

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

Statutory Authority: RSA 151:9

PART He-P 810 BIRTHING CENTER RULES

He-P 810.01 Purpose. The purpose of this part is to set forth the licensing and operating requirements for birthing centers pursuant to RSA 151:2, I(d).

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association, or other legal entity operating a birthing center except:

- (a) The facilities listed in RSA 151:2, II;
- (b) All entities which are owned or operated in their entirety by the state of New Hampshire, pursuant to RSA 151:2, II(h); and
- (c) All health promotion, disease prevention, or screening clinics operated by a New Hampshire licensed birthing center.

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.03 Definitions.

- (a) "Abuse" means any one of the following:
 - (1) "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 clients;
 - (2) "Physical abuse" means the misuse of physical force which results or could result in physical injury to clients; and
 - (3) "Sexual abuse" means contact or interaction of a sexual nature involving clients with or without his or her informed consent.
- (b) "Administer" means "administer" as defined in RSA 318:1, I.
- (c) "Administrative remedy" means an action imposed upon a licensee in response to non-compliance with RSA 151, He-P 810, or other licensing rules.

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(d) “Administrator” means the licensee or individual appointed by the birthing center to be responsible for all aspects of the daily operation of the licensed premises.

(e) “Admission” means the point in time when a client has been accepted by a licensee for the provision of services and is physically present in the licensed facility.

(f) “Advanced practice registered nurse-certified nurse midwife (APRN-CNM)” means an individual licensed by the New Hampshire board of nursing in accordance with RSA 326-B:11 and certified by the American Certified Nurse Midwife Certification Council.

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

(h) “Area of noncompliance” means any action, failure to act, or other set of circumstances that cause a licensee to be out of compliance with RSA 151, He-P 810, or other federal and state requirements.

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

(j) “Birthing center” means a facility that is not located in a licensed acute care hospital, and which provides prenatal care through postnatal care, and which instructs and assists women in natural childbirth.

(k) “Care plan” means a written guide developed by a licensed or certified practitioner, in consultation with the client, as a result of the assessment process for the provision of care and services as required by He-P 810.16(g) and (h).

(l) “Certified midwife” means a “certified midwife” as defined in Mid 301.01(b).

(m) “Certified nurse-midwife” means a “certified nurse-midwife” as defined in Mid 301.01(c).

(n) “Change of ownership” means a change in the controlling interest in an established birthing center to a successor business entity.

(o) “Client” means any person admitted to or in any way receiving care, services, or both from a birthing center licensed in accordance with RSA 151 and all other applicable federal and state requirements.

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

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

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

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

(t) “Emergency” means an unexpected occurrence or set of circumstances that require immediate, remedial attention.

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

(v) “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, deception, or fraud.

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

(x) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 810, or to respond to allegations of non-compliance with RSA 151 or He-P 810.

(y) “License” means the document issued by the department to an applicant at the start of operation as a birthing center, which authorizes operation in accordance with RSA 151 and He-P 810, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date, and license number.

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

(aa) “Licensed or certified practitioner” means a:

- (1) Medical doctor;
- (2) Licensed advanced practice registered nurse-certified nurse midwife (APRN-CNM);
- (3) Doctor of osteopathy;
- (4) Doctor of naturopathic medicine with certification in natural childbirth; or
- (5) Certified midwife.

(ab) “Licensed premises” means the facility that comprises the physical location that the department has approved for the birthing center to conduct operations in accordance with its license. It can include the private home of the licensed or certified practitioner, but it does not include the private residence of a client receiving services from the birthing center licensed under the authority of RSA 151.

(ac) “Licensee” means any person or other legal entity to which a license has been issued pursuant to RSA 151 and He-P 810.

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

(ae) “Medical director” means a New Hampshire licensed physician, doctor of naturopathic medicine with certification in natural childbirth, or an APRN-CNM who is responsible for overseeing the quality of medical care and services at the birthing center.

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

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

(ah) “Owner” means a person or organization who has controlling interest in the birthing center.

(ai) “Personnel” means individual(s), either paid or volunteer, including independent contractors, who provide direct care or services to a client.

(aj) “Physician” means an individual licensed in the state of New Hampshire pursuant to RSA 329.

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(ak) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct non-compliance with applicable rules or codes identified at the time of a clinical or life safety inspection conducted pursuant to RSA 151:6-a or during the course of a complaint investigation conducted pursuant to RSA 151:6.

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

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

(an) “Reportable incident” means an occurrence of an error, a negative outcome, or an accident, which occurs while the client is in the care of the licensee, and has resulted in injury that requires examination or treatment by a licensed practitioner.

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

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

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New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.04 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” (8/4/2016 edition), signed by the applicant or 2 of the corporate officers, affirming and certifying the following:

a. “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 a license, or imposition of a fine.”;

b. For any birthing center to be newly licensed on or after July 1, 2016:

“I certify that I have notified the public of the intent to file this application with a description of the facility to be licensed by publishing a notice in a newspaper of general circulation covering the area where the facility is to be located in at least 2 separate issues of the newspaper no less than 10 business days prior to the filing of this application.”; and

c. For any birthing center to be newly licensed on or after July 1, 2016 and to be located within a radius of 15 miles of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. section 485.610 (b) and (c):

“I certify that the facility is to be located within a radius of 15 miles of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. section 485.610 (b) and (c), and that I have given written notice of the intent to file this application with a description of the facility to be licensed to the chief executive officer of the hospital by registered mail no less than 10 business days prior to the filing of this application.”

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- (2) A floor plan of the prospective birthing center including the location of all beds;
- (3) 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 corporation; or
 - c. "Certificate of Trade Name," where applicable;
- (4) The applicable \$150.00 fee, in accordance with RSA 151:5, XXI, payable in cash or, if paid by check or money order, in the exact amount of the fee, made payable to the "Treasurer, State of New Hampshire;"
- (5) A resume identifying the name and qualifications of the birthing center administrator and medical director;
- (6) Copies of applicable licenses, certificates, or both, for the birthing center administrator and medical director;
- (7) Written local approvals as follows:
 - a. For an existing building, the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials or, if there is no such official(s), from the board of selectmen or mayor:
 1. The health officer verifying that the applicant complies with all applicable local health requirements and drinking water and wastewater requirements;
 2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
 3. The zoning officer verifying that the applicant complies with all local applicable zoning ordinances; and
 4. The fire chief verifying that the applicant complies with the state fire code, including the ambulatory health care chapter of National Fire Protection Association (NFPA) 101 as adopted by the department of safety, and local fire ordinances applicable for a birthing center; or
 - b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and again upon completion of the construction project;
- (8) If the birthing center uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Dw 702.02 and 704.02, or if a public water supply, a copy of a water bill; and
- (9) For a birthing center to be newly licensed on or after July 1, 2016, and to be located within a radius of 15 miles of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. section 485.610 (b) and (c), a letter from the chief executive officer of the hospital stating that the proposed new birthing center will not have a material adverse impact on the essential health care services provided in the service area of the critical access hospital.

(b) 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

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He-P 810.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be deemed to be complete when the department determines that all items required by He-P 810.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 810.04(a), the department shall notify the applicant in writing of the items required to be submitted 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, the department shall deny a licensing request in accordance with He-P 810.13(b) if, after reviewing the information in He-P 810.18(a)-(b), it determines that the applicant, administrator, or a household member:

- (1) Has been convicted of a felony in this or any other state;
- (2) Has been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect, or exploitation in this or any other state;
- (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 clients.

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

(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 810.

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

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New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.06 License Expirations and Procedures for Renewals.

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(a) A license shall be valid on the date of issuance and expire the following year on the last day of the month prior to the month in which 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 810.04(a)(1) at least 120 days prior to the expiration of the current license.

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

(1) The materials required by He-P 810.04(a)(1) and (4);

(2) The current license number;

(3) A request for renewal of any existing non-permanent waiver previously granted by the department, in accordance with He-P 810.10(f), if applicable;

(4) A list of any current employees who have a permanent waiver granted in accordance with He-P 810.18(c); and

(5) A statement identifying any variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03–6005.04, as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control.

(d) In addition to (c) above, if a private water supply is used, the licensee shall provide documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Dw 702.02 for bacteria and Env-Dw 704.02 for nitrates.

(e) Following an inspection as described in He-P 810.09, a license shall be renewed if the department determines that the licensee:

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

(2) Has submitted a POC that has been accepted by the department and implemented by the licensee if areas of noncompliance were cited at the last licensing inspection or investigation; and

(3) Is found to be in compliance with RSA 151 and He-P 810 at the renewal inspection.

(f) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license shall be required to submit an application for initial license pursuant to He-P 810.04.

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

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

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He-P 810.07 Birthing Center Construction, Modifications, or Structural Alterations.

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(a) Notice and accurate architectural plans or drawings that show the room designation(s) and exact measurements of each area to be licensed, including windows and door sizes and each room's use, shall be submitted to the department at least 60 days prior to the start of construction or initiating any structural modifications to a building, for the following:

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

(b) Architectural sprinkler and fire alarm plans shall be submitted to the NH state fire marshal's office as required by RSA 153:10-b, V.

(c) Any licensee or applicant who wants to use performance-based standards to meet the fire safety requirements shall provide the department with documentation of fire marshal approval for such methods.

(d) The department shall review plans for construction, modifications, or structural alterations of a birthing center for compliance with all applicable sections of RSA 151 and He-P 810 and notify the applicant or licensee as to whether the proposed plans comply with these requirements.

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

(f) The birthing center shall comply with the applicable licensing rules when doing construction, modifications, or structural alterations.

(g) Any licensee or applicant constructing, modifying, or structurally altering a building shall comply with the following:

- (1) The state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control;
- (2) The state building code, as defined in RSA 155-A:1, IV, as amended by the building code review board pursuant to RSA 155-A:10, V; and
- (3) Local rules, regulations, and ordinances.

(h) Waivers granted by the department for construction or renovation purposes shall not require annual renewal unless the underlying reason or circumstances for the waivers change.

(i) Exceptions or variances pertaining to the state fire code referenced in (g)(1) above shall be granted only by the state fire marshal.

(j) The building or renovated space shall be subject to an inspection pursuant to He-P 810.09 prior to its use.

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

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New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss
by #11161, eff 8-20-16

He-P 810.08 Birth Center Requirements for Organizational or Service Changes.

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

- (1) Ownership;
- (2) Physical location;
- (3) Address;
- (4) Name;
- (5) Number of beds; or
- (6) Services.

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

- (1) A change in ownership;
- (2) A change in the physical location; or
- (3) An increase in number of beds.

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

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

(e) When there is to be a change in the services provided, the birthing center shall provide the department with a description of the service change and, where applicable, identify what additional personnel will be hired and their qualifications, how the new services will be incorporated into the infection control and quality improvement programs, and describe what changes, if any, in the physical environment will be made.

(f) The department shall review the information submitted under (e) above and determine if the added services can be provided under the birthing center's current license.

(g) An inspection by the department shall be conducted prior to operation for changes in the following:

- (1) Ownership, unless an inspection was conducted within 90 days of the date of the change in ownership and a plan of correction designed to address any areas of noncompliance was submitted and accepted by the department;
- (2) The physical location;
- (3) An increase in the number of beds; or
- (4) A change in licensing classification.

- (h) A new license shall be issued for a change in ownership or physical location.
- (i) A revised license and license certificate shall be issued for a change in name.
- (j) A license certificate shall be issued at the time of initial licensure.
- (k) A revised license certificate shall be issued for any of the following:
 - (1) A change in administrator or medical director;
 - (2) An increase or decrease in the number of beds;
 - (3) A change in the scope of services provided;
 - (4) A change in address without a change in physical location; or
 - (5) When a waiver has been granted.
- (l) The birthing center shall notify the department in writing as soon as possible prior to a change in administrator or medical director and provide the department with the following:
 - (1) A resume identifying the name and qualifications of the new administrator or medical director; and
 - (2) Copies of applicable licenses, certificates, or both, for the new administrator or medical director.
- (m) Upon review of the materials submitted in accordance with (l) above, the department shall make a determination as to whether the new administrator or medical director meets the qualifications for the position, as specified in He-P 810.15(a) for an administrator and He-P 810.15(d) for a medical director.
- (n) If the department determines that the new administrator or medical director does not meet the qualifications for their position as specified in (m) above, it shall so notify the birthing center in writing so that a waiver can be sought or the program can search for a qualified candidate.
- (o) A restructuring of an established birthing center that does not result in a transfer of the controlling interest of the facility, but which might result in a change in the name of the facility or corporation, shall not constitute a change in ownership and a new license shall not be required.
- (p) Licenses issued for a change of ownership shall expire on the date the license issued to the previous owner would have expired.
- (q) Licensees shall inform the department in writing via e-mail, fax, or mail of any change in the facility's e-mail address as soon as practicable and in no case later than 10 days of the change, as this is the primary method used for all emergency notifications to the facility.

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He-P 810.09 Inspections.

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(a) For the purpose of determining compliance with RSA 151 and He-P 810, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services being provided by the birthing center; and
- (3) Any records required by RSA 151 or He-P 810.

(b) The department shall conduct a clinical and life safety code inspection as necessary, to determine full compliance with RSA 151 and He-P 810 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership, except as provided for in He-P 810.08(g)(1);
- (3) A change in the physical location of the birthing center;
- (4) A change in the licensing classification, as defined in He-P 810.03(ad);
- (5) An increase in the number of beds;
- (6) Occupation of space after construction, modifications, or structural alterations; or
- (7) 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.

(d) A written notification of denial will be sent to an applicant applying for an initial license if it has been determined by the inspection mentioned in (a) above, that the prospective premises is not in full compliance with RSA 151 and He-P 810.

(e) A statement of findings for clinical inspections or a notice to correct for life safety inspections shall be issued when, as a result of any inspection, the department determines that the birthing center is in violation of any of the provisions of He-P 810, RSA 151, or any applicable code.

(f) If areas of noncompliance were cited in either a statement of findings or a notice to correct, the licensee shall submit a written POC, in accordance with He-P 810.12(c), within 21 days of the date on the letter that transmits the statement or notice.

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New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 810 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;

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- (2) A full explanation of why a waiver is necessary; and
 - (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 for which a waiver is sought.
- (b) A waiver shall be permanent unless the department specifically places a time limit on the waiver.
- (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 at least 60 days prior to the expiration of the existing waiver by submitting the information required by (a) above.
- (g) The request to renew a waiver shall be subject to (b) through (f) above.

Source. #5635, eff 6-7-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.11 Complaints and Investigations.

- (a) The department shall investigate any complaint that meets the following conditions:
- (1) The alleged violation(s) occurred not more than 6 months prior to the date the department was made aware of the allegation(s);
 - (2) The complaint is based upon the complainant's first-hand knowledge regarding the allegation(s) or on information reported directly to the complainant by a person who has first-hand knowledge regarding the allegation(s); and
 - (3) There is sufficient specific information for the department to determine that the allegation(s), if proven to be true, would constitute a violation of any of the provisions of RSA 151 or He-P 810.
- (b) When practicable, the complaint shall be in writing and contain the following information:
- (1) The name and address, if known, of the birthing center, 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 810.

(c) Investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the complaint, including, but not limited to:

- (1) Requests for additional information from the complainant;
- (2) A physical inspection of the premises;
- (3) Review of any records that might be relevant and have probative value; and
- (4) Interviews with individuals who might have information that is relevant to the investigation and might have probative value.

(d) The following shall apply for a licensed birthing center:

- (1) The department shall provide written notification of the results of the investigation to the licensee along with a statement of findings or notice to correct if areas of noncompliance were found as a result of the investigation;
- (2) The department shall 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;
- (3) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall notify the licensee in writing and take no further action; and
- (4) If the investigation results in areas of noncompliance being cited, the licensee shall be required to submit a POC in accordance with He-P 810.12(c).

(e) The following shall apply for the unlicensed individual or entity:

- (1) The department shall provide written notification to the owner or person responsible that includes:
 - a. The date of investigation;
 - b. The reasons for the investigation; and
 - c. Whether or not the investigation resulted in a determination that the services being provided require licensing under RSA 151:2, I;
- (2) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 days from the date of the notice required by (1) above to submit a completed application for a license;
- (3) If the owner of an unlicensed facility does not comply with (2) above the department shall issue a written warning to immediately comply with RSA 151 and He-P 817; and
- (4) Any person or entity who fails to comply after receiving a warning as described in (i) above, shall be subject to an action by the department for injunctive relief under RSA 151:17.

(f) Complaint investigations 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;

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- (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;
and
- (4) In connection with an adjudicative proceeding relative to licensure.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss
by #11161, eff 8-20-16

He-P 810.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 810, or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC in accordance with (c) below;
- (2) Imposing a directed POC upon a licensee in accordance with (d) below;
- (3) Imposing conditions upon a license;
- (4) Imposing fines upon an unlicensed individual, applicant, or licensee in accordance with (f) below; or
- (5) Monitoring of a licensee.

(b) When administrative remedies are imposed, the department shall provide written notice, as applicable, which:

- (1) Identifies each area in which the licensee is not in compliance with RSA 151 or a provision of these rules;
- (2) Identifies the specific remedy(s) that has been imposed; and
- (3) Provides the following information:
 - a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to the imposition of a fine; and
 - b. The automatic reduction of a fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the area of noncompliance has been corrected, or a POC has been accepted and approved by the department.

(c) A POC shall be developed and complied with in the following manner:

- (1) Upon receipt of a statement of findings or a notice to correct, the licensee shall submit its POC for each item, written in the appropriate place on the statement or notice and containing:
 - a. How the licensee intends to correct each area of noncompliance;
 - b. What measures will be put in place, or what system changes will be made to ensure that the noncompliance does not recur; and
 - c. The date by which each area of noncompliance shall be corrected;

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(2) The licensee shall submit a written POC to the department within 21 days of the date on the letter that transmitted the statement of findings or notice to correct 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-calendar 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 810;
- b. Addresses all areas of noncompliance as cited in the statement of findings or notice to correct;
- c. Prevents a new violation of RSA 151 or He-P 810 as a result of the implementation of the POC; and
- d. Specifies the date upon which the areas of noncompliance 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:

- a. The department shall notify the licensee in writing of the reason for rejecting the POC;
- b. 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, via telephone or in writing, and the department grants the extension, based on the following criteria:
 1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and
 2. The department determines that the health, safety, or well being of a client will not be jeopardized as a result of granting the extension;
- c. The revised POC shall comply with (c)(1) above and be reviewed in accordance with (c)(3) above; and
- d. 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, or as extended under (5)b. above, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(11) below;

(6) 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

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- c. Reviewing compliance during the next annual inspection;
- (7) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and
- (8) 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 810.12(b); and
 - b. Issued a directed POC in accordance with (d) below and shall be subject to a fine, as appropriate, in accordance with (f)(12) below.
- (d) The department shall develop and impose a directed POC that specifies corrective actions for the applicant or licensee to implement when:
- (1) As a result of an inspection or investigation, areas of noncompliance were identified that require immediate corrective action to protect the health and safety of the clients and personnel;
 - (2) A revised POC is not submitted within 14 days of the written notification from the department or such other date as applicable if an extension was granted by the department; or
 - (3) A revised POC submitted by the licensee or administrator has not been accepted.
- (e) If, at the time of the next inspection, the directed POC referenced in (d) above has not been implemented by the completion date stated in the directed POC, the department shall, as appropriate:
- (1) Impose a fine;
 - (2) Deny an application for a renewal of a license in accordance with He-P 810.13; or
 - (3) Revoke the license in accordance with He-P 810.13.
- (f) The department shall impose fines as follows:
- (1) For 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 for an applicant or unlicensed provider shall be \$2000.00;
 - (2) For failure to cease operations after a denial of a license or after receipt of an order to cease and desist operations immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for the applicant, unlicensed provider, or licensee shall be \$2000.00;
 - (3) For advertising services or otherwise representing themselves as having a license to provide services that the licensee is 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 failure to transfer a client whose needs change such that the needs exceed the services or programs authorized by the license, in violation of RSA 151:5-a and He-P 810.14(k), the fine for a licensee shall be \$500.00;
 - (5) For acceptance or admission of a client whose needs exceed the services or programs authorized by the licensee's licensing classification, in violation of RSA 151:5-a and He-P 810.14(j), the fine for a licensee shall be \$1000.00;

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- (6) For failure to comply with the directives of a warning issued by the department, in violation of RSA 151:7-a and He-P 810.11(j), the fine for an unlicensed provider or licensee shall be \$500.00;
- (7) For submitting a renewal application for a license less than 120 days prior to the expiration date, in violation of He-P 810.06(b), the fine for the licensee shall be \$100.00;
- (8) For failure to notify the department prior to a change of ownership, in violation of He-P 810.08(a)(1), the fine for a licensee shall be \$500.00;
- (9) For failure to notify the department prior to a change in the physical location, in violation of He-P 810.08(a)(2), the fine for a licensee shall be \$500.00;
- (10) For failure to allow access by the department to a birthing center's programs, services or records, in violation of He-P 810.14(n), the fine for an applicant, unlicensed provider, or licensee shall be \$2000.00;
- (11) For failure to submit a POC or a revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the statement of findings or notice to correct, in violation of He-P 810.12(c)(2) or He-P 810.12(c)(5)b., the fine for a licensee shall be \$100.00;
- (12) For failure to implement any POC that has been accepted or issued by the department, in violation of He-P 810.12(c)(8), the fine for a licensee shall be \$1000.00;
- (13) For failure to establish, implement, or comply with licensee policies, as required by He-P 810.14(b) and He-P 810.14(h)(2), the fine for a licensee shall be \$500.00;
- (14) For failure to provide medical services required by the license and specified by He-P 810.15(d), the fine for a licensee shall be \$500.00;
- (15) For exceeding the licensed capacity of the birthing center, in violation of He-P 810.14(l), the fine for a licensee shall be \$500.00 per day, multiplied by the number of unauthorized clients present;
- (16) For furnishing or making false or misleading statements or reports to the department, or for falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 810.14(e), the fine for an applicant or licensee shall be \$500.00 per offense;
- (17) For failure to meet the needs of the client, in violation of He-P 810.14(h)(3), the fine for a licensee shall be \$500.00;
- (18) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 810.15(a) and He -P 810.18(d), respectively, or under circumstances where the department has not granted a waiver in accordance with He-P 810.10, the fine for a licensee shall be \$500.00;
- (19) For failure to submit architectural plans or drawings, when applicable, prior to undertaking construction or renovation of the licensed facility, in violation of He-P 810.07(a), the fine for a licensed facility shall be \$500.00;
- (20) When an inspection determines that a violation of RSA 151 or He-P 810 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:

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a. If the same area of noncompliance is cited within 2 years of the original area of noncompliance the fine for a licensee shall be \$1000.00; and

b. If the same area of noncompliance is cited for a third time within 2 years of being fined in a. above, the fine for a licensee shall be \$2000.00 per area of noncompliance;

(21) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 810 shall constitute a separate violation and shall be fined in accordance with He-P 810.12; and

(22) If the applicant or licensee is making good faith efforts to comply with (4), (6) and (15) 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. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.13 Enforcement Actions and Hearings.

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

(1) The reasons for the proposed action;

(2) The action to be taken by the department; and

(3) The right of an applicant or licensee to an administrative hearing in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable, before the enforcement action becomes final.

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

(1) An applicant or a licensee violated a provision of RSA 151 or He-P 810 which poses a threat to the health, safety, or well-being of a client;

(2) An applicant or a licensee has failed to pay an administrative fine imposed 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 810.04;

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

a. Provides false or misleading information to the department;

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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) A 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 810.12(c), (d), and (e);

(7) A licensee has submitted a POC that has not been accepted by the department in accordance with He-P 810.12(c)(5) and has not submitted a revised POC as required by He-P 810.12(c)(5)b.;

(8) A licensee is cited a third time under RSA 151 or He-P 810 for the same violation within the last 5 inspections;

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

(10) For an initial license, upon inspection, the applicant's premises are not in full compliance with RSA 151 or He-P 810;

(11) The applicant or licensee employs an administrator who does not meet the qualifications for the position under circumstances in which the department has not granted a waiver; or

(12) The owner(s), licensee, or administrator has been found guilty of or plead guilty to a felony assault, fraud, abuse, neglect, or exploitation of any person, in this or any other state, or had an investigation for abuse, neglect, or exploitation adjudicated and founded by the department or any administrative agency in this or any other state.

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

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

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

(f) If the immediate suspension of a license is ordered:

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

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

(g) If an immediate suspension is upheld at the hearing described in (f)(2) above, the licensee shall not operate until the department determines through inspection that compliance with RSA 151 and He-P 810 is achieved.

(h) Hearings and appeals of department decisions under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(i) When a birthing center's license has been denied or revoked, the the applicant, licensee, administrator, or medical director shall not be eligible to apply for a license, or be employed as an administrator or medical director for at least 5 years, if the enforcement action specifically pertained to their role in the program.

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

- (1) The date of the department's decision to revoke or deny the license, if no appeal is filed; or
- (2) The date a final decision upholding the action of the department is issued, if a request for a hearing is made and a hearing is held.

(k) Notwithstanding (i) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 810.

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

(m) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A:30, III, or He-P 810.

(n) The department shall offer an opportunity for informal dispute resolution to any applicant or licensee who disagrees with an area of noncompliance cited by the department on a statement of findings, provided that the applicant or licensee submits a written request for an informal dispute resolution.

(o) The informal dispute resolution shall be requested in writing by the applicant, licensee, or program director no later than 14 days from the date the statement of findings was issued by the department.

(p) The department shall change the statement of findings or notice to correct if, based on the evidence presented, the statement or notice is determined to be incorrect. The department shall provide notice to the applicant or licensee of the determination.

(q) The deadline to submit a POC in accordance with He-P 810.12(c)(2) shall not apply until the notice of the determination to not make a change to the statement of findings or notice to correct in (o) above has been provided to the applicant or licensee.

(r) An informal dispute resolution shall not be available for any applicant or licensee against whom the department has initiated action to suspend, revoke, deny or refuse to issue or renew a license.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.14 Duties and Responsibilities of All Licensees.

(a) The licensee shall comply with all relevant federal, state, and local laws, rules, codes, and ordinances as applicable.

(b) The licensee shall have a written policy and procedures setting forth the rights and responsibilities of clients admitted to the birthing center in accordance with RSA 151:20.

(c) The licensee shall define, in writing, the scope and type of services to be provided at the birthing center, including the client services required in He-P 810.16.

(d) The licensee shall assess and monitor the quality of care and services.

(e) The licensee shall not falsify any information contained in:

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- (1) The “Application for Residential or Health Care License,” or any other documents required for the licensing of a birthing center; or
 - (2) The records required to be maintained for the clients and personnel of the birthing center.
- (f) The licensee shall not advertise or otherwise represent the birthing center as having residential care or health care programs or services for which they are not licensed to provide.
- (g) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department and all court orders.
- (h) Licensees shall have responsibility and authority for:
- (1) Managing, controlling, and operating the birthing center;
 - (2) Developing and implementing written policies and procedures governing all of the operations and services provided, and for:
 - a. Reviewing the policies and procedures annually; and
 - b. Revising as needed;
 - (3) Meeting the needs of a client when the client is in the care of the birthing center;
 - (4) Establishing, in writing, a chain of command that sets forth the line of authority for the operation of the birthing center;
 - (5) Appointing an administrator;
 - (6) Appointing a medical director;
 - (7) Verifying the qualifications of all personnel;
 - (8) Providing sufficient numbers of personnel who are present in the birthing center and are qualified to meet the needs of clients during all hours of operation, in accordance with He-P 810.15(f)(1);
 - (9) Reporting all positive tuberculosis test (TB) results for personnel to the department’s TB program in accordance with RSA 141-C:7, He-P 301.02, and He-P 301.03;
 - (10) Providing the birthing center with sufficient supplies, equipment, and lighting to ensure that the needs of clients are met; and
 - (11) Implementing any POC that has been accepted or issued by the department.
- (i) The licensee shall consider all clients to be competent and capable of making health care decisions unless the client:
- (1) Has a guardian or conservator appointed by a court of competent jurisdiction;
 - (2) Has a durable power of attorney for health care that has been activated; or
 - (3) Is a minor.
- (j) The licensee shall only admit a client whose needs can be met through the programs and services offered under the current license.

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(k) If the licensee has a client whose needs cannot be met by the programs and services offered at the birthing center, the licensee shall transfer the client to a licensed facility whose current license classification will allow it to meet the needs of the client.

(l) The birthing center shall not exceed the number of licensed beds authorized by the department.

(m) In addition to the posting requirements specified in RSA 151:29, the licensee shall post the following documents in an area of the birthing center that is conspicuous and open to clients and the general public:

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

(2) All statements of findings and notices to correct issued in accordance with He-P 810.09(d) and He-P 810.11(f) for the previous 12 months;

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

(4) A copy of the licensee's complaint procedure, including a statement that complaints may be submitted, in writing, to the Department of Health and Human Services, Health Facilities Administration, 129 Pleasant Street, Concord, N.H. 03301 or by calling 1-800-852-3345; and

(5) The licensee's evacuation floor plan identifying the location of and access to all fire exits.

(n) The licensee shall admit and allow any department representative to inspect the birthing center and all programs and services they are providing at any time for the purpose of determining compliance with RSA 151 and He-P 810 as authorized by RSA 151:6 and RSA 151:6-a.

(o) For reportable incidents, the licensee shall:

(1) Fax to 271-5574 or, if a fax machine is not available, convey by electronic or regular mail, the following information to the department within 48 hours of a reportable incident as defined in He-P 810.03(an):

a. The birthing center's name;

b. A description of the incident, including identification of injuries, if applicable;

c. The name of the licensee(s) or personnel involved in, witnessing, or responding to the reportable incident;

d. The name of client(s) involved in the reportable incident;

e. The date and time of the reportable incident;

f. The action taken in direct response to the reportable incident;

g. If medical intervention was required, by whom and the date and time;

h. When the client's guardian or agent, if any, or personal representative, or emergency contact person was notified;

i. The signature of the person reporting the reportable incident; and

j. The date and time the clients licensed practitioner was notified, if applicable; and

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- (2) Notify the department with a written report within 5 days describing the actions taken by personnel, the final outcome or continuation of the reportable incident, and actions taken to prevent a reoccurrence if it was not submitted in the initial report.
- (p) A licensee shall provide a client or their guardian, agent acting pursuant to an activated durable power of attorney (DPOA), or anyone else authorized in writing by the client with a copy of the client's record pursuant to the provisions of RSA 151:21, X, upon request.
- (q) All records required for licensing shall:
- (1) Be available to the department during an inspection or investigation conducted in accordance with RSA 151:6 and RSA 151:6-a;
 - (2) Be legible, current and accurate; and
 - (3) Be maintained in a secure manner that safeguards confidentiality and prevents tampering with data.
- (r) Any licensee that maintains electronic records shall develop a system with written policies and procedures to protect the privacy of clients and staff that, at a minimum, include:
- (1) Procedures for backing up files to prevent deletion;
 - (2) Safeguards to ensure the confidentiality of information pertaining to clients and staff; and
 - (3) Systems to prevent tampering with information pertaining to clients and staff.
- (s) The licensee shall comply with the patient's bill of rights as set forth in RSA 151:21.
- (t) The licensee shall provide housekeeping and maintenance service, as needed to protect clients, personnel, and the public.
- (u) Applicants, licensees, and staff shall cooperate with the department during all departmental visits authorized under RSA 151 and He-P 810, including allowing representatives of the department to:
- (1) Enter and complete an inspection of the premises;
 - (2) Review and reproduce any forms or reports which are required to be maintained or made available to the department; and
 - (3) Interview staff and clients of the birthing center.
- (v) The licensee shall not falsify any documentation required by law or provide false or misleading information to the department.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.15 Required Services.

- (a) The licensee shall provide administrative services that include the appointment of a full-time, on-site administrator who:
- (1) Has a bachelor's degree in business administration or health and human services;

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- (2) Is a licensed physician in the State of New Hampshire;
- (3) Is a certified midwife or certified nurse midwife (CNM) in the State of New Hampshire; or
- (4) Is an APRN-CNM in the State of New Hampshire.

(b) The licensee shall establish a process for verifying the credentials of personnel involved in the direct care of the client which includes written documentation that:

- (1) The individual is licensed or certified to practice health care in New Hampshire, if required; and
- (2) The individual has the requisite education and experience to meet the requirements of the position, and required by this section.

(c) In addition to (b) above, the licensee shall:

- (1) Document that each employee involved in the direct care of clients has been advised of the duties that they may perform;
- (2) Establish in writing the process for updating the scope of practice of personnel as necessary; and
- (3) Conduct an annual review of all credentialed personnel and document the review in their file.

(d) The licensee shall provide medical services that include the appointment of a medical director who:

- (1) Is a physician licensed in the State of New Hampshire;
- (2) Is an APRN-CNM licensed in the State of New Hampshire; or
- (3) Is a doctor of naturopathic medicine with certification in natural childbirth.

(e) The medical director shall:

- (1) Participate in the development of policies and procedures for the birthing center;
- (2) Participate in the birthing center's quality improvement program; and
- (3) Provide consultation to the birthing center's personnel.

(f) In addition to (d) above, the licensee shall:

- (1) Provide qualified personnel sufficient to meet the needs of clients that, at a minimum, shall include:
 - a. A primary caregiver to attend each birth that is:
 1. An obstetrician;
 2. A family practice physician;
 3. A licensed APRN;
 4. A certified midwife; or
 5. A naturopathic doctor with certification in natural childbirth; and

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- b. A second person to attend each birth that has been verified by the birthing center as being appropriately credentialed as specified in (b) above;
- (2) Have at least 2 persons on call when births are anticipated, one of whom is a person listed under (f)(1)a. above; and
- (3) Provide the following services in the birthing center or at the home of the client:
- a. Orientation to the birthing center, the fees, and the services of the birthing center;
 - b. Education for pregnancy, labor, breastfeeding, infant care, early discharge, parenting, and sibling preparation;
 - c. Prenatal care;
 - d. Intrapartum care;
 - e. Postpartum care; and
 - f. Follow up care for the mother and newborn.
- (g) The following services shall be prohibited in the birthing center or at the home of the client:
- (1) Regional or general anesthesia including awake sedation;
 - (2) Vacuum extraction; and
 - (3) Chemical induction and augmentation.
- (h) The licensee shall provide dietary services that include light nourishment during labor and postpartum.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, eff 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.16 Client Services.

- (a) At the time of admission, personnel of the birthing center shall:
- (1) Provide, both verbally and in writing, to the client or the client's legal representative, the birthing center's policy on client rights and responsibilities, complaint procedure, and rules and obtain written confirmation acknowledging receipt of the policies;
 - (2) Collect and record the following information:
 - a. Client's name, home address, and home telephone number;
 - b. Client's date of birth;
 - c. Name, address, and telephone number of an emergency contact;
 - d. Name of client's primary care provider with the address and telephone number; and
 - e. Client's insurance information, if applicable;

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- (3) Provide an orientation to the scope of services provided at the birthing center;
 - (4) Provide instruction and education relevant to the following:
 - a. Conception;
 - b. Health and nutrition;
 - c. Pregnancy;
 - d. Lactation and lactation assistance;
 - e. Family planning
 - f. The postpartum period;
 - g. Holistic care;
 - h. Early recognition and prevention of potential health problems;
 - i. Detection of any abnormal conditions in the mother, fetus, and newborn;
 - j. Procurement of medical assistance, if necessary; and
 - k. Execution of emergency measures in the absence of medical help, if necessary;
 - (5) Complete a health examination and a social, family, medical, reproductive, nutritional, and behavioral history;
 - (6) Obtain from the client documentation of informed consent; and
 - (7) Obtain from the client a written consent for release of information, if the client so authorizes.
- (b) Only clients who meet the eligibility criteria and have registered at least 4 weeks prior to the anticipated date of birth shall be admitted to the birthing center.
- (c) In order to be eligible:
- (1) The client's licensed or certified practitioner shall determine that the client was medically, psychologically, surgically, and obstetrically uncomplicated during her prenatal care;
 - (2) A client shall not present any of the following contraindications:
 - a. Placenta previa;
 - b. Multiple fetuses;
 - c. Insulin dependent diabetes;
 - d. Previous cesarean section, unless authorized in accordance with Mid 503; or
 - e. Rh factor sensitivity with positive antibody titre;
 - (3) A client shall have written approval from a medical doctor (MD), doctor of osteopathic medicine (DO) with certification in natural childbirth, or APRN-CNM to deliver in the birthing center if she presents with any of the following potential medical risk factors:

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- a. Maintenance on anti-epileptic medications without convulsive activity within the last year;
- b. Blood dyscrasias;
- c. Current hepatitis;
- d. A positive HIV test result or AIDS;
- e. Current alcoholism;
- f. Current drug addiction, including use of hallucinogens;
- g. Chronic pulmonary disease that interferes with oxygen saturation;
- h. Chronic hypertension;
- i. Past history of significant heart disease; or
- j. Maintenance on psychotropic medication which, as a result of a consultation with the client's physician, has been determined to have a sedating effect on the newborn.

(d) All clients who present with, or develop during prenatal care, any one or more of the following shall be evaluated by a physician or a certified nurse midwife to determine appropriateness for delivery in a birthing center:

- (1) Younger than 16 or older than 45 years of age;
- (2) High blood pressure, which is defined as 140/90 or elevation of 30 systolic or 15 diastolic on at least 2 occasions, at least 6 hours apart;
- (3) Anemia, which is defined as hemoglobin of less than 10 grams, unresolved at term;
- (4) History of genetic problems or previous intrauterine death at greater than 20 weeks or unexplained stillbirth;
- (5) Possibility of multiple fetuses, malpresentation, or fetus too small or large for gestational age;
- (6) Past history of significant hemorrhaging during delivery, which is defined as the loss of 500 cubic centimeters (cc) of blood or greater;
- (7) Abnormal Pap smear;
- (8) Active primary herpes at term;
- (9) Positive cervical herpes cultures;
- (10) Indications that the fetus has died in utero;
- (11) Suspected postmaturity greater than 42 weeks;
- (12) Heart murmur or arrhythmia other than functional;
- (13) Prior obstetrical problems, including, but not limited to:
 - a. Past prematurity;
 - b. Uterine abnormalities;

- c. Placental abruption; and
- d. Incompetent cervix;

(14) Development of other conditions potentially detrimental to the pregnancy, such as recurrent urinary tract or kidney infection or active gonorrhea;

(15) Polyhydramnios or oligohydramnios;

(16) Suspected intrauterine growth retardation;

(17) Condyloma acuminata, significant or intravaginal;

(18) Suspected premature labor less than 37 weeks;

(19) Present with or develop a significant overweight or underweight state; or

(20) Non-insulin dependent gestational diabetes or abnormal glucose challenge test.

(e) If the client's risk factors, as outlined in (d) above, have been evaluated by an MD, DO with certification in natural childbirth, or APRN-CNM and deemed appropriate for delivery in the birthing center, the MD, DO with certification in natural childbirth, or APRN-CNM shall:

- (1) Provide written documentation of their approval; and
- (2) Include this documentation as part of the client's record.

(f) Any client who develops the following conditions during prenatal care shall be prohibited from delivery at the birthing center and transferred to the care of a physician or a certified nurse midwife for a hospital delivery:

- (1) Multiple fetuses;
- (2) Malpresentation, including breech position, that is not resolved before the onset of labor;
- (3) Confirmation that the fetus is small for gestational age;
- (4) Placenta previa or abruptio placenta;
- (5) Onset of labor prior to the 37th week of pregnancy; or
- (6) Insulin dependent diabetes.

(g) A care plan shall be developed and revised based on needs identified by the client's licensed or certified practitioner.

(h) If a certified midwife is the primary practitioner, the midwife shall consult with a physician or licensed APRN who is certified as a midwife and develop a plan of care for all clients who present with the following conditions:

- (1) Maternal distress as indicated by:
 - a. Hypertension; which is a systolic reading of 30 mm of mercury and a diastolic reading of 15 mm of mercury over baseline;
 - b. Blood loss greater than 500 cc; or

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- c. Temperature greater than 100 degrees Fahrenheit or less than 97 degrees Fahrenheit;
- (2) Prolonged rupture of the membranes prior to the onset of labor for more than 18 hours;
- (3) Fetal distress as indicated by:
- a. Persistent bradycardia;
 - b. Persistent tachycardia; or
 - c. Particulate meconium;
- (4) Failure to progress in spite of active labor that is defined as:
- a. A lack of steady dilation and descent after 24 hours for primigravida or 18 hours for multigravida during the first stage of labor;
 - b. A lack of fetal descent after 2 hours during the second stage of labor; or
 - c. Failure to deliver the placenta after one hour during the third stage of labor;
- (5) Neonatal distress as indicated by:
- a. Obvious congenital anomalies;
 - b. Apical pulse rate greater than 160 per minute;
 - c. Respiratory rate greater than 80 per minute;
 - d. Temperature outside the parameters of 97.7 to 99.4 degrees Fahrenheit or 36.5 to 37.5 degrees Celsius;
 - e. Persistent signs of respiratory difficulty without signs of improvement within one hour after birth;
 - f. Persistent central cyanosis or pallor;
 - g. Signs of hypoglycemia, such as jitteriness, lethargy or hypothermia;
 - h. Jaundice appearing before 24 hours after birth;
 - i. Small for gestational age; or
 - j. A 5 minute Apgar score that is 6 or 7.
- (i) All clients who present the following conditions during labor or delivery shall be immediately transferred to a hospital:
- (1) Malpresentation;
 - (2) Multiple fetuses;
 - (3) Prolapsed cord;
 - (4) Neonatal distress as indicated by:
 - a. Apnea with persistent central cyanosis or pallor;

- b. Persistent grunting and retractions;
- c. A 5 minute Apgar score of 5 or less, or failure to achieve an Apgar score of 7 within 30 minutes; or
- d. Jaundice before 24 hours; or

(5) Uncontrolled maternal bleeding.

(j) Prenatal care shall be provided at the home of the client, at the office of the licensed practitioner, or at the birthing center.

(k) Prenatal care shall include, but is not limited to:

- (1) A health examination including pelvic and speculum exam, as applicable;
- (2) A social, family, medical, reproductive, nutritional, and behavioral history;
- (3) Assessing vital signs including blood pressure;
- (4) Arranging for the following blood tests if not previously completed during the present pregnancy:
 - a. Complete blood count (CBC);
 - b. Blood type and Rh antibody screen;
 - c. Rubella titre;
 - d. Syphilis serology;
 - e. Hepatitis B surface antigen; and
 - f. HIV testing, if requested by the client;
- (5) An initial nutritional assessment and counseling;
- (6) Pap smear, if not done in the last 2 years;
- (7) Chlamydia and gonorrhea screening tests, as applicable;
- (8) Establishment of gestational age; and
- (9) Advising of available prenatal testing.

(l) Following the initial visit, the licensed or certified practitioner shall see the client:

- (1) Once a month through the 28th week of pregnancy;
- (2) Once every 2 weeks from the 28th week until the 36th week of pregnancy; and
- (3) Once a week from the 36th week of pregnancy until the onset of labor.

(m) Each prenatal visit shall include, but is not limited to, the following care:

- (1) Determining weight;
- (2) Assessing blood pressure;

- (3) Urine dip for protein and glucose, which may be performed by the client;
 - (4) Assessment of general health;
 - (5) Monitoring of uterine measurements, fetal heart rate, and fetal activity; and
 - (6) Arranging for birthing center tests or procedures as indicated.
- (n) Intrapartum care shall include, but is not limited to:
- (1) Monitoring the condition of mother and fetus;
 - (2) Providing emotional and physical support;
 - (3) Assisting with the delivery;
 - (4) Repairing minor tears or episiotomies as necessary;
 - (5) Examination and assessment of the newborn;
 - (6) Inspection of the placenta, membranes, and cord vessels; and
 - (7) Management of any maternal or neonatal complications.
- (o) Postpartum care shall include, but is not limited to:
- (1) Remaining with the client and newborn for a minimum of 2 hours after birth or until:
 - a. The infant:
 1. Is alert;
 2. Has good color;
 3. Has a good sucking reflex;
 4. Is breathing normally; and
 5. Has a stable temperature within the range of 97 to 100 degrees F; and
 - b. The mother:
 1. Has a firm fundus;
 2. Does not have excessive vaginal bleeding;
 3. Is afebrile;
 4. Has voided; and
 5. Has established successful breastfeeding, if applicable;
 - (2) Obtaining or arranging for a blood sample from the newborn for metabolic disorders as required by RSA 132:10-a;
 - (3) Providing the client with information on routine postpartum and newborn care, including follow up care with a pediatrician or family practitioner for the newborn;

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- (4) Providing the client's obstetrician, primary care physician, pediatrician, or certified nurse midwife with a written summary of labor and delivery and an assessment of the newborn;
 - (5) Contacting the client by telephone within 24 hours of discharge to establish well-being and health of mother and newborn;
 - (6) Providing 2 postpartum visits within 6 weeks of delivery; and
 - (7) Managing any complications that may arise and, based on the complication:
 - a. Consulting with a physician under the arrangements required by Mid 502.06 or a certified nurse midwife; or
 - b. Transferring the client with notification to the consulting physician or certified nurse midwife.
- (p) The certified nurse midwife or certified midwife, or other person authorized by law, shall administer the following medications as clinically indicated:
- (1) Rhogam (immune globulin) for Rh blood incompatibility;
 - (2) Eye prophylaxis for prevention of gonococcal infection in the newborn;
 - (3) Oxygen for fetal distress and infant resuscitation;
 - (4) Lidocaine hydrochloride by infiltration only for the purpose of postpartum repair of tears, lacerations, or episiotomies;
 - (5) Vitamin K, orally or intramuscular, for prevention of hemorrhagic disease in the newborn;
 - (6) Oxytocins, orally or intramuscular, for control of postpartum maternal hemorrhage; and
 - (7) Intravenous fluids as an emergency measure for maternal complications.
- (q) Birthing center personnel shall follow the orders of the licensed or certified practitioner.
- (r) The client's record shall contain written notes for:
- (1) All care and services provided at the birthing center, including:
 - a. Date and time that the care or services were provided;
 - b. Description of the care or services provided;
 - c. Client's response to the care or services provided; and
 - d. Signature and title of the person providing the care or service; and
 - (2) Any reportable incidents involving the client, which shall include, but not be limited to:
 - a. Date and time of the reportable incident;
 - b. Description of the reportable incident, including identification of injuries, if applicable;
 - c. Actions taken by personnel, including follow-up;

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- d. Date and time the emergency contact person, guardian, or agent acting pursuant to a DPOA and the licensed or certified practitioner were notified if medical intervention was required;
 - e. Signature and title of the person reporting the unusual incident; and
 - f. Signature and title of the person completing the report.
- IX. (s) The use of chemical or physical restraints shall be prohibited except as allowed by RSA 151:21,
- (t) In addition to (s) above, the use of mechanical restraints shall be prohibited.
- (u) Clients shall be transferred or discharged from the birthing center:
- (1) In accordance with:
 - a. RSA 151:21,V and RSA 151:26; and
 - b. The birthing center's policies; and
 - (2) When there is:
 - a. A written order from a licensed practitioner;
 - b. A medical emergency and the client is in need of care and services not available at the birthing center; or
 - c. The client has developed one of the conditions listed in (f) above.
- (v) A summary shall be written for any client discharged or transferred from the birthing center which includes:
- (1) The date and time the client left the birthing center;
 - (2) The place to which the client was transferred or discharged;
 - (3) The condition of the client at the time of discharge or transfer; and
 - (4) The discharge plan and instructions for home and follow up care.
- (w) After receiving permission from the client or legal representative, copies of the clinical progress notes and medication records shall accompany the transferred client.
- (x) For each client accepted for care and services at the birthing center, a current and accurate record shall be maintained and include, at a minimum:
- (1) The written confirmation required by (a)(1) above;
 - (2) The identification data required by (a)(2) above;
 - (3) The record of the health examination required by (a)(5) above;
 - (4) Consent forms and release forms required by (a)(7) above;
 - (5) All orders from a licensed practitioner, including the date and signature of the licensed practitioner;

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- (6) Results of any birthing center tests or ultrasounds;
- (7) All consultation reports;
- (8) All assessments;
- (9) All written notes required by (r) above; and
- (10) A discharge or transfer summary as required by (v) above.

(y) Client records shall be safeguarded against loss, damage, or unauthorized use by being stored in locked containers, cabinets, rooms, or closets except when being used by the birthing center's personnel.

(z) Client records shall be retained for a minimum of 4 years after discharge or, in the case of a minor, until one year after reaching age 18, but no less than 4 years after discharge.

(aa) Prior to the birthing center ceasing operation, it shall arrange for the storage of and access to client records for 4 years after the date of closure, which shall be made available to the department and past clients upon request.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.17 Medications.

- (a) If the licensee maintains a pharmacy on the licensed premises it shall comply with RSA 318.
- (b) All prescription medications listed under He-P 810.16(p) may be maintained as stock medications at the birthing center.
- (c) The licensed practitioner shall approve all over-the-counter medications taken by clients at the birthing center.
- (d) All medications shall be administered in accordance with the orders of the licensed practitioner or other professional with prescriptive powers.
- (e) Licensees shall maintain either the original, or a copy of the original written order in the client's record, signed by a licensed practitioner or other individual authorized by law, for each prescription medication being taken at the birthing center.
- (f) Each prescription medication shall legibly display the following information:
 - (1) The client's name, unless it is a stock medication as allowed in (b) above;
 - (2) The medication name, strength, prescribed dose, and the route of administration;
 - (3) The frequency of administration;
 - (4) The indications for usage of all PRN medications;
 - (5) The date ordered; and
 - (6) The name of the prescribing practitioner.

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(g) Except for stock medications identified in He-P 810.16(p), the label of all medication containers maintained in the birthing center shall match the current written orders of the licensed practitioner.

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

(i) Any change or discontinuation of medications taken at the birthing center shall be pursuant to a written order from a licensed practitioner or other individual authorized by law.

(j) All prescription medication not ordered, approved, or labeled for a specific client, including but not limited to pharmaceutical samples, which is stored at the birthing center, shall be the responsibility of the medical director.

(k) All verbal orders from an authorized prescriber, including but not limited to telephone orders, shall be taken by a licensed person such as a nurse or other licensed health care professional, if such action is within the scope of their practice act, and immediately transcribed and signed by the individual taking the order, and shall be counter-signed by the authorized prescriber within 48 hours.

(l) The medication storage area shall be:

(1) Locked and accessible only to authorized personnel;

(2) Clean, organized in a fashion to ensure correct identification of each client's medication(s), and have lighting adequate to read all medication labels; and

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

(m) Medication kept at the birthing center shall be kept in the original containers as dispensed by the pharmacy and properly closed after each use.

(n) Topical liquids, ointments, creams, or powder forms of products shall be stored separately from oral, optic, ophthalmic, and parenteral products.

(o) Controlled drugs, as defined by RSA 318-B: 1, VI, stored in a central storage area of the birthing center shall be:

(1) Kept in a separately locked compartment within the locked medication storage area; and

(2) Accessible only to authorized personnel.

(p) Except as allowed by (r) below, any contaminated, expired, or discontinued medication shall be destroyed within 30 days.

(q) The destruction of contaminated, expired, or discontinued medication under (p) above shall:

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

(2) Be documented in the record of the client.

(r) Medication(s) may be returned to pharmacies for credit only under the provisions of Ph 704.07.

(s) Upon discharge or transfer, the licensee shall make the client's current medications available to take with them.

(t) The department shall order a birthing center to obtain the routine services of a consultant pharmacist for 12 months if areas of noncompliance regarding medications, which the department determines present a potential risk to clients' health, are found during any inspection or investigation.

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(u) Only individuals authorized by law shall administer medications to clients.

(v) Medication shall be prepared immediately prior to administration and shall be prepared, identified, and administered by the same person in compliance with RSA 318 and RSA 326-B.

(w) When administering medication, personnel shall remain with the client until the client has taken all of the medication.

(x) The licensee shall maintain a written record for each medication taken by the client at the birthing center, containing the following information:

- (1) Any allergies or allergic reaction to medication;
- (2) The name and strength of the medication;
- (3) The dose taken by the client;
- (4) The route of administration, if other than by mouth;
- (5) The signature and identifiable initials and job title of:
 - a. The person administering the medication; and
 - b. The person supervising or assisting the client taking his or her medication;
- (6) Documented reason for any medication refused or omitted; and
- (7) For PRN medications, the reason the client required the medication and the effect of the PRN medication.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.18 Personnel.

(a) For all applicants for employment, except, pursuant to RSA 151:2-d, VI, those licensed by the New Hampshire board of nursing, and for all household members 17 years of age or older, the licensee shall:

- (1) Obtain and review a criminal records check from the New Hampshire department of safety; and
- (2) Review the results of the criminal records check in accordance with (b) below and verify the qualifications of all applicants prior to employment.

(b) The licensee shall not offer employment for any position or allow a household member to continue to reside in the residence if the individual:

- (1) Has been convicted of a felony in this or any other state;
- (2) Has been convicted of a sexual assault, other violent crime, assault, fraud, abuse, theft, neglect, or exploitation in this or any other state;
- (3) Has been found by the department or any administrative agency in this or any other state to have committed assault, fraud, abuse, neglect, or exploitation of any person; or

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

(c) The department shall grant a waiver of (b) 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.

(d) No employee shall be permitted to maintain their employment, and no household member shall be permitted to remain residing in the facility, if he or she has 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 has had a complaint investigation for abuse, neglect, or exploitation adjudicated and founded by the department or any administrative agency in this or any other state unless a waiver has been granted by the department.

(e) The licensee shall check, prior to hiring, the names of all prospective employees against the bureau of elderly and adult services (BEAS) state registry maintained pursuant to RSA 161-F:49 and He-E 720, and the NH board of nursing's nursing assistant registry maintained pursuant RSA 326-B:26 and 42 C.F.R. section 483.156.

(f) If the information identified in (b) above regarding any employee is learned after the person begins employment, the licensee or administrator shall submit the information to the department immediately upon discovery.

(g) All personnel shall:

- (1) Be at least 18 years of age if working as direct care personnel;
- (2) Meet the educational and physical qualifications for their position, as listed in the job description in (n)(5) below;
- (3) Be licensed, registered, or certified if required by state statute;
- (4) Receive an orientation within the first 3 days of work, including:
 - a. The birthing center's policy on client rights and responsibilities and complaints in accordance with RSA 151:20;
 - b. The duties and responsibilities of the position;
 - c. The birthing center's policies, procedures, and guidelines;
 - d. The birthing center's infection control program;
 - e. The birthing center's fire, evacuation, and emergency plans outlining the responsibilities of personnel in an emergency; and
 - f. Mandatory reporting requirements such as those found in RSA 161-F:46 or RSA 169-C:29;

(h) Prior to having contact with clients or food, personnel shall:

- (1) Submit to the birthing center the results of a physical examination or health screening and results of a 2-step tuberculosis (TB) test, Mantoux method or other method approved by the Centers for Disease Control (CDC), conducted not more than 12 months prior to employment;
- (2) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first step are negative for TB; and

- (3) Comply with the requirements of the Centers for Disease Control and Prevention “Guidelines for Preventing the Transmission of *M. tuberculosis* in Health-Care Settings,” 2005 edition, available as noted in Appendix A, 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.
- (i) All personnel shall complete annual in-service education, including a review of the birthing center’s:
- (1) Policies and procedures relative to patient’s rights;
 - (2) Infection control program;
 - (3) Education program on fire, evacuation, and emergency procedures; and
 - (4) The mandatory reporting requirements including RSA 161-F:46 and RSA 169-C:29.
- (j) All professional direct care personnel shall have current certificates in:
- (1) Adult cardio pulmonary resuscitation (CPR) equivalent to basic life support from either the American Red Cross or the American Heart Association; and
 - (2) Neonatal CPR equivalent to the American Heart Association and American Academy of Pediatrics’ “2005 American Heart Association (AHA) Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC) of Pediatric and Neonatal Patients: Neonatal Resuscitation Guidelines,” available as noted in Appendix A.
- (k) All direct care personnel shall be familiar with the location, operation, and use of all equipment in the birthing center.
- (l) All birthing centers using the service of independent clinical contractors who have direct contact with clients shall:
- (1) Provide each clinical contractor with an orientation as specified in (g)(4) above;
 - (2) Maintain copies on file of a physical examination or health screening and 2-step tuberculosis testing, Mantoux method, that were conducted not more than 12 months prior to employment for each clinical contractor;
 - (3) Maintain a copy of the clinical contractors’ licenses as required by (g)(3) above, if applicable; and
 - (4) Have a written agreement with each clinical contractor that describes the services that will be provided.
- (m) Current and complete personnel files shall be maintained at the birthing center for all personnel.
- (n) The personnel file required by (m) above shall include the following:
- (1) A completed application for employment or a resume;
 - (2) Proof that the individual meets the minimum age requirements;
 - (3) A statement signed by each individual that he or she has received a copy of the birthing center’s policy setting forth the client’s rights and responsibilities, and acknowledging training and implementation of the policy as required by RSA 151:20;

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- (4) A copy of the results of the criminal record check as described in (a) above;
- (5) A job description signed by the individual that identifies the:
 - a. Position title;
 - b. Qualifications and experience; and
 - c. Duties required by the position;
- (6) A record of satisfactory completion of the orientation program required by (g)(4) above;
- (7) Information as to the general content and length of all in-service or educational programs attended;
- (8) Record of satisfactory completion of all required education programs required by (g), (i) and (j) above;
- (9) A copy of each current New Hampshire license, registration, or certification in a health care field, if applicable;
- (10) Documentation that the required physical examination or health screenings, TB test results and radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
- (11) If applicable, copies of current certificates in:
 - a. Adult CPR equivalent to basic life support from either the American Red Cross or the American Heart Association; and
 - b. Neonatal CPR equivalent to the American Heart Association and American Academy of Pediatrics "2005 American Heart Association (AHA) Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC) of Pediatric and Neonatal Patients: Neonatal Resuscitation Guidelines," available as noted in Appendix A; and
- (12) The statement required by (o) below.
 - (o) 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;
 - (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; or
 - (4) Otherwise poses a threat to the health, safety or well-being of clients.
 - (p) An individual need not re-disclose any of the matters in (o) above if the documentation is available and the department has previously reviewed the material and determined that the individual can continue employment.
 - (q) The licensee shall maintain separate personnel records that:

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- (1) Contain the information required by (n) above; and
- (2) Are protected and stored in a secure and confidential manner.

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He-P 810.19 Quality Improvement.

- (a) The birthing center 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 birthing center shall determine the size and composition of the quality improvement committee based on the size of the birthing center 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 birthing center; and
 - (7) Evaluate the effectiveness of the corrective actions.
- (e) If the birthing center utilizes nurse delegation for the task of medication administration to an individual not licensed to administer medications, a quarterly written report containing the following information shall be completed and submitted to the quality improvement committee for review:
 - (1) The client census;
 - (2) The number of unlicensed personnel administering medications via nurse delegation;
 - (3) Categories of medications administered;
 - (4) Route of administration; and
 - (5) Any incidents or medication errors and actions taken.
- (f) The quality improvement committee shall meet at least quarterly.
- (g) The quality improvement committee shall generate dated, written minutes after each meeting.
- (h) Documentation of all quality improvement activities, including minutes of meetings, shall be maintained on-site for at least 2 years from the date the record was created.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.20 Infection Control.

(a) The birthing center shall appoint an individual who will oversee the development and implementation of an infection control program that educates and provides procedures for the prevention, control, and investigation of infectious and communicable diseases.

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

- (1) Proper hand washing techniques;
- (2) The utilization of universal precautions;
- (3) The management of clients with infectious or contagious diseases or illnesses;
- (4) The handling, storage, transportation, and disposal of those items identified as infectious waste in Env-Sw 904; and
- (5) The 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) Personnel infected with a disease or illness transmissible through food, fomites or droplets, shall not work in food service or provide direct care in any capacity until they are no longer contagious.

(e) Personnel with a newly positive TB test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the person is receiving tuberculosis treatment and has been determined to be noninfectious by an authorized medical professional.

(f) Personnel with an open wound who participate in food preparation or service or provide direct care in any capacity shall cover the wound at all times by an impermeable, durable, tight fitting bandage.

(g) Personnel infected with scabies or lice shall not provide direct care to clients or work in food services until such time as they are no longer infected.

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

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.21 Sanitation.

(a) The birthing center shall have and maintain a source of potable water available for human consumption.

(b) All furniture, floors, ceilings, walls, and fixtures shall be kept clean, sanitary, and in good repair at all times.

(c) All client bathrooms shall have non-porous floors.

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

(e) Birthing center personnel shall clean and disinfect bedpans, commodes, basins, fixtures, toilets, and showers or tubs after each use.

(f) If equipment or supplies need to be sterilized in order to prevent contamination, the birthing center shall develop and maintain written procedures for cleaning, packaging, and sterilizing, including:

(1) Testing and documenting the sterilization processes used; and

(2) Documentation when supplies are outdated.

(g) The sterilization system required in (f) above shall be checked for effective sterilization in accordance with the manufacturer's recommendation, and the results of these quality control tests shall be documented and available on site for review by the department.

(h) Sterile supplies and equipment shall:

(1) Be stored in dust-proof, moisture-free storage areas; and

(2) Not be mixed with non-sterile supplies.

(i) Cleaning solutions, compounds, and substances that might be considered toxic or defined as hazardous waste, in accordance with RSA 147-A:2 VII, shall be kept in an enclosed area and be:

(1) Distinctly labeled and legibly marked so as to identify the contents; and

(2) Stored in a place separate from food, medications and client supplies.

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

(k) In-house trash and garbage receptacles shall be insect and rodent proof, water tight, lined or cleaned, and disinfected after emptying and kept covered except when in use.

(l) Trash receptacles for paper waste may be kept uncovered in all areas except food service areas.

(m) There shall be a designated work area for soiled materials and linens that contains a work counter of at least 6 linear feet, a sink, and a storage area.

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(n) A supply of clean linens shall be stored in a clean area separated from soiled linens and available in sufficient amounts to meet the needs of the clients.

(o) Soiled materials, linens, and clothing shall be handled as little as possible and transported in a laundry bag, sack, or a covered container.

(p) Soiled linens and clothing, which would be considered contaminated with infectious waste shall be handled as infectious waste.

(q) Laundry rooms shall have non-porous floors and be kept separate from the kitchen and eating areas.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.22 Physical Environment.

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

- (1) Building;
- (2) Health;
- (3) Fire;
- (4) Waste disposal; and
- (5) Water.

(b) The birthing center shall:

- (1) Have all entrances and exits accessible at all times;
- (2) Be maintained in good repair and kept free of hazards to personnel and clients, including but not limited to hazards from falls, burns, or electrical shocks;
- (3) Be free from environmental nuisances, including excessive noise and odors;
- (4) Keep all corridors free from obstructions; and
- (5) Take measures to prevent the presence of rodents, insects, and vermin, including but not limited to:
 - a. Having tightly fitting screens on all doors, windows, or other openings to the outside unless the door is self closing and remains closed unless in use;
 - b. Repairing holes and caulking of pipe channels; and
 - c. Extermination by a pesticide applicator licensed under RSA 430.

(c) Equipment providing heat within a birthing center, including but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove, or pellet stove shall:

- (1) Maintain a temperature as follows, except where clients have control of the thermostat in their own room:

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- a. Be at least 65 degrees Fahrenheit at night; and
 - b. Be at least 70 degrees Fahrenheit during the day if there are clients present; and
- (2) Be serviced once a year or as recommended by the manufacturer with written documentation of such service retained for at least 4 years.
- (d) Electric heating systems shall be exempt from (c)(2) above.
 - (e) Portable space heating devices shall be prohibited, unless the following are met:
 - (1) Such devices are used only in employee areas where personnel are present and awake at all times; and
 - (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.
 - (f) Unvented fuel-fired heaters shall not be used in any birthing center.
 - (g) Plumbing shall be sized, installed, and maintained in accordance with the provisions of the International Plumbing Code 2009, as specified in the State Building Code under RSA 155-A:1, IV.
 - (h) Delivery rooms shall have general lighting in addition to examination lighting at each birthing bed. Portable examination lights shall be permitted, but must be immediately accessible.
 - (i) Ventilation shall be provided throughout the entire building whenever necessary, including but not limited to, fans to remove excessive heat, moisture, smoke, objectionable odors, dust, and explosive or toxic gases.
 - (j) There shall be a reception and waiting area that includes chairs, tables, and lighting sufficient to allow for needlepoint or reading.
 - (k) Pursuant to RSA 155:66, I, smoking shall be prohibited in the birthing center.
 - (l) There shall be public access to a telephone and toilet facilities for the client and the client's visitors.
 - (m) The licensee shall ensure the birthing center has properly maintained equipment including, but not limited to:
 - (1) A heat source for the newborn;
 - (2) Portable lighting;
 - (3) Sterilizer or demonstration of sterilizing capability;
 - (4) Blood pressure equipment, thermometers, fetoscope, or doptone;
 - (5) Oxygen;
 - (6) Neonatal resuscitation bag; and
 - (7) Intravenous equipment.
 - (n) The birthing center shall provide clients with continuous access to a device or means that will signal personnel when the client(s) are in need of assistance.
 - (o) The number of sinks and toilets in the birthing center shall be as follows:

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- (1) Sinks and toilets in a ratio of one to every 6 clients; and
- (2) Personnel and visitors shall either have:

- a. Separate sinks and toilets; or
- b. Be counted along with clients in the ratios in (1) above.

(p) All clients shall have access to a bathroom with a toilet, tub or shower, a hand washing sink, soap dispensers, and paper towels or a hand-drying device providing hot air.

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

(r) All bathroom and closet door locks or latches shall be designed so that the door can be easily unlocked and opened from the outside.

(s) Each client bedroom shall have natural lighting directly from outside windows of a size equivalent to or greater than 8% of the room's gross square footage.

(t) Each client bedroom shall provide at least 100 square feet per room, exclusive of space required for closets, wardrooms, and bathrooms and contain the following:

- (1) A bed with mattress, pillow, linens, and blankets;
- (2) A lamp for the bed; and
- (3) Window blinds or curtains that provide privacy.

(u) Only one client shall be admitted to each bedroom in the birthing center.

(v) Each bedroom shall have a door that shall be of the side hinge type and not a folding door or a curtain.

(w) Each bedroom shall have its own separate entry to permit the client to reach their room without passing through the room of another person.

(x) All mattresses and new upholstered furniture or draperies shall either comply with Saf-C 6000 as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control, or be treated annually with a fire retardant spray.

(y) Each birthing center may be licensed for more than one licensing classification, but if the licensee has overnight beds for more than one licensing classification, physically separate and distinct units shall be required for each classification.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.23 Fire Safety.

(a) An emergency and fire safety program shall be developed and implemented to provide for the safety of clients and personnel in accordance with the following:

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- (1) The birthing center shall have a telephone and extensions accessible at all times in each client bedroom in case of emergency;
 - (2) The birthing center shall have at least one ABC type fire extinguisher on every level or every 75 feet of corridor as required by NFPA 10, as adopted by the department of safety;
 - (3) The birthing center shall immediately notify the department by phone, fax, or electronic mail within 24 hours and in writing within 72 hours of any fire or situation, excluding a false alarm, that requires either an emergency response to the birthing center or the evacuation of the licensed premises; and
 - (4) The written notification under (3) above shall include:
 - a. The date and time of the incident;
 - b. A description of the location and extent of the incident, including any damage;
 - c. A description of events preceding and following the incident;
 - d. The name of any personnel or clients who required medical treatment as a result of the incident, if applicable; and
 - e. The name of the individual the birthing center wishes the department to contact if additional information is required.
- (b) All freestanding tanks of compressed gases shall be firmly secured to the adjacent wall or secured in a stand or rack.
- (c) Flammable gases and liquids shall be stored in metal fire retardant cabinets.
- (d) A written plan for fire safety, evacuation, and emergencies shall be adopted and posted in multiple locations throughout the facility.
- (e) Evacuation drills shall include the transmission of a fire alarm signal and simulation of emergency fire conditions.
- (f) Evacuation drills shall be conducted twice a year, and each employee shall participate in at least 2 drills a year.
- (g) The licensee shall maintain a report for each evacuation drill, which includes:
- (1) The names of the personnel and clients involved;
 - (2) The time, date, month, and year the drill was conducted;
 - (3) The exits utilized;
 - (4) The total time required to evacuate the building and the time needed to complete the emergency drill or both; and
 - (5) Any problems encountered and corrective actions taken to rectify problems.

Source. #8957, eff 7-27-07, EXPIRED: 7-27-15

New. #11039, INTERIM, 2-24-16, EXPIRES: 8-22-16; ss by #11161, eff 8-20-16

He-P 810.24 Emergency Preparedness.

(a) Each facility shall have an individual or group, known as an emergency management committee, with the authority for developing, implementing, exercising, and evaluating the emergency management program. The committee shall include the facility administrator and others who have knowledge of the facility and the capability to identify resources from key functional areas within the facility and shall solicit applicable external representation, as appropriate.

(b) The emergency management committee shall develop and institute a written emergency preparedness plan (plan) to respond to a disaster or an emergency.

(c) The plan in (b) above shall:

(1) Include site-specific plans for the protection of all persons on-site in the event of fire, natural disaster, or severe weather and human-caused emergency to include, but not be limited to, missing clients and bomb threat;

(2) Be approved by the local emergency management director and reviewed and approved, as appropriate, by the local fire department;

(3) Be available to all personnel;

(4) Be based on realistic conceptual events;

(5) Be modeled on the Incident Command System (ICS) in coordination with local emergency response agencies;

(6) Include the facility's response to both short-term and long-term interruptions in the availability of utility service in the disaster or emergency, including establishing contingency plans for continuity of essential building systems or evacuation to include the following, as applicable:

a. Electricity;

b. Water;

c. Ventilation;

d. Fire protection systems;

e. Fuel sources;

f. Medical gas and vacuum systems, if applicable; and

g. Communications systems;

(7) Include a plan for alerting and managing staff in a disaster, and accessing Critical Incident Stress Management (CISM), if necessary;

(8) Include the management of clients, particularly with respect to physical and clinical issues to include relocation of clients with their medical record including the medication administration records, if time permits, as detailed in the emergency plan;

(9) Include an educational program for the staff, to provide an overview of the components of the emergency management program, concepts of the ICS, and the staff's specific duties and responsibilities; and

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(10) If the facility is located within 10 miles of a nuclear power plant and is part of the New Hampshire plan for radiological emergency preparedness, include this plan in the event of a radiological disaster or emergency.

(d) The facility shall contact the local emergency management director annually to determine if any revisions are needed based upon current trends in emergency management, local policy changes, and hazard changes. Annually, the facility shall participate in a community-based disaster drill which may be a table top discussion drill with outside agencies.

Source. #11161, eff 8-20-16

Appendix A: Incorporation by Reference Information

Rule	Title	Obtain at:
He-P 810.18(h)(3)	Centers for Disease Control and Prevention “Guidelines for Preventing the Transmission of M. tuberculosis in Health-Care Settings,” 2005 edition	Available free of charge from the CDC website at www.cdc.gov .
He-P 810.18(j)(2) & (n)(11)b.	American Heart Association and American Academy of Pediatrics “2005 American Heart Association (AHA) Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC) of Pediatric and Neonatal Patients: Neonatal Resuscitation Guidelines”	Available free of charge from the American Academy of Pediatrics website at http://pediatrics.aappublications.org/content/117/5/e1029 .
He-P 810.20(h)	United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007 edition)	Available free of charge from the CDC website at www.cdc.gov .

Appendix B

Rule	Specific State or Federal Statutes the Rule Implements
He-P 810.01 - He-P 810.03	RSA 151:9, I(a) & (b)
He-P 810.04 - He-P 810.06	RSA 151:9, I(c); RSA 151:4, II and III-a; RSA 151:5, I(c)
He-P 810.07	RSA 151:9, I(a) & (e); RSA 151:9, III; RSA 151:6, II
He-P 810.08	RSA 151:9, I(a) & (f)
He-P 810.09	RSA 151:9, I(a) & (e); RSA 151:6, III; RSA 151:6-a
He-P 810.10	RSA 151:9, I(a) & (b)
He-P 810.11	RSA 151:9, I(a) & (e); RSA 151:6
He-P 810.12 – He-P 810.13	RSA 151:9, I(a), (f)-(i), (l) & (m); RSA 151:7; RSA 151:7-a; RSA 151:8
He-P 810.14 – He-P 810.22	RSA 151:9, I(a); RSA 151:20; RSA 151:21, RSA 151:22; RSA 151:29
He-P 810.23 – He-P 810.24	RSA 151:9, I(a); RSA 151:9, III
He-P 810.23 – He-P 810.24	RSA 151:9, I(a); RSA 151:9, III