

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

PART He-P 809 HOME HEALTH CARE PROVIDERS

He-P 809.01 Purpose. The purpose of this part is to set forth the licensing requirements for all home health care providers (HHCPs) pursuant to RSA 151:2, I(b).

Source. #4073, eff 6-26-86, EXPIRED: 6-26-92

New. #5630, eff 5-26-93; amd by #6240, HB 32, eff 5-3-96, EXPIRED 12-31-98; ss and amd by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09

He-P 809.02 Scope. This part shall apply to any organization, business entity, partnership, corporation, government entity, association or other legal entity operating a HHCP, except:

- (a) All facilities listed in RSA 151:2, II(a)-(g);
- (b) Agencies that are certified by the department as other qualified agencies delivering personal care services in accordance with RSA 161-H;
- (c) Entities that are licensed under another home health care license and are providing only the services permitted under that license;
- (d) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use; and
- (e) For a period ending 4 years from the 2015 effective date of this rule, emergency medical services units and emergency medical care providers operating under the jurisdiction and regulatory oversight of the New Hampshire department of safety, bureau of emergency medical services, in compliance with the “mobile integrated healthcare protocol” contained in the New Hampshire patient care protocols, incorporated by reference in Sac-C 5902.01.

Source. #4073, eff 6-26-86, EXPIRED: 6-26-92

New. #5630, eff 5-26-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09; ss by #10939, eff 9-25-15

He-P 809.03 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, self-management, and monitoring or supervision 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 or He-P 809.

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(e) “Administrator” means the licensee, or an individual appointed by the licensee, who is responsible for all aspects of the daily operations of the HHCP.

(f) “Admission” means accepted by a licensee for the provision of services to a client.

(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.

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

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

(j) “Branch office” means a location physically separate from the primary location of the HHCP and that:

(1) Provides oversight for employees who provide direct care services to clients in their residential setting; and

(2) Is under the administration and supervision of the primary location of the HHCP.

(k) “Care plan” means a written guide developed by the licensee, or its personnel, in consultation with the client, guardian, agent or personal representative, if any, as a result of the assessment process for the provision of care and services as required by He-P 809.15(o)-(q).

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

(m) “Client” means any person admitted to or in any way receiving care, services or both from a HHCP licensed in accordance with RSA 151 and He-P 809.

(n) “Client record” means the documentation of all care and services, which includes all documentation required by RSA 151 and He-P 809 and any other applicable federal and state requirements.

(o) “Client rights” means the privileges and responsibilities possessed by each client provided by RSA 151:21-b.

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

(q) “Coordinator” means a person from the HHCP who coordinates the care and services necessary to provide optimum health care management for the client.

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

(s) “Deficiency” means any action, failure to act or other set of circumstances that causes a licensee to be out of compliance with RSA 151 or He-P 809.

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

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

(v) “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.

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(w) “Drop site” means a location, which does not meet the definition of a branch office, where materials, equipment and supplies used in the provision of services may be temporarily stored.

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

(y) “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 client.

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

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

(ab) “Home health care provider (HHCP)” means any organization or business entity, whether public or private, whether operated for profit or not, which is engaged in arranging or providing, directly or through contract arrangement, one or more of the following services: nursing services, home health aide services, or other therapeutic and related services, which can include but are not limited to, physical and occupational therapy, speech pathology, nutritional services, medical social services, personal care services and homemaker services which may be of a preventative, therapeutic, rehabilitative, health guidance or supportive nature to persons in their places of residence.

(ac) “Homemaker services” means services that are of a supportive nature that do not routinely require hands-on contact with a client other than to maintain the client’s safety. Such services may include, but are not limited to, laundry, housecleaning, cooking, transporting to and from medical or other appointments, shopping, companion services, and medication reminders.

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

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

(af) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 809 or to respond to allegations of non-compliance with RSA 151 and He-P 809.

(ag) “Investigation” means the process used by the department to respond to allegations of non-compliance with RSA 151 and He-P 809.

(ah) “License” means the document issued to an applicant or licensee of an HHCP which authorizes operation in accordance with RSA 151 and He-P 809, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

(ai) “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 HHCP is licensed for.

(aj) “Licensed practitioner” means a:

(1) Medical doctor;

(2) Physician’s assistant;

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- (3) Advanced registered nurse practitioner (ARNP);
- (4) Doctor of osteopathy; or
- (5) Doctor of naturopathic medicine.

(ak) “Licensed premises” means the building(s) that comprises the physical location the department has approved for the licensee to conduct operations in accordance with its license. This term includes branch offices. This term does not include drop sites or the private residence of a client receiving services from a HHCP.

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

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

(an) “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 client.

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

(ap) “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.

(aq) “Personal care service provider” means a person who provides non-medical hands-on assistance to a client, helping with activities of daily living such as grooming, toileting, eating, dressing, bathing, getting into or out of a bed or chair, walking, or reminding client to take medications.

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

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

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

(au) “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.

(av) “Primary location” means the principal site for the HHCP where the business office and administrative staff are located.

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

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

(ay) “Professional staff” means:

- (1) Physicians;
- (2) Physician assistants;

- (3) Advanced registered nurse practitioners;
- (4) Registered nurses;
- (5) Registered physical therapists;
- (6) Speech therapists;
- (7) Licensed practical nurses;
- (8) Licensed respiratory therapists;
- (9) Occupational therapists;
- (10) Medical social workers; and
- (11) Dietitians.

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

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

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

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

(bd) “Unusual incident” means an occurrence of an error, a negative outcome, or an accident, which occurs while personnel of the HHCP are physically present in the client’s home, and has resulted in an injury that requires treatment by a licensed practitioner within 24 hours.

Source. #4073, eff 6-26-86, EXPIRED: 6-26-92

New. #5630, eff 5-26-93; amd by #6240, HB 32, eff 5-3-96, EXPIRED 12-31-98; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09

He-P 809.04 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.”;

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- (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 HHCP administrator;
- (5) Written local approvals as follows:
- a. For the proposed licensed premises 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;
    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 time of the application based on the local official's review of the building plans and again upon completion of the construction project;
- (6) A written disclosure from the applicant, licensee, and 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; and
- (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.

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(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. #4073, eff 6-26-86, EXPIRED: 6-26-92

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New. #9466, eff 5-2-09

He-P 809.05 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 809.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 809.04(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) Unless a waiver has been granted in accordance with He-P 809.10, the department shall deny a licensing request in accordance with He-P 809.13(b) after reviewing the information in He-P 809.04(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 809.09 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 809.

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

Source. #4073, eff 6-26-86, EXPIRED: 6-26-92

New. #5630, eff 5-26-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09

He-P 809.06 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 809.04(a) 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 809.04(a)(1), (3), (5), and (6);

(2) The current license number;

(3) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 809.10(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 809 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 809.04.

(f) If a licensee chooses to cease the operation of the HHCP, 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 809.04(a)(6) and deny a license renewal in accordance with He-P 809.05(e).

Source. #4073, eff 6-26-86, EXPIRED: 6-26-92

New. #5630, eff 5-26-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09

He-P 809.07 Branch Offices and Drop Sites.

(a) The HHCP may establish branch offices and drop sites provided that no direct client care is provided at a drop site.

(b) The HHCP shall notify the department in writing prior to operating branch offices with the following information:

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- (1) The branch address;
- (2) The branch phone number; and
- (3) The license number of the HHCP.

(c) The HHCP shall submit to the department the information required by He-P 809.04(a)(5) for branch offices.

(d) Upon receipt of the information required by (b) and (c) above, the department shall issue a revised license certificate to reflect the addition of the branch offices, provided the additions do not violate RSA 151 or He-P 809.

(e) All records, including those maintained at any branch office, shall be made available to the inspector at the primary location of the licensed premises at the time of inspection.

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New. #5630, eff 5-26-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09

He-P 809.08 HHCP Requirements for Organizational or Service Changes.

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

- (1) Ownership;
- (2) Physical location of the licensed premises;
- (3) Address;
- (4) Name; and
- (5) Services.

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

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

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

(d) The HHCP 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 809.04(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.

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(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) Does not have a history of any of the criteria identified in He-P 809.05(e); and
- (2) Meets the qualifications for the position, as specified in He-P 809.15(d) for an administrator.

(f) If the department determines that the new administrator does not meet the qualifications for his or her position, it shall so notify the program in writing so that a waiver can be sought or the program can search for a qualified candidate.

(g) When there is a change in the name, prior to using the new name, the HHCP 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 HHCP 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 HHCP'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;
- (3) When a waiver has been granted; or
- (4) The addition of a branch office.

(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.

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New. #5630, eff 5-26-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #9466, eff 5-2-09

He-P 809.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 809, 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 HHCP; and
- (3) Any records required by RSA 151 and He-P 809.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 809 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as allowed by He-P 809.08(j)(1);
- (3) A change in licensing classification; or
- (4) 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.

(d) A notice of deficiencies shall be issued when, as a result of an inspection, the department determines that the HHCP is in violation of any of the provisions of He-P 809 or RSA 151.

(e) If deficiencies were cited, the licensee shall submit a POC, in accordance with He-P 809.12(c).

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New. #9466, eff 5-2-09

He-P 809.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 809 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 clients 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.

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(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 clients; and
- (3) Does not affect the quality of client 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 809.06(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.

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New. #6240, HB 32, eff 5-3-96, EXPIRED: 12-31-98

New. #9466, eff 5-2-09

He-P 809.11 Complaints.

(a) The department shall investigate complaints that allege:

- (1) A violation of RSA 151 or He-P 809;
- (2) That an individual or entity is operating as a HHCP without being licensed; or
- (3) That an individual or entity is advertising or otherwise representing the HHCP 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 HHCP, 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 809.

(c) For a licensed HHCP, 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

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(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 809.12(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(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 HHCP 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 809; 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 809 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. #4073, eff 6-26-86, EXPIRED: 6-26-92

New. #9466, eff 5-2-09

He-P 809.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 809 or other applicable licensing rules, including:

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- (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
      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 client 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 809;

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- b. Addresses all deficiencies and deficient practices as cited in the inspection report;
  - c. Prevents a new violation of RSA 151 or He-P 809 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 client 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, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(11) 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 He-P 809.11(c); and
  - b. Issued a directed POC in accordance with (d) below and a fine in accordance with (f)(12) 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 clients and personnel;

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- (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)(12) below;
  - (2) Deny the application for a renewal of a license; or
  - (3) Revoke the license in accordance with He-P 809.13.
- (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;
  - (4) For a failure to transfer a client whose needs exceeds the services or programs provided by the HHCP, in violation of RSA 151:5-a, the fine for a licensee shall be \$500.00;
  - (5) For admission of a client whose needs exceed the services or programs authorized by the HHCP, in violation of RSA 151:5-a, II, the fine for a licensee shall be \$1000.00;
  - (6) 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 809.11(i), the fine for an unlicensed provider or a licensee shall be \$500.00;
  - (7) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 809.06(b), the fine for a licensee shall be \$100.00;
  - (8) For a failure to notify the department prior to a change of ownership, in violation of He-P 809.08(a)(1), the fine for a licensee shall be \$500.00;
  - (9) For a failure to notify the department prior to a change in the physical location, in violation of He-P 809.08(a)(2), the fine for a licensee shall be \$500.00;
  - (10) For a failure to allow access by the department to the HHCP's premises, programs, services, clients or records, in violation of He-P 809.09(a)(1)-(3), the fine for an applicant, unlicensed individual or 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 809.12(c)(2) or (6), the fine for a licensee shall be \$100.00;

- (12) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 809.12(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 809.14(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 809.14(c), the fine for a licensee shall be \$500.00;
- (15) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 809.14(f), the fine for an applicant or licensee shall be \$500.00 per offense;
- (16) For a failure to meet the needs of the client, in violation of He-P 809.14(i)(2), the fine for a licensee shall be \$500.00;
- (17) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 809.14(i)(6), the fine for a licensee shall be \$500.00;
- (18) When an inspection determines that a violation of RSA 151 or He-P 809 has the potential to jeopardize the health, safety or well-being of a client, 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;
- (19) Each day that the licensee continues to be in violation of the provisions of RSA 151 or He-P 809 shall constitute a separate violation and shall be fined in accordance with He-P 809.12; and
- (20) 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:
- (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. #9466, eff 5-2-09

He-P 809.13 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.

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- (b) The department shall deny an application or revoke a license if:
- (1) An applicant or a licensee violated RSA 151 or He-P 809 in a manner which posed a risk of harm to a client'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 809.04;
  - (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, 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 809.12(c)(11) and (e);
  - (7) The licensee has submitted a POC that has not been accepted by the department in accordance with He-P 809.12(c)(3) and has not submitted a revised POC as required by He-P 809.12(c)(6);
  - (8) The licensee is cited a third time under RSA 151 or He-P 809 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 licensed premises is not in compliance with RSA 151 or He-P 809;
  - (11) The department makes a determination that one or more of the factors in He-P 809.05(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, the cessation of services, and the transfer of care of clients when it finds that the health, safety or well-being of clients is in jeopardy and requires emergency action in accordance with RSA 541:A-30, III.

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(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 809 is achieved.

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

(h) When a HHCP's license has been denied or revoked, if the enforcement action specifically pertained to his or her role in the program, the applicant, licensee, 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 809.

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

(k) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A or He-P 809.

Source. #9466, eff 5-2-09

He-P 809.14 Duties and Responsibilities of All Licensees.

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

(b) The licensee shall have a written policy setting forth the rights and responsibilities of clients receiving services from the HHCP, as well as written procedures to implement its policy to ensure that the rights set forth in RSA 151:21-b, "Home Care Clients' Bill of Rights" are upheld.

(c) The licensee shall define, in writing, the scope and type of services to be provided by the HHCP.

(d) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the HHCP and for:

(1) Reviewing the policies and procedures every 2 years; and

(2) Revising them as needed.

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

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

(g) The licensee shall not advertise or otherwise represent the HHCP as providing services that it is not licensed to provide, pursuant to RSA 151:2, III.

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(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) Manage and operate the HHCP;
- (2) Meet the needs, as determined by the care plan, of the client during those hours that the HHCP staff is in the client's home;
- (3) Initiate action to maintain the HHCP 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;
- (4) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the HHCP;
- (5) Appoint an administrator;
- (6) Verify the qualifications of all personnel;
- (7) Accept new clients based upon the availability of personnel to meet the clients' requested service needs;
- (8) Require all personnel to follow the orders of the licensed practitioner for every client that has orders and encourage the client to follow the licensed practitioner's orders; and
- (9) Implement any POC that has been accepted or issued by the department.

(j) The licensee shall consider all clients to be competent and capable of making all decisions relative to their own health care unless the client:

- (1) Has a guardian or conservator appointed by a court of competent jurisdiction; or
- (2) Has a durable power of attorney for health care that has been activated in accordance with RSA 137-J.

(k) The licensee shall only accept a client whose needs can be met through the program and services offered under the current license.

(l) If the licensee accepts a client 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 clients, 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).

(m) 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.

(n) 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 for the last 12 months issued in accordance with He-P 809.09(d) and He-P 809.11(e);

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- (3) A copy of the “Home Care Clients’ Bill of Rights” specified by RSA 151:21-b;
  - (4) A copy of the licensee’s policies and procedures relative to the implementation of client rights and responsibilities;
  - (4) A copy of the licensee’s complaint procedure; and
  - (6) The licensee’s plan for fire safety, evacuation and emergencies, identifying the location of, and access to all fire exits.
- (o) Licensees shall contact the department in writing within 3 business days to report an unusual incident and provide the following information:
- (1) The HHCP name;
  - (2) A description of the incident, including identification of injuries, if applicable;
  - (3) The name of the licensee(s) or personnel involved in, witnessing or responding to the unusual incident;
  - (4) An identifier for the client involved and the name of any witnesses to the unusual incident;
  - (5) The date and time of the unusual incident;
  - (6) The action taken in direct response to the unusual incident, including any follow-up;
  - (7) The medical intervention rendered, by whom and the date and time;
  - (8) Whether the client’s guardian and/or agent, if any, was notified;
  - (9) The signature of the person reporting the unusual incident;
  - (10) The date and time the client’s licensed practitioner was notified; and
  - (11) The actions taken to prevent a reoccurrence.
- (p) The licensee shall admit and allow any department representative to inspect the HHCP and all programs and services that are being providing at any time for the purpose of determining compliance with RSA 151 and He-P 809 as authorized by RSA 151:6 and RSA 151:6-a.
- (q) The licensee shall, upon request, provide a client or their guardian or agent, if applicable, with a copy of his or her client record, pursuant to the provisions of RSA 151:21, X.
- (r) All records required for licensing shall be legible, current, accurate and be made available to the department during an inspection or investigation conducted in accordance with RSA 151:6 and RSA 151:6-a.
- (s) Any licensee that maintains electronic records shall develop a system with written policies and procedures to protect the privacy of clients and personnel that, at a minimum, include:
- (1) Procedures for backing up files to prevent deletion;
  - (2) Safeguards for maintaining the confidentiality of information pertaining to clients and personnel; and
  - (3) Systems to prevent tampering with information pertaining to clients and personnel.

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(t) The licensee shall develop policy and procedures regarding the release of information from client records.

(u) At the time of admission the licensee shall give a client and their guardian and agent, if applicable, a listing of all applicable HHCP's charges and identify what care and services are included in the charge.

(v) The licensee shall give a client a written notice before any increase is imposed in the cost or fees, for any HHCP services.

(w) The HHCP shall comply with all federal, state and local health, building, fire and zoning laws, rules and ordinances.

Source. #9466, eff 5-2-09

He-P 809.15 Required Services.

(a) The licensee shall have a written contractual agreement for all services provided by arrangement.

(b) Any contractual agreement to provide care and services shall:

- (1) Identify the care and services to be provided;
- (2) Specify the qualifications of the personnel that will be providing the care and services;
- (3) Require that the HHCP must authorize the services; and
- (4) Stipulate the HHCP retains professional responsibility for all care and services provided.

(c) The licensee shall provide staff for the following positions:

- (1) An administrator to oversee the scope of the program, except as allowed by (e)(1) below; and
- (2) A director of client services.

(d) Any administrator appointed after the effective date of these rules shall possess at least a bachelor's degree in business or a health related field, or be a registered nurse (RN).

(e) The administrator shall:

- (1) Designate, in writing, an alternate administrator who shall assume the responsibilities of the administrator in his or her absence; and
- (2) Be permitted to hold more than one position at the HHCP if:
  - a. The individual meets the qualifications of all positions; and
  - b. The duties and responsibilities of the positions can be accomplished by one individual.

(f) Any director of client services appointed after the effective date of these rules shall:

- (1) Either:
  - a. Be a New Hampshire–licensed registered nurse; or
  - b. Have a bachelor's degree in a health related field; and
- (2) Have at least 2 year's experience supervising personnel or providing direct home health care services.

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(g) The director of client services shall be responsible for the overall delivery of client care and services.

(h) At the time of admission, personnel of the HHCP shall:

(1) Provide, both orally and in writing, to the client, or the client's guardian or agent, if applicable, the HHCP's:

- a. Policy on client rights and responsibilities, including a copy of the Home Care Clients' Bill of Rights, pursuant to RSA 151:21-b;
- b. Complaint procedure;
- c. List of services that are to be provided by the HHCP; and
- d. List of the care and services that are provided by contract;

(2) Obtain written confirmation acknowledging receipt of the items in (1) above from the client, their guardian or agent, if applicable;

(3) Collect and record the following information:

- a. Client's name, home address, home telephone number and date of birth;
- b. Name and telephone number of an emergency contact and guardian and/or agent, if applicable;
- c. Name of client's primary care provider and the provider's address and telephone number as applicable;
- d. Written and signed consent for the provision of care and services; and
- e. Copies of all legal directives such as durable power of attorney, guardian or living will as applicable; and

(4) Obtain documentation of informed consent and consent for release of information.

(i) Each client shall have a health assessment by professional personnel in the specific discipline providing care to determine the level of care and services required by the client except as allowed by (k) and (l) below:

- (1) Prior to initiating care for the specified discipline;
- (2) At least every 90 days thereafter; and
- (3) Whenever there is a significant change in the client's condition.

(j) The assessment required by (i) above shall contain at a minimum the following:

- (1) Pertinent diagnoses including mental status;
- (2) Goals and objectives of the services that shall be provided by the HHCP;
- (3) Estimated duration and frequency of care and services;
- (4) Any equipment required;

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- (5) Prognosis;
  - (6) Functional limitations;
  - (7) Rehabilitation potential;
  - (8) Activities that are limited;
  - (9) Nutritional requirements;
  - (10) Medications and treatments administered or supervised by personnel of HHCP;
  - (11) Any safety precautions; and
  - (12) Discharge planning or referral information as applicable.
- (k) Clients requiring only homemaker services shall not require an assessment or a care plan.
- (l) Clients requiring personal care services shall have an assessment performed initially and every 6 months by a registered nurse, licensed practical nurse (LPN), or the director of client services to determine the level of services required that shall at a minimum include (j)(1), (4), (6), (8), (9), (10) and (11) above.
- (m) If the assessment required by (i) above is completed by an LPN, the assessment shall be reviewed and co-signed by the registered nurse or physician that is supervising the LPN prior to the development of the client's care plan.
- (n) The licensee shall develop a care plan within 3 business days of admission or prior to the initiation of services, if later, that is based on the results of the assessments required by (i), (l), and (m) above.
- (o) The care plan required by (n) above shall include:
- (1) The date of the assessment;
  - (2) A description of the problem or need;
  - (3) The goal for the client, if applicable, and whether there are any medical, nursing or therapeutic contraindications to the provision of these services by personal care service providers as defined by RSA 161-I;
  - (4) The action or approach to be taken by HHCP personnel;
  - (5) The responsible person(s) or position;
  - (6) The date of re-evaluation, reassessment and/or resolution; and
  - (7) Documentation that the client and their legal representative, if applicable, were involved in the development of the care plan and any revisions made to the plan.
- (p) The care plan based on the assessments in (i) and (m) shall be prepared by an interdisciplinary team that includes:
- (1) The personnel performing the assessment;
  - (2) Other personnel in disciplines as determined by the client's needs; and
  - (3) The client or the client's legal representative.

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(q) The care plan shall be reviewed and revised at least every 90 days by the interdisciplinary team, or every 6 months if only personal care services are provided, and shall be made available to all personnel that assist the client in the implementation of the plan.

(r) The licensee shall have a written order for any service for which such order is required by the licensing statute of the licensed practitioner. Such orders shall be renewed at least annually.

(s) All personnel of the HHCP shall follow the orders of the licensed practitioner and carry out the goals stated in the care plan.

(t) The licensee shall develop a discharge plan with the input of the client or the client's legal representative, if any, including:

- (1) Date and reason for discharge;
  - (2) Discharge instructions and referrals, if applicable;
  - (3) Discharge or transfer summary; and
  - (4) Signed order for discharge, if applicable.
- (u) Written notes shall be documented in the client's record at the time of each visit for:

- (1) All care and services provided by the HHCP and shall include the:
  - a. Date and time of the care or service;
  - b. Description of the care or service;
  - c. Progress notes, including, as applicable;
    1. Changes in the client's physical, functional and mental abilities;
    2. Changes in the client's behaviors such as eating or sleeping patterns; and
    3. The client's pain management, if applicable; and
  - d. Signature and title of the person providing the care or service; and
- (2) Any unusual incident involving the client when HHCP personnel are in the client's home.

(v) For each client accepted for care and services by the HHCP, a current and accurate record shall be maintained and include, at a minimum:

- (1) The written confirmation required by (h)(2) above;
- (2) The identification data required by (h)(3) above;
- (3) Consent and medical release forms, as applicable;
- (4) Consent for release of information, as applicable;
- (5) The record of the assessment required by (i) or (l) above.
- (6) All orders from a licensed practitioner, including the date and signature of the licensed practitioner required by (r) above;

- (7) All care plans required by (p) above including documentation that the client or their legal representative participated in the development of the care plan;
  - (8) All written notes required by (u) above;
  - (9) All daily medication records required by He-P 809.16(e) and (f);
  - (10) A discharge plan or transfer summary as required by (t) above;
  - (11) Documentation of service authorization, if required, for a client receiving third party payment including but not limited to medicaid waiver services; and
  - (12) Documentation of any client refusal to follow their licensed practitioner's orders.
- (w) Client records shall be available to:
- (1) The client, the client's guardian, and the client's agent;
  - (2) HHCP personnel as required by their job responsibilities and subject to the licensee's policy on confidentiality;
  - (3) Any individual given written authorization by the client, the client's guardian, and the client's agent;
  - (4) Any individual authorized by a court of competent jurisdiction; and
  - (5) The department or any individual authorized by law.
- (x) The licensee shall develop and implement a method for the written release of information in client records that is consistent with federal and state law.
- (y) The HHCP shall store all paper and electronic backup files of client records in the primary or branch office except when they are being utilized by supervisory and or direct care personnel.
- (z) Paper records shall be safeguarded against loss, damage or unauthorized use by being stored in locked containers, cabinets, rooms or closets except when they are being used by direct care personnel.
- (aa) Electronic records shall be maintained as required by He-P 809.14(s).
- (ab) Records shall be retained for a minimum of 4 years after discharge and in the case of minors, until one year after reaching age 18, but no less than 4 years after discharge.
- (ac) The HHCP shall arrange for storage of, and access to, client records as required by (ab) above in the event that the HHCP ceases operation.
- (ad) If the HHCP is providing home hospice care, they shall be licensed in accordance with He-P 823.

Source. #9466, eff 5-2-09

He-P 809.16 Medications.

- (a) HHCP personnel, who are not authorized by law to administer medications, may remind clients to take their medications, place medication container(s), including pill planners, within client reach, and/or open the medication container(s), as per the care plan without requiring documentation of specific medications taken.

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(b) If a nurse delegates care, including the task of medication administration, to an individual not licensed to administer medication, the nurse and delegate shall comply with the rules of medication delegation pursuant to Nur 404, as applicable, and RSA 326-B.

(c) An licensed nursing assistant (LNA) may perform hand over hand assistance by following the care plan, as delegated by a licensed nurse, to a competent and stable client pursuant to RSA 326-B.

(d) The licensee shall allow the client to self-direct administration of medications, as defined in He-P 809.03(ba), if the client:

- (1) Has a physical limitation due to a diagnosis that prevents the client from self-administration;
- (2) Obtains an annual written verification of the client's physical limitation and self-directing capabilities from the client's licensed practitioner or the assessment performed by an RN and such documentation is included in the client record; and
- (3) Verbally directs personnel to:
  - a. Assist the client with preparing the correct dose of medication by pouring, applying, crushing, mixing or cutting; and
  - b. Assist the client to apply, ingest or instill the ordered dose of medication.

(e) If personnel, who are authorized by law, administer medication(s), delegate medication administration, or prepare medication in advance for administration in accordance with RSA 318:42, XIII and XIV, the HHCP shall:

- (1) Maintain a list of medications currently being taken by the client;
- (2) Administer all medications in accordance with the orders of the licensed practitioner;
- (3) Maintain a written order or a copy thereof in the client's record, signed by a licensed practitioner or other individual authorized by law that includes:
  - a. The client's name;
  - b. The medication name, strength, prescribed dose and route of administration;
  - c. The frequency of administration;
  - d. The indications for usage of all PRN medications; and
  - e. The date ordered;
- (4) Only use medications that have been be kept in the original containers, as dispensed by the pharmacy, licensed practitioner's samples or over the counter medications;
- (5) Require that any change or discontinuation of medications shall be pursuant to a written order from a licensed practitioner or other individual authorized by law;
- (6) Require that all telephone orders for medications or treatments are:
  - a. Taken only by a licensed health care professional if such action is within the scope of their practice act;
  - b. Immediately transcribed and signed by the individual taking the order; and

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- c. Counter-signed by the ordering practitioner within 30 days;
- (7) Require that the medication to be administered by HHCP personnel be:
- a. Prepared immediately prior to administration; and
  - b. Prepared, identified, and administered by the same person in compliance with RSA 318 and RSA 326-B;
- (8) Require that when personnel are supervising or administering medication, they remain with the client until the client has taken all of the medication, excluding infusion therapy;
- (9) Maintain documentation for all medications either supervised by or administered by HHCP personnel that includes:
- a. The name of the client;
  - b. A list of any allergies or allergic reactions to medications;
  - c. The name, strength, dose, frequency, and route of the medications;
  - d. The date and time medication was taken;
  - e. The signature and identifiable initials and job title of:
    - 1. The person administering the medication; or
    - 2. The person supervising or assisting the client taking his or her medication;
  - f. Documented reason for any medication refusal or omission; and
  - g. For PRN medications, the reason the client required the medication and the effect of the PRN medication at the time of the next client contact; and
- (10) Develop and implement a system for reporting to the client's prescribing, licensed practitioner any:
- a. Observed adverse reactions to medication; and
  - b. Side effects, or medication errors such as incorrect medications.
- (f) If the HHCP provides "self-administration with supervision" medication services to a client, the HHCP shall:
- (1) Maintain, in the home, a list of medications currently being taken by the client;
  - (2) Supervise self-administration of medications in accordance with the orders of the licensed practitioner;
  - (3) Maintain either the original written order or a copy of the order in the client's record, signed by a licensed practitioner or other individual authorized by law that includes:
    - a. The client's name;
    - b. The medication name, strength, prescribed dose and route of administration;
    - c. The frequency of administration;

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- d. The indications for usage of all PRN medications; and
  - e. The date ordered;
- (4) Not allow staff to supervise self-administration of medications if anyone other than a pharmacist has changed prescription medication container labels except as allowed by (7)f. below;
- (5) Require that any change or discontinuation of medications shall be pursuant to a written order from a licensed practitioner or other individual authorized by law;
- (6) Require that all telephone orders for medications or treatments are:
- a. Taken only by a licensed health care professional if such action is within the scope of their practice act;
  - b. Immediately transcribed and signed by the individual taking the order; and
  - c. Counter-signed by the ordering practitioner within 30 days;
- (7) Allow a client to self-administer medication with supervision by personnel, as directed by the care plan, who shall be required to:
- a. Remind the client to take the correct dose of his or her medication at the correct time from the original medication bottle;
  - b. Place the medication container within reach of the client;
  - c. Remain with the client to observe them taking the appropriate number and type of medication as ordered by the licensed practitioner;
  - d. Record that they have supervised the client taking their medication on the client's daily medication record;
  - e. Document in the client's record any observed or reported side effects, adverse reactions, and refusal to take medications and/or medications not taken; and
  - f. Require that if the licensed practitioner or other professional authorized by law changes the dose of a medication and personnel of the HHCP are unable to obtain a new prescription label:
    - 1. The RN shall clearly and distinctly mark the original container, for example, with a colored sticker that does not cover the pharmacy label, in a manner consistent with the HHCP's written procedure, indicating that there has been a change in the medication order;
    - 2. The RN 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) and (2) above, shall be allowed for a maximum of 90 days from the date of the new medication order, until the medications in the marked container are exhausted or, in the case of PRN medications, until the expiration date on the container, whichever occurs first;

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- (8) Permit personnel who supervise a client that self-administers medication to open the medication container but not permit that person to physically handle the medication in any manner;
- (9) Require that when personnel are supervising or administering medication they remain with the client until the client has taken all of the medication, excluding infusion therapy;
- (10) Maintain documentation for all medications supervised by HHCP personnel that includes:
- a. The name of the client;
  - b. A list of any allergies or allergic reactions to medications;
  - c. The name, strength, dose, frequency, and route of the medications;
  - d. The date and time medication, including PRN medications, was taken;
  - e. The signature, identifiable initials and job title of the person supervising the client taking his or her medication; and
  - f. Documented reason for any medication refusal or omission;
- (11) Develop and implement a system for reporting to the client's prescribing, licensed practitioner any:
- a. Observed adverse reactions to medication; or
  - b. Side effects, or medication errors such as incorrect medications; and
- (12) Require LNAs who supervise clients with "self-administration of medications with supervision" to comply with the board of nursing requirements according to their practice act.
- (g) A home health personal care provider shall successfully complete a 4-hour medication supervision education program taught by a licensed nurse, licensed practitioner, or pharmacist, whether in person or through other means such as electronic media, prior to assisting a client with self-administration with supervision, self-directed administration, or administration via nurse delegation.
- (h) The medication supervision education program required by (g) above shall, at a minimum, include training on the following subjects:
- (1) Infection control and proper hand washing techniques;
  - (2) The 5 rights, including:
    - a. The right client;
    - b. The right medication;
    - c. The right dose;
    - d. Administered at the right time; and
    - e. Administered via the right route;
  - (3) Documentation requirements; and
  - (4) General categories of medications such as antihypertensives or antibiotics.

Source. #9466, eff 5-2-09

He-P 809.17 Personnel.

- (a) The licensee shall develop a job description for each position in the HHCP containing:
- (1) Duties of the position;
  - (2) Physical requirements of the position; and
  - (3) Qualifications and educational requirements of the position.
- (b) For all applicants for employment, 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 (c) below; and
  - (3) Verify the qualifications of all applicants prior to employment.
- (c) Unless a waiver is granted in accordance with He-P 809.10 and (d) 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 or any person; or
  - (4) Otherwise poses a threat to the health, safety or well-being of clients.
- (d) The department shall grant a waiver of (c) 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 clients.
- (e) If the information identified in (c) above regarding any employee is learned after the person is hired, the licensee shall immediately notify the department.
- (f) The department shall review the information in (c) 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 client.
- (g) All personnel shall:
- (1) Meet the educational and physical 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;

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- (4) Receive an orientation prior to contact with a client that includes:
    - a. The HHCP's policy on client 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 HHCP's policies, procedures and guidelines;
    - d. The HHCP's infection control program;
    - e. The HHCP's fire, evacuation, and emergency plans which outline the responsibilities of personnel in an emergency;
    - f. The mandatory reporting requirements such as RSA 161:F: 46-48 and RSA 169-C: 29-31; and
    - g. Body mechanics training;
  - (5) Complete mandatory annual in-service education, which includes a review of the HCCP's:
    - a. Policies and procedures on client rights and responsibilities;
    - b. Infection control program; and
    - c. Fire and emergency procedures;
  - (6) Be at least 18 years of age if working as direct care personnel unless they are:
    - a. An LNA 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 clients or food, submit to the HHCP the results of a physical examination or 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) 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.
- (h) The scope of services provided by a personal care service provider shall be as follows:
- (1) Basic personal care and grooming to include:
    - a. Sponge bathing;
    - b. Gathering and handing the client materials related to bathing;
    - c. Regulating the bath or shower water temperature and running the water;

- d. Hair care including shampooing;
  - e. Skin care to include application of preventive skin care products;
  - f. Filing of nails;
  - g. Assisting with oral hygiene;
  - h. Shaving of client using an electric razor; and
  - i. Dressing to include putting on or removing clothing, shoes, and stockings;
- (2) Transfer assistance as follows:
- a. Weight bearing assistance such as steadying the client and arranging items to assist the transfer of the client; and
  - b. Non-weight bearing assistance on a case-by-case basis as specified by the agency;
- (3) Mobility assistance as follows:
- a. Accompanying the client as he or she moves from one location to another, removing obstacles from his or her path, opening doors, and handing the client his or her cane or walker;
  - b. Pushing a wheelchair which has been fitted to the client; and
  - c. On a case-by-case basis steadying the client as he or she ambulates;
- (4) Assistance with toileting and toileting hygiene measures as follows:
- a. Assistance with the use of the toilet, commode, bedpan, and urinal;
  - b. Assistance with the use of products related to hygiene care such as disposable incontinent briefs or pads;
  - c. Assistance with cleaning after elimination;
  - d. Assisting with cleaning the client after instances of vomiting, diarrhea and incontinence;
  - e. Assistance with ostomy care in a long term, well healed, trouble free ostomy, such as assisting in application of the stoma bag on a case-by-case basis as individually trained by the HHCP's director of client services; and
  - f. Assistance with catheter care only by emptying the urinary drainage bag on a case-by-case basis as individually trained by the HHCP's director of client services;
- (5) Assistance with personal appliances as follows:
- a. Insertion and cleaning dentures;
  - b. Insertion and cleaning hearing aids;
  - c. Cleaning and putting on eye glasses; and

d. Assisting with application of some types of braces, splints, slings and prostheses on a case-by-case basis as determined by the agency and individually trained by the HHCP's director of client services; and

(6) Assistance with nutrition, hydration, and meal preparation as follows:

- a. Preparation of the meal;
- b. Arranging food including cutting up or mashing the food;
- c. Filling the client's fork or spoon;
- d. Encouraging the client to eat or drink; and
- e. Feeding the client by mouth on a case-by-case basis as determined by the agency.

(i) The HHCP shall determine the client-related training required by the personal care services provider, in addition to the basic training described in (j) below, in order to provide the personal care services which are on a case-by-case basis as described in (h) above.

(j) Prior to assisting clients with transfers, bathing, and/or dressing, personnel care service providers, whose duties include the aforementioned tasks, shall attend a minimum 8-hour training in the performance of these duties, the clinical portion of which shall be conducted by a licensed professional such as an LPN or RN.

(k) The training in (j) above shall include at a minimum:

- (1) Orientation to home care including the role of the personal care services provider and the general orientation required by (g)(4) above;
- (2) Communication with clients, and understanding client needs;
- (3) Personal and home safety including environmental safety and emergency response;
- (4) Personal care skills including:
  - a. Supervision and verbal prompting;
  - b. Assisting in bathing, dressing, grooming, mouth care, hair care, and skin care;
  - c. Assisting in elimination including cleaning the client after elimination and use of products related to hygiene care;
  - d. Moving and transferring clients;
  - e. Nutrition, the mechanics of eating, hydration, and how to prepare, serve, and encourage the client to eat and drink;
  - f. Use of assistance devices;
  - g. Fall prevention; and
  - h. Medication reminder training; and
- (5) Responsibility, accountability, and record keeping.

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(l) LNAs who are working as personal care service caregivers shall be deemed as already having received the training required in (j) above but shall be required to receive the training required by (g)(4) above.

(m) The HHCP shall maintain a record for training of each personal care service provider.

(n) The HHCP shall provide supervision of the personal care services provider every 6 months.

(o) The director of client services shall:

(1) Coordinate the individual training required for personal care services provided on a case-by-case basis; and

(2) Assure that the plan of care is being carried out.

(p) 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.

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

(r) All HHCPs using the service of independent clinical contractors who have direct contact with clients shall ensure that these personnel have:

(1) Completed an orientation as specified in (g)(4) above;

(2) Submitted results of a physical examination or health screening performed by a licensed nurse or a licensed practitioner and 2 step tuberculosis testing, mantoux method, that were conducted not more than 12 months prior to employment;

(3) Provided a copy of any license required by (g)(3) above;

(4) A written agreement with the HHCP that describes the services that will be provided including agreement to comply with (1) through (3) above; and

(5) Documentation of the criminal records check.

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

(t) Current, separate and complete personnel files shall be maintained and stored in a secure and confidential manner at the HHCP licensed premises.

(u) The personnel records required by (t) above shall include the following:

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

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- a. Identification data, including proof of being 18 years of age or older, except as allowed by (g)(6) above; and
  - b. The education and work experience of the employee;
- (2) A signed statement acknowledging the receipt of the HHCP'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 (g)(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 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 (g)(5) above;
- (8) The statement signed at the time the initial offer of employment is made renewed annually thereafter by all personnel as required by (p) above;
- (9) Documentation of the criminal records check; and
- (10) Documentation that the elder abuse registry maintained by the bureau of elderly and adult services was checked as required by RSA 161-F:49.

Source. #9466, eff 5-2-09

He-P 809.18 Quality Improvement.

- (a) The HHCP 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 HHCP 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;
  - (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) 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. #9466, eff 5-2-09

He-P 809.19 Infection Control and Sanitation.

- (a) The HHCP 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, 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 clients 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 prepare food or 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.

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(f) Personnel with an open wound who prepares food or provides 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 clients or prepare food 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) If the HHCP has soiled items at its office(s), they shall be disposed of according to the facility's infection control policies.

(j) If equipment needs to be cleaned in order to prevent contamination, the HHCP shall develop and maintain written procedures for safe and effective cleaning of the equipment.

(k) The HHCP shall not re-use any equipment or supplies that require sterilization.

Source. #9466, eff 5-2-09

He-P 809.20 Physical Environment and Emergency Preparedness.

(a) The licensee shall comply with all federal, state and local laws, rules, codes and ordinances for:

(1) Building;

(2) Health, including waste disposal and water;

(3) Fire; and

(4) Zoning.

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

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

(d) Each licensee shall develop a written emergency plan that covers any situation that prevents the HHCP from providing client services.

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

Source. #9466, eff 5-2-09

**Appendix B**

<b>Rule</b>	<b>Specific State or Federal Statutes the Rule Implements</b>
He-P 809.01	RSA 151:9, I(a),(b)
He-P 809.02	RSA 151:9, I(a),(b); RSA 151:2, II(i)
He-P 809.03	RSA 151:9, I(a),(b)
He-P 809.04 – He-P 809.07	RSA 151:2, I and II; RSA 151:9, I
He-P 809.08	RSA 151:9, I(a)
He-P 809.09	RSA 151:9, I(e)
He-P 809.10	RSA 151:9, I(a)
He-P 809.11	RSA 151:9, I(e)
He-P 809.12	RSA 151:9, I(f),(g),(l),(m)
He-P 809.13	RSA 151:9, I(f),(h),(l)
He-P 809.14 – He-P 809.20	RSA 151:9, I(a)