i);
- (b) Entities who provide health screening services for the purpose of risk assessment only and not for diagnosis and/or treatment; and
- (c) Immunization clinics that are registered with the department's division of public health services.

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; amd by #6427, eff 1-13-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99, paragraphs (c) and (d) EXPIRED 1-13-03

New. #9655, eff 2-13-10

He-P 806.03 Definitions.

- (a) "Abuse" means "emotional abuse", "physical abuse" or "sexual abuse", as defined in this section.
- (b) "Adequate qualifications" means that employee qualifications for professional staff are in accordance with federal, state and local laws and ordinances or professional review or certification boards.
- (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 or He-P 806.
- (e) "Administrator" means the licensee, or an individual appointed by the licensee, who is responsible for all aspects of the daily operations of the NEWCC.
- (f) "Admission" means accepted by a licensee for the provision of services to a patient.
- (g) "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.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(h) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate a NEWCC pursuant to RSA 151.

(i) “Assessment” means an evaluation of the patient to determine the care and services that are needed.

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

(k) “Commissioner” means the commissioner of the department of health and human services or his or her designee.

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

(m) “Deficiency” means any action, failure to act, or other circumstance that causes a licensee to be out of compliance with RSA 151 or He-P 806.

(n) “Department” means the New Hampshire department of health and human services, at 129 Pleasant Street, Concord, NH 03301, Tel: (603) 271-9499.

(o) “Direct care” means personal care, social worker services, treatments, procedures or therapy provided by an individual for the cure or amelioration of disease, illness, pain or symptoms.

(p) “Discharge instructions” means instructions developed as a result of the assessment process in the provision of services.

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

(r) “Efficiently” means the ability to perform advertised services within a timeframe that does not delay patient care.

(s) “Emergency drug cart” means any container holding drugs for use in a medical emergency.

(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 patient.

(v) “Exploitation” means the illegal use of a patient’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 patient through the use of undue influence, harassment, duress or fraud.

(w) “Full hours” means the hours that the facility advertises, promotes or documents as being available to provide services.

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

(y) “Health screening services” means assessment or testing performed for the purpose of assessing a patient’s risk of having a disease condition and where the patient with an elevated risk is not diagnosed or treated but encouraged to contact a licensed provider for diagnosis and treatment as needed. This term does not include any on-site services provided by a licensed NEWCC.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(z) “Infectious waste” means those items specified by Env-Sw 103.28 and regulated by Env-Sw 904.

(aa) “In-service” means an educational program, which is designed to increase the knowledge, skills, and overall effectiveness of personnel.

(ab) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 806 or to respond to allegations of non-compliance with RSA 151 and He-P 806.

(ac) “Investigation” means the process used by the department to respond to allegations of non-compliance with RSA 151 and He-P 806.

(ad) “License” means the document issued to an applicant or licensee of a NEWCC which authorizes operation in accordance with RSA 151 and He-P 806, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

(ae) “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 and the type(s) of services authorized that the NEWCC is licensed for.

(af) “Licensed practitioner” means a:

- (1) Medical doctor;
- (2) Physician’s assistant;
- (3) Advance practice registered nurse (APRN);
- (4) Doctor of osteopathy; or
- (5) Doctor of naturopathic medicine.

(ag) “Licensed premises” means the building(s) or area within a building that comprises the physical location the department has approved for the licensee to conduct operations in accordance with its license.

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

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

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

(ak) “Non-emergency walk-in care center (NEWCC)” means a medical facility where a patient can receive medical care which is not of an emergency life-threatening nature, without making an appointment and without the intention of developing an ongoing care relationship with the licensed practitioner. This term includes such facilities that are self-described as urgent care centers, retail health clinics, and convenient care clinics. A NEWCC can be a stand-alone entity or an entity located within a retail store or pharmacy, which can be owned and operated by the retail store or pharmacy, or be owned and operated by a third party.

(al) “Orders” means prescriptions, instructions for treatments, special diets or therapies given by a licensed practitioner, or other professional authorized by law.

(am) “Owner” means any person, corporation, association, or any other legal entity, whether organized for profit or not, holding or claiming ownership of, or title to, a license.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(an) "Patient" means any person admitted to or in any way receiving care, services or both from a NEWCC licensed in accordance with RSA 151 and He-P 806.

(ao) "Patient record" means the documentation of all care and services, which includes all documentation required by RSA 151 and He-P 806 and any other applicable federal and state requirements.

(ap) "Patient rights" means the privileges and responsibilities possessed by each patient provided by RSA 151:21.

(aq) "Personal representative" means a person designated in accordance with RSA 151:19, V, to assist the patient for a specific, limited purpose or for the general purpose of assisting the patient 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 patient(s).

(as) "Physical abuse" means the use of physical force that results or could result in physical injury to a patient.

(at) "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.

(au) "Pre-employment health screen" means a health screen performed to determine a prospective employee's fitness to perform the duties of the position applied for.

(av) "Provider performed microscopy" means a type of CLIA certificate that allows the qualified facility personnel to perform all CLIA-waived testing and which allows the licensed practitioner to perform basic microscopic analysis.

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

(ax) "Professional staff" means:

- (1) Physicians;
- (2) Physician assistants;
- (3) Advance practice registered nurses;
- (4) Licensed nurses;
- (5) Physical therapists;
- (6) Speech therapists;
- (7) Respiratory therapists;
- (8) Occupational therapists;
- (9) Social workers; and
- (10) Dietitians.

(ay) "Security provisions" means locked when not in use.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(az) “Sexual abuse” means contact or interaction of a sexual nature involving a patient without his or her consent.

(ba) “Stabilize” means to provide medical care to allow the patient or patient to be moved or transferred to another facility.

(bb) “Sufficient” means according to acceptable standards in conformity with facility policy, professional review organizations or nationally acceptable professional practice.

(bc) “Written disclosure statement” means a signed and dated statement from an administrator whereby he/she discloses any of the items listed in He-P 806.04(a)(6) or states that he/she has no criminal background, and which is required to accompany all applications or the application is incomplete.

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; amd by #6427, eff 1-13-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99, paragraphs (a), (i), (j) and (m) EXPIRED: 1-13-03

New. #9655, eff 2-13-10

He-P 806.04 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,” which includes the number of employees and service providers and is 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) 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;
- b. “Certificate of Formation,” if a limited liability company; or
- c. “Certificate of Trade Name,” where applicable;

(3) The applicable fee, in accordance with RSA 151:5 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”;

(4) A resume identifying the qualifications of and copies of applicable licenses for the NEWCC administrator;

(5) Written local approvals as follows:

- a. For the proposed or existing licensed premises the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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;
2. The building official verifying that the applicant complies with all applicable state and local building codes and 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, as adopted by the commissioner of the department of safety, and local fire ordinances applicable for a business; and

b. For a building under construction, the written approvals required by a. above shall be submitted at the end of construction based on the local official's review of the building plans and their final on-site inspection of the construction project;

(6) A written disclosure statement from the administrator containing a list of any:

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

(7) The results of a criminal records check from the NH department of safety for the applicant(s), licensee, if different from the applicant, and administrator; and

(8) If the NEWCC uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Ws 313.01 and Env-Ws 314.01, or, if a public water supply is used, a copy of a water bill.

(b) Information disclosed regarding adjudication of juvenile delinquency, as required by (a)(6)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. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; amd by #6427, eff 1-13-97; amd by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99, paragraphs (b) and (m) EXPIRED: 1-13-03

New. #9655, eff 2-13-10

He-P 806.05 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 806.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 806.04(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) The department shall deny a licensing request in accordance with He-P 806.13(b) after reviewing the information in He-P 806.04(a)(6) and (7) 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.

(f) An inspection shall be completed in accordance with He-P 806.09 prior to the issuance of a license.

(g) 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 806.

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

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.06 License Expirations and Procedures for Renewals.

(a) A license shall be valid on the date of issuance and expire the following year on the last day of the month it was issued 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 806.04(a) at least 120 days prior to the expiration of the current license.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

- (1) The materials required by He-P 806.04(a)(1), (3), (6) and (8);
- (2) The current license number;
- (3) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 806.11(f), if applicable; and
- (4) A statement identifying any variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03–6005.04.

(d) Following an inspection, a license shall be renewed if the department determines that the licensee:

- (1) Submitted an application containing all the items required by (c) above, prior to the expiration of the current license;
- (2) If deficiencies were cited at the last 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 806 at the renewal inspection.

(e) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license shall be required to submit an application for initial license pursuant to He-P 806.04.

(f) If a licensee chooses to cease the operation of the NEWCC, the licensee shall submit written notification to the department at least 30 days in advance.

(g) Prior to issuing a license the department shall review any of the information submitted in accordance with He-P 806.04(a)(6) and deny a license renewal in accordance with He-P 806.05(e).

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.07 NEWCC Requirements for Organizational or Service Changes.

(a) The NEWCC 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; and
- (5) Services.

(b) The NEWCC shall complete and submit a new application and obtain a new license and license certificate prior to operating for:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

(c) When there is a change in address without a change in location, the NEWCC shall provide the department with a copy of the notification from the local, state or federal agency that requires the address change.

(d) The NEWCC 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 806.04(a)(6) and (a)(7);
- (2) A resume identifying the name and qualifications of the new administrator; and
- (3) Copies of applicable licenses for the new administrator.

(e) Upon review of the materials submitted in accordance with (d) above, the department shall make a determination as to whether the new administrator:

- (1) Has a history of any of the criteria identified in He-P 806.05(e); and
- (2) Meets the qualifications for the position, as specified in He-P 806.15(c) for an administrator.

(f) If the department determines that the new administrator does not meet the requirements of (e) above, it shall so notify the NEWCC in writing so that a waiver can be sought or the NEWCC can search for a qualified candidate.

(g) When there is a change in the name, prior to using the new name, the NEWCC shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.

(h) When there is to be a change in the services provided, prior to providing the additional services the NEWCC shall provide the department with a description of the service change and, where applicable, identify what additional personnel will be hired and their qualifications, and how the new services will be incorporated into the infection control and quality improvement programs.

(i) The department shall review the information submitted under (h) above and determine if the added services can be provided under the NEWCC's current license.

(j) An inspection by the department shall be conducted prior to operation for 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; or
- (2) A change in licensing classification.

(k) A new license and license certificate shall be issued for a change in ownership, classification or physical location.

(l) A revised license and license certificate shall be issued for a change in name.

(m) A revised license certificate shall be issued for any of the following:

- (1) A change of administrator;
- (2) A change in the scope of services provided; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) When a waiver has been granted.

(n) Licenses issued under (k) above shall expire on the date the license issued to the previous owner or location would have expired.

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

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.08 NEWCC Construction, Modifications or Renovations.

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

(1) A new building;

(2) Additions to the building; or

(3) Renovations or alterations that:

a. Involve more than 15% of the square footage of the premise;

b. Involve any patient area;

c. Require approval from local or state authorities; and

d. Effect compliance with the health and safety, fire or building codes, including but not limited to, fire suppression, detections systems and means of egress.

(b) The department shall review plans for construction, renovation or structural alterations of a NEWCC for compliance with all applicable sections of RSA 151 and He-P 806 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 shall do so at his or her own risk.

(d) The NEWCC shall comply with all applicable licensing regulations.

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

(1) The state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety under RSA 153;

(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; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(3) The applicable sections and chapters of the American Institute of Architects “Guidelines for Design and Construction of Health Care Facilities,” 2006 edition.

(f) The completed building shall be subject to an inspection pursuant to He-P 806.09 prior to its use as a NEWCC.

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 806, as authorized by RSA 151:6 and RSA 151:6-a, the applicant or licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The proposed or licensed premises;
- (2) All programs and services provided by the NEWCC; and
- (3) Any records required by RSA 151 and He-P 806.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 806 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as allowed by He-P 806.07(j)(1);
- (3) A change in licensing classification; and
- (4) The renewal of a license.

(c) In addition to (b) above the department shall conduct an inspection as necessary 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, when:

- (1) The deficiency is determined to be have significant potential to jeopardize the health, safety and well-being of patients;
- (2) The required corrective action is of a particularly complex nature; or
- (3) The NEWCC has a history of not implementing corrective action.

(d) A notice of deficiencies shall be issued when, as a result of an inspection, the department determines that the NEWCC is in violation of any of the provisions of He-P 806 or RSA 151.

(e) If deficiencies were cited, the licensee shall submit a POC, in accordance with He-P 806.11(c).

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 806 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 patients as the rule from which a waiver is sought; and
- (4) The period of time for which the waiver is sought.

(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 safety or well-being of the patients; and
- (3) Does not affect the quality of patient 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 by submitting the information required by (a) above:

- (1) When the licensee submits its application for license renewal pursuant to He-P 806.06(b) and (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. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.11 Complaints.

(a) The department shall investigate complaints that allege:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) A violation of RSA 151 or He-P 806;
 - (2) That an individual or entity is operating as a NEWCC without being licensed; or
 - (3) That an individual or entity is advertising or otherwise representing the NEWCC 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, if known, of the NEWCC, 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 806.
- (c) For a licensed NEWCC, 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.
- (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 806.12(c).
- (f) For the unlicensed individual or entity, subsequent to investigation, the department shall provide written notification to the owner or person responsible that includes:
- (1) The date of investigation;
 - (2) The reasons for the investigation; and
 - (3) Whether or not the investigation resulted in a determination that the services being provided require licensing under RSA 151:2, I(d).
- (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 NEWCC 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 806; 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.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(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 806 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. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 806 or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC;
- (2) Imposing a directed POC upon a licensee;
- (3) Imposing a fine upon an unlicensed individual, applicant or a licensee;
- (4) Suspension of a license; or
- (5) Revocation of a license.

(b) When administrative remedies 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 the payment of the fine; and
 - b. The automatic reduction of a fine by 25% if:
 1. The fine is paid within 10 days of the date on the written notice from the department;
 2. The unlicensed individual, applicant or licensee submits a written statement waiving the right to an administrative hearing; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

3. 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 written POC describing:
 - 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, unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:
 - a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 day period but has been unable to do so; and
 - b. The department determines that the health, safety or well-being of a patient will not be jeopardized as a result of granting the extension;
- (3) The department shall review and accept each POC that:
 - a. Achieves compliance with RSA 151 and He-P 806;
 - b. Addresses all deficiencies and deficient practices as cited in the inspection report;
 - c. Prevents a new violation of RSA 151 or He-P 806 as a result of this implementation; and
 - d. Specifies the date upon which the deficiencies will be corrected;
- (4) If the POC is acceptable, the department shall 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 within the 14 day period, the licensee requests an extension either via telephone or in writing and the department grants the extension based on the following criteria:
 - a. 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
 - b. The department determines that the health, safety or well-being of a patient will not be jeopardized as a result of granting the extension;
- (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,

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(9) below;

(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 (b) above; and
- b. Issued a directed POC in accordance with (d) below and a fine in accordance with (f)(10) below.

(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 patients 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 according to (f)(10) below;
- (2) Deny the application for a renewal of a license; or
- (3) Revoke the license in accordance with He-P 806.13.

(f) The department shall impose fines as follows:

- (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 for an applicant or unlicensed provider;
- (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 and RSA 541-A:30, the fine for an applicant or unlicensed provider or a licensee 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, the fine for an applicant, licensee or unlicensed provider shall be \$500.00;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) 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 806.11(i), the fine for an unlicensed provider or a licensee shall be \$500.00;
- (5) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 806.06(b), the fine for a licensee shall be \$100.00;
- (6) For a failure to notify the department prior to a change of ownership, in violation of He-P 806.07(a)(1), the fine for a licensee shall be \$500.00;
- (7) For a failure to notify the department prior to a change in the physical location, in violation of He-P 806.07(a)(2), the fine for a licensee shall be \$500.00;
- (8) For a failure to allow access by the department to the NEWCC's premises, programs, services, patients or records, in violation of He-P 806.09(a)(1)-(3), the fine for an applicant, unlicensed individual or licensee shall be \$2000.00;
- (9) 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 806.12(c)(2) or (6), the fine for a licensee shall be \$100.00;
- (10) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 806.12(c)(11), the fine for a licensee shall be \$1000.00;
- (11) For a failure to establish, implement or comply with licensee policies, as required by He-P 806.14(c), the fine for a licensee shall be \$500.00;
- (12) For a failure to provide services or programs required by the licensing classification and specified by He-P 806.14(c), the fine for a licensee shall be \$500.00;
- (13) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 806.14(f), the fine for an applicant or licensee shall be \$500.00 per offense;
- (14) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 806.15(c), the fine for a licensee shall be \$500.00;
- (15) When an inspection determines that a violation of RSA 151 or He-P 806 has the potential to jeopardize the health, safety or well-being of a patient, 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 for a licensee 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;
- (16) Each day that the licensee continues to be in violation of the provisions of RSA 151 or He-P 806 shall constitute a separate violation and shall be fined in accordance with He-P 806.12; and
- (17) If the licensee is making good faith efforts to comply with (4) or (5) above, the department shall not issue a daily fine.
- (g) Payment of any imposed fine to the department shall meet the following requirements:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (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. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.13 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 806 in a manner which poses a risk of harm to a patient's health, safety or well-being;
- (2) An applicant or a licensee has failed to pay a fine imposed under administrative remedies by the department;
- (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 806.04;
- (5) An applicant, licensee or any representative or employee of the applicant or licensee:
 - 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 fully implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 806.12(c)(11) and (e);
- (7) The licensee has submitted a POC that has not been accepted by the department in accordance with He-P 806.12(c)(3) and has not submitted a revised POC as required by He-P 806.12(c)(6);

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(8) The licensee is cited a third time under RSA 151 or He-P 806 for the same violation within the last 5 inspections;

(9) A licensee, or its corporate officers, has had a license revoked and submits an application during the 5-year prohibition period specified in (h) below;

(10) Upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 806;

(11) The department makes a determination that one or more of the factors in He-P 806.05(e) is true; or

(12) 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 secession of operations when it finds that the health, safety or well-being of patients 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 806 is achieved.

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

(h) When a NEWCC's license has been denied or revoked, if the enforcement action specifically pertained to his or her role in the program, 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 from:

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

(2) The date an order is issued upholding the action of the department, if a request for an administrative hearing was made and a hearing was held.

(i) Notwithstanding (h) 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 806.

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

(j) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A or He-P 806.

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.14 Duties and Responsibilities of All Licensees.

- (a) The licensee shall comply with the patients' bill of rights as set forth in RSA 151:19–21.
- (b) The licensee shall define, in writing, the scope and type of services to be provided by the NEWCC and shall post the same in the facility and in all facility advertising including on the facility's website.
- (c) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the NEWCC.
- (d) All policies and procedures shall be reviewed and approved by the medical director.
- (e) The licensee shall assess and monitor the quality of care and service provided to patients on an ongoing basis.
- (f) The licensee or any employee shall not falsify any documentation or provide false or misleading information to the department.
- (g) The licensee shall not:
 - (1) Advertise or otherwise represent itself as operating a NEWCC, unless it is licensed; and
 - (2) Advertise that it provides services that it is not authorized to provide.
- (h) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.
- (i) Licensees shall:
 - (1) Initiate action to maintain the NEWCC 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;
 - (2) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the NEWCC;
 - (3) Appoint an administrator; and
 - (4) Implement any POC that has been accepted by the department.
- (j) The licensee shall consider all patients to be competent and capable of making health care decisions unless the patient:
 - (1) Has a guardian appointed by a court of competent jurisdiction;
 - (2) Has a durable power of attorney for health care that has been activated; or
 - (3) Is an un-emancipated minor.
- (k) 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.
- (l) 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;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) All inspection reports issued in accordance with He-P 806.08(d), for the previous 12 months;
 - (3) A copy of the patients' bill of rights;
 - (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;
 - (5) The licensee's plan for fire safety, evacuation and emergencies identifying the location of, and access to all fire exits; and
 - (6) A copy of the licensee's complaint procedure, including the address and phone number of the department to which complaints may also be made, which shall also be posted on the facility website if available.
- (m) The licensee shall admit and allow any department representative to inspect the NEWCC and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 806 as authorized by RSA 151:6 and RSA 151:6-a.
- (n) A licensee shall, upon request, provide a patient or the patient's guardian or agent, if any, with a copy of his or her patient record pursuant to the provisions of RSA 151:21, X.
- (o) All personnel and patient 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.
- (p) Any licensee that maintains electronic records shall develop written policies and procedures designed to protect the privacy of patients 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 patients and staff; and
 - (3) Systems to prevent tampering with information pertaining to patients and staff.
- (q) The licensee shall develop policies and procedures regarding the release of information contained in patient records.
- (r) The building housing the NEWCC shall comply with all state and local:
- (1) Health requirements;
 - (2) Building ordinances;
 - (3) Fire ordinances; and
 - (4) Zoning ordinances.
- (s) Smoking shall be prohibited in the NEWCC as required by RSA 155:66, I(b).

Source. #2349, eff 4-28-83; ss by #3193, eff 1-28-86; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5512, eff 11-25-92; ss by #6895, INTERIM, eff 11-26-98, EXPIRED: 3-26-99

New. #9655, eff 2-13-10

He-P 806.15 Organization and Administration.

- (a) Each facility shall have a governing body or owner whose responsibilities include:
- (1) Management and control of the operation;
 - (2) Assurance of the quality of care and services;
 - (3) Appointment of the medical director and clinic administrator;
 - (4) Determination of the qualifications and appointment of physicians, administrator, and other professional staff;
 - (5) Management of overall operation and fiscal viability of the clinic; and
 - (6) Ensuring compliance with all relevant health and safety requirements of federal, state and local laws and regulatory requirements.
- (b) Each facility shall have an administrator responsible for the day to day management and operation of the clinic.
- (c) Any administrator appointed after the 2010 effective date of these rules shall:
- (1) Possess at a minimum, a bachelor's degree in business or a health related field;
 - (2) Be an RN; or
 - (3) Have at least 4 years equivalent experience in a health-related field.
- (d) Each facility shall have a medical director who shall be a physician or APRN licensed in the state of New Hampshire and who shall have training and experience commensurate with the services offered by the clinic as determined by the governing body described in (a) above.
- (e) The medical director shall be responsible for:
- (1) The development and approval of clinic procedures;
 - (2) The development of facility protocols for assisting patients whose medical needs are outside the NEWCC's scope of practice;
 - (3) Monitoring and evaluation of the quality of patient care; and
 - (4) Providing medical direction, consultation and supervision to the professional staff.
- (f) The administrator and medical director may hold more than one position in the NEWCC and may serve in these capacities for multiple NEWCCs.

Source. #9655, eff 2-13-10

He-P 806.16 Personnel/Staffing.

- (a) Each NEWCC shall be staffed with at least one licensed practitioner on site during the full hours of operation.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) Professional staff appropriate to the services rendered shall be present in the facility during the full hours of operation.

(c) The licensee shall develop a job description for each position in the NEWCC containing, at a minimum:

(1) Duties of the position; and

(2) Qualifications, physical requirements, if any, and educational requirements of the position.

(d) For all new hires, the licensee shall:

(1) Obtain a criminal record check from the New Hampshire department of safety pursuant to RSA 151:2-d;

(2) Review the results of the criminal records check in accordance with (e) below; and

(3) Verify the qualifications of all applicants prior to employment.

(e) Unless a waiver is granted in accordance with He-P 806.10 and (f) below, the licensee shall not offer employment for any position 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 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 patients.

(f) The department shall grant a waiver of (e) 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 patients.

(g) If the information identified in (e) above regarding any employee is learned after the person is hired, the licensee shall immediately notify the department.

(h) The department shall review the information in (e) 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 patient.

(i) The waiver in (f) above shall be permanent unless additional convictions or findings under (e) above occur.

(j) All personnel shall:

(1) Meet the educational qualifications of the position as listed on their job description;

(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;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) Receive an orientation within the first week of employment that includes:
 - a. The NEWCC's policy on patient 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 NEWCC's policies, procedures and guidelines;
 - d. The NEWCC's infection control program;
 - e. The NEWCC's fire, evacuation, and emergency plans which outline the responsibilities of personnel in an emergency; and
 - f. The mandatory reporting requirements such as RSA 161-F:46-48 and RSA 169-C:29-31;
 - (5) Complete mandatory annual in-service education, which includes a review of the NEWCC's:
 - a. Policies and procedures on patient rights and responsibilities, and complaints;
 - b. Infection control program; and
 - c. Fire and emergency procedures;
 - (6) Be at least 18 years of age unless they are:
 - a. A licensed nursing assistant working under the supervision of a registered nurse in accordance with Nur 700; or
 - b. Part of an established educational program working under the supervision of a registered nurse;
 - (7) Prior to contact with patients, submit to the NEWCC the results of a physical examination or pre-employment health screening performed by a licensed nurse or a licensed practitioner and 2 step tuberculosis testing, Mantoux method, or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;
 - (8) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first test are negative for TB; and
 - (9) Comply with the requirements of the Centers for Disease Control "Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities Settings," 2005 edition, if the person has either a 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.
- (k) All personnel shall sign a statement at the time the initial offer of employment is made and then annually thereafter stating that they:
- (1) Do not have a felony conviction in this or any other state;
 - (2) Have not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation or pose a threat to the health, safety or well-being of a patient; and
 - (3) Have not 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.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(l) Personnel, volunteers, or independent contractors with a history of TB or a positive skin test, who are hired by the licensee and who will have direct care contact with patients shall have a symptomatology screen in lieu of a TB test.

(m) All personnel shall follow the orders of the licensed practitioner for each patient and encourage patients to follow the practitioner's order.

(n) Current, separate and complete personnel files shall be maintained and stored in a secure and confidential manner and made available at the NEWCC licensed premises upon request.

(o) The personnel records required by (n) 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, except as allowed by (j)(6) above; and

b. The education and work experience of the employee;

(2) A signed statement acknowledging the receipt of the NEWCC's policy setting forth the patients' 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 (j)(4) above and any required annual continuing education program;

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

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

(7) Documentation of annual in-service education as required by (j)(5) above;

(8) The statement signed at the time the initial offer of employment is made and renewed annually thereafter as required by (k) above; and

(9) Documentation of the criminal records check.

Source. #9655, eff 2-13-10

He-P 806.17 Patient Records.

(a) A patient record shall be maintained for each patient accepted for treatment by the facility.

(b) Patient records shall be:

(1) Current and maintained in detail based on services rendered to the patient; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Signed, either written or electronically, by all individuals providing care and treatment.
- (c) Patient records shall include:
- (1) Identification data, including the patient's:
 - a. Name;
 - b. Home address;
 - c. Home telephone number;
 - d. Emergency contact address and telephone number;
 - e. Date of birth; and
 - f. Legal guardian when applicable;
 - (2) A signed acknowledgment of receipt of the patients bill of rights and the facility's complaint procedures, signed by the patient or legal guardian;
 - (3) A record of a health assessment by a licensed practitioner or registered nurse;
 - (4) All orders for medications, treatments, special diets, laboratory service, and referrals to other practitioners, as applicable;
 - (5) Documentation of all services provided which shall include progress notes by nursing personnel, licensed practitioners, or other health professionals providing care; and
 - (6) Laboratory, x-ray or results of other diagnostic tests.
- (d) Patient records shall be available to the professional staff and health care workers and any other person authorized by law or rule to review such records.
- (e) Patient records shall be retained in the facility and stored in locked containers, cabinets, rooms or protected electronic files.
- (f) The facility shall develop a policy that complies with state and federal laws describing the method by which release of information from patient or patient records shall occur.
- (g) Patient records shall be safeguarded against loss or unauthorized use by implementation of use, handling and storage procedures.
- (h) Patient records shall be retained 7 years after discharge of a patient or patient. In the case of minors, patient records shall be retained until at least 3 years after reaching age 18, but in no case shall they be retained for less than 7 years after discharge.
- (i) The facility shall arrange for storage of and access to patient records for 7 years in the event the clinic ceases operation.
- (j) The facility shall notify the department where the storage required in (i) above is located.
- (k) Referrals to other health care providers shall occur if medically indicated and the facility does not provide the services required.

Source. #9655, eff 2-13-10

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

He-P 806.18 Quality Improvement.

- (a) The NEWCC 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 NEWCC shall determine the size and composition of the quality improvement committee based on the size of the facility and the care and services provided.
- (d) The quality improvement committee shall:
 - (1) Determine the information to be monitored, such as:
 - a. Infection surveillance;
 - b. Risk assessment;
 - c. Environmental safety; and
 - d. Monitoring of staff quality control practices in each service provided;
 - (2) Determine the frequency with which information will be reviewed;
 - (3) Evaluate the information that is gathered;
 - (4) Determine the action that is necessary to correct identified problems;
 - (5) Recommend corrective actions to the licensee;
 - (6) Evaluate the effectiveness of the corrective actions;
 - (7) Ensure that quality control logs are maintained for any laboratory controls and proficiency testing required; and
 - (8) Ensure that quality control logs for preventive maintenance and safety checks are maintained for all equipment according to manufacturer's recommendations.
- (e) The quality improvement committee shall meet at least quarterly.
- (f) The quality improvement committee shall generate dated, written minutes after each meeting.
- (g) Documentation of all quality improvement activities shall be maintained on-site for at least 2 years.

Source. #9655, eff 2-13-10

He-P 806.19 Infection Control and Sanitation.

- (a) The NEWCC 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 policies and procedures for:
 - (1) Proper hand washing techniques;
 - (2) The utilization of universal precautions;

- (3) The management of patients with infectious or contagious diseases or illnesses;
 - (4) The handling, storage, transportation and disposal of those items specified as infectious waste in Env-Sw 103.28 and regulated by Env-Sw 904; 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) Causes of infection;
 - (2) Effects of infections;
 - (3) Transmission of infections; and
 - (4) Prevention and containment of infections.
- (d) Any personnel infected with a disease or illness transmissible through food, fomites or droplets, shall not provide direct care in any capacity until they are no longer contagious unless they utilize appropriate infection control equipment as required by the facility's policy and procedures on infection control.
- (e) 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 person is on tuberculosis treatment and has been determined to be non-infectious by a licensed practitioner.
- (f) Personnel with an open wound who provide direct care in any capacity shall cover such wound at all times by an impermeable, durable, tight fitting bandage.
- (g) Personnel infected with scabies or lice/pediculosis shall not provide direct care to patients until such time as they are no longer infected.
- (h) Sterile supplies and equipment shall:
- (1) Be stored in dust-proof, moisture-free storage areas; and
 - (2) Not be mixed with un-sterile supplies.
- (i) All soiled items at the NEWCC shall be disposed of according to the facility's infection control policies.
- (j) All furniture, floors, ceilings, walls, and fixtures shall be clean, sanitary and in good repair.
- (k) 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, program supplies and other cleaning materials.
- (l) 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.
- (m) 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.
- (n) Bathrooms and laundry rooms, if present, shall have non-porous floors.
- (o) There shall be a designated, enclosed storage area for soiled, dirty, and bio-hazardous materials.

(p) If equipment or supplies need to be sterilized in order to prevent contamination, the NEWCC shall develop and maintain written procedures for cleaning, packaging and sterilization that includes:

- (1) Testing and documenting sterilization processes used;
- (2) Testing and documenting the effectiveness of sterilization equipment for adequate sterilization in accordance with the manufacturer's recommendations or using industry acceptable quality control standards;
- (3) Documentation when supplies are outdated; and
- (4) Ensuring that all sterile packages are stored separately from non-sterile supplies in an enclosed area.

(q) All patient bathing, if applicable, and toileting facilities shall be cleaned and disinfected as often as necessary to prevent illness or contamination,

(r) Any NEWCC 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. #9655, eff 2-13-10

He-P 806.20 Physical Environment.

(a) The physical environment shall be maintained, inside and outside, so as to provide for the health, safety, well-being and comfort of patients and personnel, including reasonable accommodations for patients and personnel with mobility limitations.

(b) Notwithstanding general access requirements from the American Institute of Architects' "Guidelines for Design and Construction of Health Care Facilities," 2006 edition, a NEWCC located on the premises of another entity shall not be required to provide separate exterior entrances or designated parking, or to provide a patient waiting area or reception area that is separated from the public area of the host entity.

(c) Equipment providing heat within an NEWCC 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 if patient(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.

(d) Electric heating systems shall be exempt from (c)(2) above.

(e) 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.

(f) Unvented fuel-fired heaters shall not be used in any NEWCC.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(g) 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.

(h) Ventilation shall be provided throughout the entire building by means of a mechanical ventilation system or with one or more screened windows that can be opened.

(i) Screens shall be provided for doors, windows or other openings to the outside.

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

(k) In accordance with RSA 155:66, I(b), smoking shall be prohibited in the NEWCC.

(l) All NEWCCs shall have access within the NEWCC to a bathroom with a toilet, a hand washing sink, soap dispenser, paper towels or a hand-drying device providing heated air, and hot and cold running water.

(m) All bathrooms doors shall have a side hinge door and not a folding or sliding door or a curtain.

(n) Notwithstanding (l) above, if the NEWCC is located within a retail store that has a public bathroom with a toilet and the bathroom complies with all applicable sanitation and construction regulations, the NEWCC shall not be required to have its own bathroom but shall:

(1) Have its own hand washing sink with hot and cold running water, soap dispenser, and paper towels or a hand-drying device providing heated air, and

(2) Not permit biological samples collected in the retail store's public bathroom to be transported through the retail store except in properly enclosed biohazard containers and bags.

(o) There shall be sufficient space and equipment for the services provided at the NEWCC.

(p) All exam tables shall be changed with clean linens or common paper between use by different patients.

(q) The licensee shall provide patients with continuous access to a device or means that will signal NEWCC personnel when they are in need of assistance.

(r) All bathroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.

(s) If available, all showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.

(t) All mattresses and new upholstered furniture or draperies shall comply with the applicable portions of Saf-C 6000.

(u) A privacy partition, curtain, or screen shall be required between beds in semiprivate rooms

(v) The NEWCC shall keep all entrances and exits to the licensed premises accessible at all times during hours of operation.

(w) The NEWCC shall be clean, sanitary, maintained in a safe manner and good repair, and kept free of hazards.

(x) The NEWCC shall provide the following:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Reception and waiting areas that include a reception desk or counter, chairs, tables and lighting adequate to read materials and complete forms as required;
 - (2) Public access to toilet facilities with non-porous floors;
 - (3) A number of examination and treatment rooms adequate to provide services to the average number of patients seen daily; and
 - (4) Hot water available at all times from taps available to patients and not less than 105 degrees Fahrenheit or more than 120 degrees Fahrenheit.
- (y) Medical waste shall be disposed of in accordance with the requirements of Env-Sw 904.
- (z) Except as described in (b) above, the NEWCC shall comply with all federal, state and local health, building, fire and zoning laws, rules and ordinances.
- (aa) The water used in the NEWCC shall be suitable for human consumption, pursuant to Env-Ws 315 and Env-Ws 316.

Source. #9655, eff 2-13-10

He-P 806.21 Emergency and Fire Safety.

- (a) All NEWCCs shall meet the appropriate chapter of NFPA 101 as adopted by the commissioner of the department of safety in Saf-C 6000.
- (b) An emergency and fire safety program shall be developed and implemented to provide for the safety of patients and personnel.
- (c) The NEWCC shall immediately notify the department by phone, fax or electronic mail within 24 hours, and in writing within 72 hours, of any fire or situation, excluding a false alarm, that requires either an emergency response to the NEWCC or the evacuation of the licensed premises.
- (d) The written notification required by (c) 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 patients or personnel or damage sustained by the NEWCC;
 - (3) A description of events preceding and following the incident;
 - (4) The name of any personnel or patients who were evacuated as a result of the incident, if applicable;
 - (5) The name of any personnel or patient 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.
- (e) For the use and storage of oxygen and other related gases, NEWCCs shall comply with NFPA 99 as adopted by the commissioner of the department of safety under Saf-C 6000 including, but not limited to, the following:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) All freestanding compressed gas cylinders shall be firmly secured to the adjacent wall or secured in a stand or rack;
- (2) Storage locations shall be outdoors in an enclosure or within an enclosed interior space of noncombustible or limited-combustible construction, with doors, or with gates if outdoors, that can be secured against unauthorized entry;
- (3) Oxidizing gases, such as oxygen and nitrous oxide, shall:
 - a. Not be stored with any flammable gas, liquid, or vapor;
 - b. Be separated from combustibles or incompatible materials by:
 1. A minimum distance of 20 ft (6.1 m);
 2. A minimum distance of 5 ft (1.5 m) if the entire storage location is protected by an automatic sprinkler system designed in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems; or
 3. An enclosed cabinet of noncombustible construction having a minimum fire protection rating of 1/2 hour; and
 - c. Shall be secured in an upright position, such as with racks or chains;
- (4) A precautionary sign, readable from a distance of 5 ft (1.5 m), shall be conspicuously displayed on each door or gate of the storage room or enclosure, and shall include, at a minimum, the following: "CAUTION, OXIDIZING GAS(ES) STORED WITHIN - NO SMOKING"; and
- (5) Precautionary signs, readable from a distance of 5 ft (1.5 m), and with language such as "OXYGEN IN USE, NO SMOKING", shall be conspicuously displayed wherever supplemental oxygen is in use and in aisles and walkways leading to the area of use, and shall be attached to adjacent doorways or to building walls or be supported by other appropriate means.
- (f) Each licensee shall develop a written emergency plan that covers:
 - (1) Loss of electricity, water and or heat;
 - (2) Bomb threat;
 - (3) Severe weather;
 - (4) Fire;
 - (5) Gas leaks; and
 - (6) Any situation that requires evacuation or closure of the NEWCC.
- (g) Each licensee shall annually review and revise, as needed, its emergency plan.
- (h) Evacuation drills shall include the transmission of a fire alarm signal if a fire alarm system is installed, and simulation of emergency fire condition.
- (i) Evacuation drills shall be quarterly and vary in time, as needed, to include all staff.
- (j) All staff shall participate in at least one drill quarterly.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(k) For NEWCCs located within a retail store or pharmacy, the fire drill shall consist of a required review of all fire safety procedures and exit protocols for the retail store or pharmacy. All personnel on duty shall participate fully in each drill held by the retail store or pharmacy in which the NEWCC may be located.

(l) For personnel who are unable to participate in the scheduled drill as required in (j) 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.

(m) Personnel who are unable to participate in a drill in accordance with (j) above shall participate in a drill within the next quarter.

(n) Regular staff, including per-diem or temporary personnel shall not be the only person(s) on duty unless they have:

- (1) Participated in at least one actual fire drill in the facility in the past year; and
- (2) Participated in the facility's orientation program pursuant to He-P 806.16.

(o) All emergency and evacuation drills shall be documented and include the following information:

- (1) The names of the personnel involved in the evacuation;
- (2) The number of patients involved in the evacuation;
- (3) The time, including AM or PM, date, month, and year the drill was conducted;
- (4) The exits utilized;
- (5) The total time necessary to evacuate the NEWCC;
- (6) The time needed to complete the drill; and
- (7) Any problems encountered and corrective actions taken to rectify problems.

Source. #9655, eff 2-13-10

He-P 806.22 Pharmacy and Medications.

(a) Medications shall be administered only by a person licensed to do so by the State of NH.

(b) If an emergency drug cart is maintained, it shall be under the control of a licensed nurse or physician and shall be inventoried and maintained according to the written policy of the medical director.

(c) All medications shall be stored in a clean well-organized cabinet or closet which shall be locked when not in use.

(d) Appropriate security provisions shall be made for medications requiring refrigeration.

(e) Security provisions such as locked drawers shall be made for individual physician samples if no central storage location is established.

(f) Schedule I and II drugs scheduled in accordance with RSA 318-B:1-a shall be stored in a locked compartment within the locked medicine cabinet or closet.

(g) Disposal of outdated medications and controlled drugs shall be in accordance with state and local ordinances and the provisions of RSA 318-B and Ph 707.

Source. #9655, eff 2-13-10

He-P 806.23 Laboratory. Any NEWCC which obtains or performs tests on human samples for diagnostic or treatment purposes shall meet the following:

(a) Only tests designated as “CLIA waived” by the FDA may be performed unless the facility is also licensed by the State of New Hampshire as a laboratory under He-P 808;

(b) The NEWCC shall hold a CLIA “certificate of waiver” or “provider performed microscopy” and comply with all regulations contained in 42 CFR 493 for the appropriate CLIA certificate;

(c) A procedure manual shall:

(1) Be readily accessible at all times to testing personnel; and

(2) Contain:

a. The written procedure for each test performed in the laboratory;

b. A copy of the package insert for each test performed;

c. The laboratory’s procedure for test requisition and specimen collection;

d. The specimen handling and follow-up procedure for all patient samples that are referred to another laboratory for testing;

e. The phlebotomy procedure;

f. Job descriptions for the testing personnel and specimen collection personnel; and

g. Documentation that the medical director has approved all procedures;

(d) Unless the facility holds a separate He-P 808 license for the laboratory, the medical director required by He-P 806.15 (d) shall be the medical director for all laboratory testing;

(e) All patient test requisitions, reports and records shall be completed and maintained in accordance with 42 CFR 493;

(f) All patient test requisitions, reports and records shall be safeguarded against loss, damage, tampering, and unauthorized access and maintained for a minimum of 4 years;

(g) Recordings of refrigerator and freezer temperatures shall be done each day specimens are collected and shall fall within the following ranges:

(1) Refrigerator temperatures shall be between 2 and 8 degrees centigrade; and

(2) Freezer temperatures shall be colder than minus 10 degrees centigrade;

(h) Centrifuge speed shall fall between 2800 and 3500 revolutions per minute or as specified by the manufacturer and be verified by tachometer on an annual basis;

(i) No expired specimen collection equipment and reagents, such as vacutainer tubes and glucoala, shall be retained in the station or used for specimen collection;

(j) Corrective measures such as repair or replacement shall be made in the event of an equipment failure and a written record of the corrective measures shall be kept at the NEWCC;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(k) All testing personnel shall, at a minimum, meet one of the following:

- (1) Have an associates degree in a laboratory science or in medical laboratory technology from an accredited institution;
- (2) Be federally certified as a medical laboratory technician by the US Department of Health, Education and Welfare (HEW);
- (3) Have attained the level of medical laboratory technician or its equivalent in military service; or
- (4) Have at least 2 years post high school education in a life science leading to certification in a health care field;

(l) The medical director shall assure that all testing and phlebotomy personnel have a documented annual competency review that shall include a visual inspection of the performance of a phlebotomy and each test method performed; and

(m) If the NEWCC performs phlebotomies to collect blood specimens for testing, the facility shall have:

- (1) A blood collection chair with a device to prevent patient falls or a reclining chair;
- (2) A cot or an alternative method that allows a patient to lie down in the event of dizziness or illness;
- (3) A specimen collection area that:
 - a. Is separate from the reception area;
 - b. Contains a work counter and hand washing facilities;
 - c. Measures, at a minimum, 36 square feet; and
 - d. Maintains patient confidentiality and privacy; and
- (4) A processing area that, at a minimum, has 6 linear feet of counter space.

Source. #9655, eff 2-13-10

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 806.01 – He-P 806.03	RSA 151:9,I(a)(b)
He-P 806.04 – He-P 806.06	RSA 151:2,I and II and RSA 151:9,I
He-P 806.07	RSA 151:9,I(a)
He-P 806.08	RSA 151:9,I(e)
He-P 806.09	RSA 151:9,I(a)
He-P 806.10	RSA 151:9,I(e)
He-P 806.11	RSA 151:9,I(f)(g)(l)(m)
He-P 806.12	RSA 151:9,I(f)(h)(l)
He-P 806.13 – He-P 806.23	RSA 151:9,I(a)