

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

PART He-P 819 CASE MANAGEMENT AGENCIES

He-P 819.01 Purpose. The purpose of this part is to set forth the licensing requirements for all case management agencies (CMA) pursuant to RSA 151:5, XXII.

Source. #5633, eff 5-27-93; ss by #7006, INTERIM, eff 5-26-99, EXPIRED: 9-23-99

New. #10260, eff 1-25-13

He-P 819.02 Scope. This part shall apply to any agency, partnership, corporation, government entity, association or other legal entity providing case management services in a client's place of residence and operating as a case management agency, except:

- (a) All facilities listed in RSA 151:2, II(a)-(i);
- (b) All entities which are owned or operated by the state of New Hampshire, pursuant to RSA 151:2, II(i);
- (c) Self-employed individuals with no employees who provide case management services by private arrangement with a client(s);
- (d) All licensed healthcare entities, whether residential or non-residential, where case management is a component of the services provided, to include but not limited to hospitals, nursing homes, home health agencies, assisted living facilities, residential rehabilitation, residential psychiatric treatment, non-emergency walk-in care centers, ambulatory surgical centers, end stage renal dialysis centers, community residences, adult day care centers, and hospice care;
- (e) Community mental health programs approved in accordance with He-M 403, where case management is a component of the services provided; and
- (f) Area agencies designated in accordance with He-M 505, where case management is a component of the services provided.

Source. #10260, eff 1-25-13

He-P 819.03 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 without their informed consent.
- (b) "Administrator" means the licensee or individual appointed by the licensee to be responsible for all aspects of the daily operation of the licensed premise.

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

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

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

(f) “Branch office” means a location physically separate from the primary location that provides client services under the administration and supervision of the primary location.

(g) “Bio-psychosocial history” means information about an individual’s past and present functioning in the areas of:

- (1) Physical health and capabilities;
- (2) Psychological health including emotional and coping abilities;
- (3) Social environment, including interactive skills, activities and supports;
- (4) Decision making abilities;
- (5) Social and family interactions;
- (6) Employment and financial management;
- (7) Financial considerations;
- (8) Vocational interests and activities, including spiritual preferences; and
- (9) Other areas of significance, including, but not limited to, substance abuse or misuse, and involvement with the behavioral health care system, the developmental disability system or the legal system.

(h) “Care plan” means a written guide developed by the licensee, in consultation with the client, and the client’s guardian, agent or personal representative, if any, as a result of the assessment process for the provision of care and services and which includes goals, objectives and timelines for their achievement.

(i) “Case management agency (CMA)” means an organization employing 2 or more people that, in consultation with the client in the client’s place of residence, arranges for and coordinates the delivery of care and services to meet the physical, emotional, medical, nursing, financial, legal and social services needs of the client.

(j) “Case manager” means a person who provides case management services for an eligible individual and who is responsible for the ongoing assessment, coordination and monitoring of services to a client and is employed by a case management agency.

(k) “Case management supervision” means the provision of professional oversight and guidance of case manager performance by:

- (1) Monitoring and oversight of case manager interactions and courses of action with the individuals for whom he/she provides case management services;
- (2) Monitoring and oversight of a case manager’s service implementation activities including a review of all complex clients at least once per quarter;

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- (3) Written evaluation of a case manager's performance at least annually;
- (4) Identifying corrective action to improve a case manager's performance; and
- (5) Teaching and training case managers to enhance quality of case management service delivery as well as providing current Choices for Independence (CFI) program information.

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

(m) "Client" means any person admitted to or in any way receiving services from a CMA licensed in accordance with RSA 151 and He-P 819.

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

(o) "Client record" means the documentation of all care and services, which includes all documentation required by RSA 151 and He-P 819 and any 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) "Days" means calendar days unless otherwise specified in the rule.

(r) "Deficiency" means any action, failure to act or other set of circumstances that causes a licensee to be out of compliance with RSA 151 or He-P 819.

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

(t) "Direct care" means providing hands-on care or services to a client.

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

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

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

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

(y) "Inspection" means the process followed by the department to determine an applicant's or a licensee's compliance with RSA 151 and He-P 819 or to respond to allegations of non-compliance with RSA 151 and He-P 819.

(z) "License" means the document issued to an applicant or licensee of an CMA which authorizes operation in accordance with RSA 151 and He-P 819, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

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

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(ab) “Licensed practitioner” means a:

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

(ac) “Licensed premises” means the building that comprises the physical location the department has approved for the licensee to conduct operations in accordance with its license. This term includes branch offices but does not include the private residences of a client receiving services from a CMA.

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

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

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

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

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

(ai) “Personnel” means individual(s) who provide case management services to a client.

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

(ak) “Primary location” means the principle site for the CMA where the business office and administrative staff are located.

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

Source. #10260, eff 1-25-13

He-P 819.04 Initial License Application Requirements.

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

- (1) A completed application form entitled “Application for Residential or Health Care License,” (4/4/12 edition) signed by the applicant or 2 of the corporate officers affirming the following:

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

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(2) If applicable, proof of authorization from the New Hampshire secretary of state to do business in New Hampshire in the form of one of the following:

- a. "Certificate of Authority," if a corporation;
- b. "Certificate of Formation," if a limited liability company; or
- c. "Certificate of Trade Name," where applicable;

(3) The applicable fee, in accordance with RSA 151:5, payable in cash in the exact amount of the fee, or, if paid by check or money order, the exact amount of the fee made payable to the "Treasurer, State of New Hampshire";

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

(5) For the proposed or existing licensed premises, not including a client's home, a local approval from the zoning officer verifying that the applicant complies with all applicable local zoning ordinances, which shall be obtained no more than 90 days prior to submission of the application; and

(6) The results of a criminal records check from the NH department of safety for the applicant(s), licensee and administrator.

(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

Source. #10260, eff 1-25-13

He-P 819.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 819.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 819.04, the department shall notify the applicant in writing of the items required before the application can be processed.

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

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

(e) Unless a waiver has been granted, the department shall deny a licensing request in accordance with He-P 819.17(c) after reviewing the information in He-P 819.04(a)(6) above if, after review, it determines that the applicant, licensee or administrator:

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

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for assault, fraud, abuse, neglect or exploitation of any person; or

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

(f) An inspection shall be completed in accordance with He-P 819.09 prior to the issuance of a license.

(g) Following an inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 819.

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

Source. #10260, eff 1-25-13

He-P 819.06 License Expirations and Procedures for Renewals.

(a) A license shall be valid on the date of issuance and expire the following year on the last day of the month it was issued unless a completed application for renewal has been received.

(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 819.04 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 819.04(a)(1), and (3);

(2) The current license number;

(3) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 819.10(f) if the existing waiver was time limited by the department; and

(4) A list of any current employees for which a waiver was granted according to He-P 819.05(e) above.

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

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

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

(3) Is found to be in compliance with RSA 151 and He-P 819 at the renewal inspection.

(e) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license shall be required to submit an application for initial license pursuant to He-P 819.04.

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

(g) Prior to issuing a license the department shall review any of the information submitted in accordance with He-P 819.04(a)(6) and deny a license renewal in accordance with He-P 819.05(e).

Source. #10260, eff 1-25-13

He-P 819.07 Branch Offices.

(a) CMAs may establish branch offices.

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(b) The CMA shall notify the department in writing prior to operating at an additional location(s).

(c) The CMA shall submit to the department the information required by He-P 819.04(a)(5) for branch offices.

(d) Upon receipt of the information required by (b) and (c) above, the department shall issue a revised annual license certificate to reflect the addition of the branch offices provided the additions do not violate RSA 151 or He-P 819.

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

Source. #10260, eff 1-25-13

He-P 819.08 CMA Requirements for Organizational Changes.

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

- (1) Ownership;
- (2) Primary physical location;
- (3) Address;
- (4) Branch locations;
- (5) Name; and
- (6) Services.

(b) The CMA shall complete and submit a new application prior to operating for:

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

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

(d) The CMA shall inform the department in writing as soon as possible prior to a change in administrator and provide the department with the following:

- (1) The information specified in He-P 819.04(a)(6);
- (2) A resume identifying the name and qualifications of the new administrator; and
- (3) Copies of applicable licenses for the new administrator.

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

- (1) Does not have a history of any of the criteria identified in He-P 819.05(e); and
- (2) Meets the qualifications for the position as specified in He-P 819.15(a).

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

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

(h) When there is to be a change in the services provided, the CMA shall provide the department with a description of the service change.

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

(j) An inspection by the department shall be conducted prior to operation when there is a change in the ownership, unless the current licensee has no outstanding administrative actions in process and there will be no changes made by the new owner in the scope of services provided.

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

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

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

- (1) A change of administrator;
- (2) A change in the scope of services provided; or
- (3) When a waiver has been granted.

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He-P 819.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 819, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the CMA; and
- (3) Any records required by RSA 151 and He-P 819.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 819 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as allowed by He-P 819.08(j); or
- (3) The renewal of a license.

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

Source. #10260, eff 1-25-13

He-P 819.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 819 shall submit a written request for a waiver to the commissioner that includes:

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

(b) Waivers granted shall be permanent, except if the waiver is specific to a particular client, and subject to changes in the client's health status, in which case it shall be restricted by the department to a specified length of time.

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

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

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

(e) Waivers shall not be transferable.

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

- (1) When the licensee submits its application for license renewal pursuant to He-P 819.06(c); or
- (2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the licensing certificate.

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

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He-P 819.11 Complaints.

(a) The department shall investigate complaints that allege:

- (1) A violation of RSA 151 or He-P 819;
- (2) That an entity is operating as an CMA without being licensed; or
- (3) That an entity is advertising or otherwise representing the CMA as having or performing services for which they are not licensed to provide, pursuant to RSA 151:2, III.

(b) When practicable the complaint shall be in writing and contain the following information:

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- (1) The name and address of the CMA, 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 819.
- (c) For the licensed CMA, the department shall:
- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if deficiencies were found as a result of the investigation; and
 - (2) Notify any other federal, state or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate.
- (d) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall so notify the unlicensed individual or licensee and take no further action.
- (e) If the investigation results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 819.12(c).
- (f) For the unlicensed entity the department shall provide written notification to the owner or person responsible that includes:
- (1) The date of inspection;
 - (2) The reasons for the inspection; and
 - (3) Whether or not the inspection resulted in a determination that the services being provided require licensing under RSA 151:2, I and RSA 151:5.
- (g) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 days from the date of receipt of the notice required by (f) above to respond to a finding that they are operating without a license or submit a completed application for a license.
- (h) If the owner of an unlicensed facility does not comply with (g) above, or if the department does not agree with the owner's response, the department shall:
- (1) Issue a written warning to immediately comply with RSA 151 and He-P 819; and
 - (2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.
- (i) Any entity who fails to comply after receiving a warning as described in (h) above, shall be subject to an action by the department for injunctive relief under RSA 151:17.
- (j) The fact that the department takes action for injunctive relief under RSA 151:17 shall not preclude the department from taking other action under RSA 151, He-P 819 or other applicable laws.
- (k) Complaint investigation files shall be confidential in accordance with RSA 151:13, and shall not be disclosed publicly but shall be released by the department on written request only:
- (1) To the department of justice when relevant to a specific investigation;
 - (2) To law enforcement when relevant to a specific criminal investigation;

- (3) When a court of competent jurisdiction orders the department to release such information; or
- (4) In connection with any adjudicative proceedings relative to the licensee.

Source. #10260, eff 1-25-13

He-P 819.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 819 or other applicable licensing rules, including:

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

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

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

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

- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a POC containing:
 - a. How the licensee intends to correct each deficiency;
 - b. What measures will be put in place, or what system changes will be made to ensure that the deficiency does not recur; and
 - c. The date by which each deficiency shall be corrected;
- (2) The licensee shall submit a POC to the department within 21 days of the date on the letter that transmitted the inspection report, unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:
 - a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 day period but has been unable to do so; and
 - b. The department determines that the health, safety or well-being of a client will not be jeopardized as a result of granting the extension;

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- (3) The department shall review and accept each POC that:
- a. Achieves compliance with RSA 151 and He-P 819;
 - b. all deficiencies and deficient practices as cited in the inspection report;
 - c. Prevents a new violation of RSA 151 or He-P 819 as a result of the implementation of the POC; and
 - d. Specifies the date upon which the deficiencies will be corrected;
- (4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever is applicable;
- (5) If the POC is not acceptable:
- 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, either 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 (1) above and be reviewed in accordance with (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, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(9) 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
 - 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 819.12(b); and

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b. Issued a directed POC in accordance with (d) below and shall be subject to a fine in accordance with (f)(10) below.

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

- (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the clients and personnel;
- (2) A revised POC is not submitted within 14 days of the written notification from the department; or
- (3) A revised POC submitted by the licensee or administrator has not been accepted.

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

- (1) Impose a fine;
- (2) Deny the application for a renewal of a license; or
- (3) Revoke the license in accordance with He-P 819.13(b)(6).

(f) The department shall impose fines as follows:

- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00 for an applicant or unlicensed provider;
- (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for an applicant or unlicensed provider or licensee shall be \$2000.00;
- (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III, the fine for an applicant, licensee or unlicensed provider shall be \$500.00;
- (4) For a failure to comply with the directives of a warning issued by the department in violation of RSA 151:7-a and He-P 819.11(i), the fine for an unlicensed provider or licensee shall be \$500.00;
- (5) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 819.06(b), the fine shall be \$100.00;
- (6) For a failure to notify the department prior to a change of ownership, in violation of He-P 819.08(a)(1), the fine shall be \$500.00;
- (7) For a failure to notify the department prior to a change in the physical location, in violation of He-P 819.08(a)(2), the fine shall be \$500.00;
- (8) For a failure to allow access by the department to the CMA's premises, programs, services or records, in violation of He-P 819.09(a), the fine for an applicant or licensee shall be \$2000.00;
- (9) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 819.12(c)(2) and (5)(b), the fine for a licensee shall be \$100.00 unless an extension has been granted by the department;

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- (10) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 819.12(c)(8), the fine for a licensee shall be \$1000.00;
- (11) For a failure to establish, implement or comply with licensee policies, after being notified in writing by the department of the need to establish, implement or comply with licensee policies, as required by He-P 819.14(e), the fine for a licensee shall be \$500.00;
- (12) For falsification of information contained on an application or on any records required to be maintained for licensing, in violation of He-P 819.14(g), the fine shall be \$500.00 per offense;
- (13) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 819.15(a), the fine for a licensee shall be \$500.00;
- (14) When an inspection determines that a violation of RSA 151 or He-P 819 has the potential to jeopardize the health, safety or well being of a client, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:
- a. If the same deficiency is cited within 2 years of the original deficiency the fine shall be double the initial fine but not to exceed \$2000.00; or
 - b. If the same deficiency is cited a third time within 2 years of being fined in a. above the fine for a licensee shall be triple the initial fine but not to exceed \$2000.00;
- (15) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 819 shall constitute a separate violation and shall be fined in accordance with He-P 819.12(f); and
- (16) If the applicant or licensee is making good faith efforts to comply with (4), (11) or (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. #10260, eff 1-25-13

He-P 819.13 Enforcement Actions and Hearings.

- (a) Prior to imposing a fine, denying, revoking or suspending a license, the department shall send to the applicant or licensee a written notice that sets forth:
- (1) The reasons for the proposed action;
 - (2) The action to be taken by the department; and
 - (3) The right of an applicant or licensee to a hearing in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable.
- (b) The department shall deny an application or revoke a license if:
- (1) An applicant or a licensee violated RSA 151 or He-P 819, which violations have the potential

- to harm to a client's health, safety or well being.
- (2) An applicant or a licensee has failed to pay a fine imposed under administrative remedies;
 - (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 819.04;
 - (5) An applicant, licensee or any representative or employee of the applicant or licensee:
 - a. Provides false or misleading information to the department;
 - b. Prevents or interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
 - c. Fails to provide requested files or documents to the department;
 - (6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 819.12(c)(3) and (d);
 - (7) The licensee is cited a third time under RSA 151 or He-P 819 for the same violations within the last 5 inspections;
 - (8) A licensee, including corporation officers or board members, has had a license revoked and submits an application during the 5-year prohibition period specified in (j) below;
 - (9) Upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 819;
 - (10) The department makes a determination that one or more of the factors in He-P 819.05(e) is true; or
 - (11) The applicant or licensee fails to employ a qualified administrator.
- (c) An applicant or licensee shall have 30 days after receipt of the notice of enforcement action to request a hearing to contest the action.
- (d) If a written request for a hearing is not made pursuant to (c) above, the action of the department shall become final.
- (e) The department shall order the immediate suspension of a license and the cessation of operations when it finds that the health, safety or well being of clients is in jeopardy and requires emergency action in accordance with RSA 541:A-30, III.
- (f) If an immediate suspension is upheld, the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 819 is achieved.
- (g) Hearings under this section shall be conducted in accordance with RSA 541-A and He-C 200.
- (h) RSA 541 shall govern further appeals of department decisions under this section.
- (i) When a CMA's license has been denied or revoked, the applicant, licensee or administrator shall not be eligible to reapply for a license or be employed as an administrator for 5 years if the enforcement action pertained to their role in the CMA.

- (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 request for a hearing 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.

Source. #10260, eff 1-25-13

He-P 819.14 Duties and Responsibilities of All Licensees.

- (a) The CMA shall not provide direct care to any client unless it is also:
- (1) Certified by the department as an other qualified agency in accordance with RSA 161-H and He-E 601; or
 - (2) Licensed by the department as a home care service provider or a home health care provider in accordance with RSA 151 and He-P 822 or He-P 809, respectively.
- (b) The licensee shall comply with all federal, state and local laws, rules, codes and ordinances, as applicable.
- (c) The licensee shall comply with the home care clients' bill of rights as set forth in RSA 151:21-b.
- (d) The licensee shall define, in writing, the scope and type of services to be provided by the CMA.
- (e) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the CMA to include but not limited to:
- (1) Complaint policy;
 - (2) Documentation and records management;
 - (3) Release of information;
 - (4) Case management supervision protocol;
 - (5) Evaluation, training and competency of personnel;
 - (6) Case management practice and services; and
 - (7) Quality improvement program, as required by He-P 819.18.
- (f) All policies and procedures shall be reviewed annually and revised as needed.
- (g) The licensee or any personnel shall not falsify any documentation or provide false or misleading information to the department.
- (h) The licensee shall not:
- (1) Advertise or otherwise represent the program as operating a CMA, unless it is licensed; and
 - (2) Advertise that it provides services that it is not authorized to provide.
- (i) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.

(j) Licensees shall:

- (1) Initiate action to maintain the CMA in full compliance at all times with all relevant health and safety requirements contained in applicable federal, state and local laws, rules, regulations, and ordinances;
- (2) Appoint an administrator; and
- (3) Implement any POC that has been accepted or issued by the department.

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

- (1) Has a guardian appointed by a court of competent jurisdiction; or
- (2) Has a durable power of attorney for health care that has been activated.

(l) A licensee shall provide a client or their guardian or agent, if any, with a copy of his or her client record pursuant to the provisions of RSA 151:21-b, II(i), upon request.

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

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

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

(o) 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 CMA's personnel.

(p) Client records shall be retained for a minimum of 4 years after discharge.

(q) Prior to the CMA 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.

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

- (1) The current license certificate issued in accordance with RSA 151:2;
- (2) All inspection reports issued in accordance with He-P 819.09(b) and (c) and He-P 819.11(c), for the previous 12 months;
- (3) A copy of the home care clients' bill of rights specified by RSA 151:21-b; and
- (4) A copy of the licensee's complaint procedure, including the address and phone number of the department to which complaints may also be made, which shall also be posted on the CMA's website if available.

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(s) The licensee shall admit and allow any department representative to inspect the CMA and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 819 as authorized by RSA 151:6 and RSA 151:6-a.

(t) At the time of admission the licensee shall give a client and his or her guardian, agent, or personal representative, if applicable, a listing of all CMA's charges and identify what services are included in the charge.

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

Source. #10260, eff 1-25-13

He-P 819.15 Required Services.

(a) The licensee shall provide an administrator who:

(1) Is at least 21 years of age;

(2) Has one of the following combinations of education and experience:

a. A bachelor's degree from an accredited institution in business or a health care field such as nursing or social work and at least 2 years of related experience; or

b. Is a registered nurse (RN), licensed in New Hampshire, with at least 2 years of related experience;

(3) Is responsible for the day to day operation of the CMA services; and

(4) Hires staff necessary to assist in maintaining regulatory compliance.

(b) Case managers shall be responsible:

(1) For the completion of an assessment that includes a biopsychosocial history;

(2) For the development of a care plan in conjunction with the client and his or her agent, if applicable;

(3) For the coordination of services identified in the care plan and ensuring that providers hold all required licenses or registrations, as applicable.

(4) For the monitoring of services to ensure that services identified in the care plan are provided according to the timeframes and frequencies identified in the care plan and are meeting the client's needs;

(5) To document changes in a client's needs and to develop recommendations for changes in the care plan as appropriate;

(6) For conducting a risk assessment for any client whose condition, behavior or other circumstances represent a risk to the individual, person(s) providing services and/or others; and

(7) For documenting all case management services provided and their outcomes.

Source. #10260, eff 1-25-13

He-P 819.16 Client Services.

(a) At the time of admission, personnel of the CMA shall:

(1) Provide, both orally and in writing, to the client, guardian, agent and personal representative, as applicable:

- a. A copy of the home care clients' bill of rights;
- b. The CMA's complaint procedure and rules; and
- c. Documentation to verify receipt of these policies and rules; and

(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;
- e. Copies of all legal directives such as durable power of attorney, legal guardian or living will; and
- f. Written and signed consent for the delivery of services and the release of information.

(b) Each client shall have an initial assessment prior to the development of the care plan.

(c) Each client shall have a review of needs whenever the case manager, client or guardian determine that the services provided are no longer required or not meeting the client's needs.

(d) The care plan shall be developed by the case manager and the client or client's personal representative.

(e) For each client accepted for care and services by the CMA, a current and accurate record shall be maintained that includes, at a minimum:

- (1) The written confirmation required by (a)(1) above;
- (2) The identification data required by (a)(2) above;
- (3) Consent and medical release forms, as required by (a)(2)f. above;
- (4) The record of assessments and reviews as required by (b) and (c) above;
- (5) All care plans, including documentation that the client or person legally responsible participated in the development of the care plan if they choose to;
- (6) A copy, initialed by the client and/or the client's guardian or personal representative, of all charges and services to be provided as required by He-P 819.14(r); and

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(7) Documentation of all contacts with the client and/or the client's guardian or personal representative, with service providers identified in the client's care plan, and with anyone else involved with the client's care plan.

Source. #10260, eff 1-25-13

He-P 819.17 Personnel.

(a) The licensee shall develop a job description for each position in the CMA containing:

- (1) Duties of the position; and
- (2) Education and experience requirements of the position.

(b) For all applicants for employment, the licensee shall:

- (1) Obtain and review a criminal records check from the New Hampshire department of safety in accordance with RSA 151:3-c;
- (2) Review the results of the criminal records check in accordance with (c) below;
- (3) Verify that the potential employee is not listed on the State Registry maintained by the department's bureau of elderly and adult services (BEAS) per RSA 161-F:49;
- (4) Require the employee to submit the results of a physical examination or pre-employment health screening performed by a licensed nurse or a licensed practitioner and 2 step tuberculosis testing, Mantoux method, or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;
- (5) Allow the employee to work while waiting for the results of the second step of the TB test when the results of the first test are negative for TB; and
- (6) Comply with the requirements of the Centers for Disease Control "Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities 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.

(c) Unless a waiver is granted in accordance with (d) below, the licensee shall not offer employment for any position if the individual:

- (1) Has been convicted of a felony in this or any other state;
- (2) Has been convicted for sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;
- (3) Has been found by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation or any person; or
- (4) Otherwise poses a threat to the health, safety or well being of clients.

(d) The department shall grant a waiver of (c) above if, after reviewing the underlying circumstances, it determines that the person does not pose a threat to the health, safety or well being of clients.

(e) Waivers granted under (d) above shall be permanent as long as the individual is employed by the facility.

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(f) Personnel shall not be permitted to maintain their employment if they have been convicted of a felony, sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation of any person in this or any other state by a court of law or had a complaint investigation for abuse, neglect, or exploitation adjudicated and founded by the department unless a waiver has been granted by the department.

(g) All personnel shall:

- (1) Meet the requirements of the position as listed in the job description required by (a) above;
- (2) Be licensed, registered or certified as required by state statute; and
- (3) Receive an orientation within the first 3 business days of work that includes:
 - a. The CMA's policies on client rights and responsibilities and complaint procedures as required by RSA 151:20;
 - b. The duties and responsibilities of the position they were hired for;
 - c. The CMA's policies, procedures and guidelines;
 - d. The CMA's emergency plans; and
 - e. Mandatory reporting requirements such as those found in RSA 161-F:42-57 and RSA 169-C:29.

(h) All personnel shall complete annual continuing education, which shall include a review of the CMA's policies and procedures relative to client rights and complaint procedures.

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

(j) The personnel file required by (i) above shall include the following:

- (1) A completed application for employment or a resume;
- (2) A signed statement acknowledging the receipt of the CMA's policy setting forth the client's rights and responsibilities, and acknowledging training and implementation of the policy as required by RSA 151:20;
- (3) Record of satisfactory completion of the orientation program required by (g)(3) above;
- (4) A copy of each current New Hampshire license, registration or certification in health care field, if applicable;
- (5) Documentation that the required TB test results or radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
- (6) Documentation of annual continuing education as required by (h) above;
- (7) Documentation of the BEAS State Registry check and the criminal record check; and
- (8) A statement that shall be signed at the time the initial offer of employment is made and then annually thereafter by all personnel stating that they:
 - a. Do not have a felony conviction in this or any other state;

- b. Have not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;
- c. Have not 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; and
- d. Do not pose a threat to the health, safety or well-being of a client.

(k) An individual need not re-disclose any of the matters in (j)(8) above if the documentation is available and the department has previously reviewed the material and determined that the individual can continue employment.

Source. #10260, eff 1-25-13

He-P 819.18 Quality Improvement.

(a) The CMA 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 containing a minimum of the administrator and one employee.

(c) The quality improvement committee shall:

- (1) Determine the indicators to be monitored and ensure that indicators reflect the clinical requirements of He-P 819;
- (2) Determine the frequency with which information will be reviewed;
- (3) Evaluate the information that is gathered;
- (4) Develop and implement the action necessary to correct identified problems; and
- (5) Evaluate the effectiveness of the corrective actions.

(d) The quality improvement committee shall meet at least annually and record the minutes of each meeting.

(e) Documentation of all quality improvement activities, including minutes of meetings, shall be maintained on-site for at least 2 years.

He-P 819.19 Emergency and Fire Safety.

(a) The licensee shall comply with all applicable federal, state and local laws, rules, codes and ordinances, including, but not limited to, the business chapter of NFPA 101 as adopted by the commissioner of the department of safety in Saf-C 6000, for:

- (1) Building;
- (2) Health, including waste disposal and water;
- (3) Fire; and
- (4) Zoning.

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

Source. #10260, eff 1-25-13

APPENDIX A: Incorporation by Reference Information

Rule	Title	Obtain at:
He-P 819.17(b)(6)	Centers for Disease Control “Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities Settings,” 2005 edition	Available free of charge from the CDC website at www.cdc.gov

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 819.01 – He-P 819.03	RSA 151:9,I(a) and (b)
He-P 819.04 – He-P 819.06	RSA 151:9,I(c) and (d)
He-P 819.07 – He-P 819.08	RSA 151:9,I(a)
He-P 819.09	RSA 151:9,I(e)
He-P 819.10	RSA 151:9,I(a) and (b)
He-P 819.11	RSA 151:9,I(e)
He-P 819.12	RSA 151:9,I(g)(l) and (m)
He-P 819.13	RSA 151:9,I(f) and (m)
He-P 819.14 – He-P 819.19	RSA 151:9,I(a)