

CHAPTER He-P 600 CERTIFICATION OF OTHER QUALIFIED AGENCIES

PART He-P 601 CERTIFIED OTHER QUALIFIED AGENCIES

Statutory Authority: New Hampshire RSA 161-I:7

Adopt He-P 601.01 through He-P 601.04, previously effective 3-29-11 (Document #9898-A), and expired 3-29-19, to read as follows:

He-P 601.01 Purpose. The purpose of this chapter is to set forth the procedures and requirements for operating as an other qualified agency pursuant to RSA 161-I.

He-P 601.02 Scope. This chapter shall apply to all other qualified agencies operating in the state of New Hampshire regarding the provision of personal care services, including agencies providing consumer-directed services or both agency-directed and consumer directed services, reimbursed through the medicaid program.

He-P 601.03 Definitions.

(a) “Agency-directed” means personal care services for which the agency is responsible for identifying, training, supervising, evaluating, and terminating the personal care service provider.

(b) “Alternative format” means a method of making written communications more accessible to individuals with vision impairments, including, but not limited to, large print or Braille.

(c) “Applicant” means an agency seeking to be certified as an other qualified agency pursuant to RSA 161-I.

(d) “Case manager” means an individual employed by, or contracted with, a case management agency who:

(1) Meets the qualifications described in He-E 805.06;

(2) Is responsible for the ongoing assessment, person-centered planning, coordination, and monitoring of the provision of services included in the comprehensive care plan; and

(3) Does not have a conflict of interest.

(e) “Choices for Independence (CFI)” means a system of long-term services and supports (LTSS) provided under Section 1915(c) of the Social Security Act.

(f) “Chronic illness” means an illness, which has one or more of the following characteristics:

(1) Is permanent;

(2) Leaves residual disability;

(3) Is caused by non-reversible, pathological alteration; or

(4) Requires special training of the individual for rehabilitation.

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

(h) “Complaint” means:

- (1) Any allegation or assertion that a right of an individual has been violated;
- (2) Any allegation or assertion that an individual has been abused, neglected, or exploited by an employee of, or a volunteer or consultant for, a facility, provider, or program; or
- (3) Any allegation or assertion that the department or a facility, agency, or service provider has acted in an illegal or unjust manner with respect to an individual or category of individuals.

(i) “Comprehensive care plan” means an individualized person-centered plan described in He-E 805.05(c) that is:

- (1) The result of a person-centered process that identifies the strengths, capacities, preferences, and desired outcomes of the individual;
- (2) Developed by the individual’s case manager; and
- (3) An integrated plan of all the individual’s services.

(j) “Consumer-directed services” means personal care services under which the individual or his or her representative is responsible for:

- (1) Participating in the development of the individual’s service plan;
- (2) Selecting the individual’s personal care services worker;
- (3) Setting the terms and conditions of work;
- (4) Training, supervising, and evaluating the personal care services worker; and
- (5) Terminating his or her relationship with the personal care services worker.

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

(l) “Incident” means an occurrence or event that interrupts normal procedure, including a serious injury or other event threatening the health or safety of an individual or staff.

(m) “Individual” means any person receiving personal care services under these rules.

(n) “Individual’s bill of rights” means a written statement of the rights and responsibilities of an individual receiving personal care services from an other qualified agency.

(o) “Intermediary services” means an array of fiscal and supportive services to facilitate the delivery of consumer-directed services, including:

- (1) Fiscal management services including but not limited to:
 - a. Computing tax withholdings;
 - b. Filing and depositing employment taxes;
 - c. Preparing and disbursing payroll checks;
 - d. Verifying time worked by employees;
 - e. Processing and paying non-labor related invoices such as printing, copying, and postage costs related to providing fiscal management services;

- f. Processing criminal background checks on prospective workers;
 - g. Overseeing the verification worker's citizenship/legal alien status; and
 - h. Generating standardized reports depending on program design; and
- (2) Supportive services including but not limited to:
- a. Skills advocacy training for the eligible consumer or representative;
 - b. Assistance with recruiting, screening, hiring, and training personal care service providers;
 - c. Creating and maintaining work registries;
 - d. Assessing and reassessing service needs;
 - e. Counseling and support; and
 - f. Monitoring of customer satisfaction.

(p) "Investigation" means the process used by the department to respond to allegations of non-compliance with RSA 161-I, He-P 601, or other applicable laws or rules.

(q) "Other qualified agency (OQA)" means an entity certified in accordance with He-E 601 to offer personal care services and/or intermediary services.

(r) "Personal care services" means non-medical, hands-on services that assist eligible individuals to maintain themselves in a community setting.

(s) "Personal care service worker" means a person who is employed by other qualified agencies and who is:

- (1) Selected by the eligible individual, his or her representatives, or the agency; and
- (2) Anyone other than the individual's legally responsible relative, as defined in RSA 161-I:2, VIII, case manager, or personal care services representative.

(t) "Person-centered" means that the individual or his or her authorized representative or caregiver is the center of the system of care and the individual's needs and preferences drive the care and services provided.

(u) "Person-centered planning" means a process for planning and supporting an individual receiving personal care services that builds upon the individual's capacity to engage in activities that promote community life and honors the individual's preferences, choices, and abilities, and which involves families, friends, and professionals as the individual desires or requires.

(v) "Registered nurse" means an individual who holds a current license to practice registered nursing as defined in RSA 326-B:2, XI.

(w) "Representative" means a person:

- (1) Chosen by:
 - a. The individual or his or her legal guardian; or

- b. A person granted power of attorney by the individual;
- (2) Deemed appropriate by the department to act on behalf of the individual; and
- (3) Who:
 - a. Is not the personal care services worker;
 - b. Does not have a financial relationship with a home health agency or other qualified agency providing intermediary services to the individual; and
 - c. Is not the individual's case manager.

(w) "Universal precautions" means a set of precautions designed to prevent transmission of blood borne pathogens when providing first aid or health care.

He-P 601.04 Personal Care Services.

(a) Personal care services shall be provided by personal care service workers in accordance with these rules.

(b) Personal care services shall include the following services:

- (1) Hands-on assistance with activities of daily living necessary to carry out daily self-care activities such as grooming, toileting, eating, dressing, getting into or out of a bed or chair, walking, bathing, and continence, or cuing an individual to perform a task;
- (2) Under the direction of the individual, assistance with self-administration of oral or topical medication as prescribed, to include:
 - a. Reminding the individual regarding the timing and dosage of the medication, and to take his or her medication as written on the medication container;
 - b. Placing the medication container within reach of the individual;
 - c. Assisting the individual with opening the medication container;
 - d. Assisting the individual by steadying shaking hands; and
 - e. Observing the individual take the medication and recording the same in the individual's record;
- (3) Accompanying the individual in the community when:
 - a. The assistance of the personal care worker is required for the individual to access necessary services; and
 - b. The need for re-direction or direct assistance, or both, is required;
- (4) When non-medical transportation services are authorized, hands-on assistance at the authorized destination when the comprehensive care plan documents that this assistance is required at the destination; and
- (5) General household tasks, limited to the following:

- a. Laundering the individual's personal clothing items, towels, and bedding;
 - b. Light cleaning limited to the individual's bedroom, bathroom, mobility, and medical devices, and common living spaces;
 - c. When the individual lives alone, light cleaning of the kitchen, entry way areas, and common living spaces, in order to maintain a safe environment;
 - d. Errands for necessary tasks identified in the comprehensive care plan; and
 - e. Preparing non-communal meals and snacks, unless for multiple CFI individuals, including cleaning the food preparation area after the food is served.
- (c) Personal care services shall not include:
- (1) For the purpose of transportation only, when no other assistance is required;
 - (2) When provided in any of the following settings:
 - a. A residential care facility;
 - b. A hospital;
 - c. A nursing facility;
 - d. A rehabilitation facility; and
 - e. An adult family care home.
 - (4) When provided by any of the following individuals:
 - a. The individual's personal care services representative;
 - b. The individual's agent acting under a designated power of attorney pursuant to RSA 564-E; or
 - c. The individual's legal guardian.

Readopt with amendment He-P 601.05, effective 3-29-11 (Document #9898-B) in paragraph (a), and previously effective 3-29-11 (Document #9898-A) in paragraphs (b)-(h), and expired 3-29-19 in paragraphs (b)-(h), to read as follows:

He-P 601.05 Application Requirements.

(a) Each applicant shall complete and submit an application entitled Form 3720 "Request for Certification of Other Qualified Agency" (5/2012) verifying the following:

"I verify that the information provided in this application is accurate to the best of my knowledge. Neither the executive director or if applicable the executive officers have been named as the perpetrator in a founded determination of abuse, neglect, or exploitation following a protective investigation conducted by the department pursuant to RSA 161-F: 42-57, or following a similar investigation conducted by another state. I affirm my programs are in compliance with RSA 161-I, He-P 601, including the requirement for criminal record checks for all personal care workers, and other applicable laws and rules. I understand that providing false information shall be grounds for denial, suspension, or revocation of a certification."

(b) Along with Form 3720 “Request for Certification of Other Qualified Agencies”, each applicant shall submit the following:

a. For program design and program administration, policies and procedures:

1. A description of the OQA program goals and objectives and how it supports consumer directed care;
2. A description of the OQA policy regarding intake and admission and/or exclusion criteria;
3. An explanation of how the agency will ensure that clients will have choice over his/her personal care worker(s) and indicate if a client will be able to choose his or her personal care worker other than from the agency’s own pool of workers;
4. An indication if the agency will allow clients who have a legal representative to participate in the program;
5. An explanation of what supports or education are offered to each client on how to manage his or her care and management of his or her personal care worker;
6. A description of how a client’s plan of care is designed including who is involved in developing the plan and how the OQA monitors its use, such as face to face interviews with the client, and how BEAS case managers are involved;
7. Specification of any other monitoring process(s) the agency uses or plans to use for ensuring the quality of personal care services such as client satisfaction surveys. If available, include samples of the tools used to collect this information;
8. A description of the annual OQA program evaluation plan indicating measurable goals and objectives and how progress will be measured;
9. A current, dated organizational chart of the OQA program illustrating lines of authority, responsibility/communication, and staff assignment, including date, staff names, and position titles;
10. A description of the policies for programmatic access related to the American with Disabilities Act, for example, alternative formats, and include the program’s web address;
11. A description of and a copy of the written confidentiality policy;
12. A description of and a copy of the agency’s policies and procedures for screening potential staff members including the procedures for conducting criminal history checks and BEAS state central registry checks on potential personal care workers;
13. An explanation of what customer service system procedures the agency currently utilized or what the agency plans to utilize, to include a toll-free number

for clients, the hours the toll-free number is staffed, and if the agency has a messaging service, and the procedures that are in place for returning calls; and

14. An indication of how the agency informs each client of his or her rights and responsibilities for participating in the program, and include a copy of the written rights and responsibilities, grievance procedures, and service-termination policies you provide to each client; and

b. For staffing, supervision, and training:

1. A copy of the staff orientation plan including for certified personal care workers;

2. A description of the policies regarding staff supervision provided to personal care workers by the OQA;

3. The OQA program job descriptions that delineate the roles and responsibilities for the executive director and the director of personal care services;

4. An indication of how the agency informs each personal care worker of his or her rights and responsibilities and include a copy of the written rights and responsibilities, grievance procedures, and service termination policies the OQA provides to each personal care worker;

5. Identification of how the OQA informs the client and his or her worker about how to report incidences to the state according to the requirements of the state's adult protection and the department's ombudsman's program laws and indicate if the agency would like pamphlets on the adult protection law to provide to clients;

6. An explanation of the process for resolving incidences and/or reporting incidences to the state according to the requirements of the state's adult protection laws. Indicate if you keep a record of incidences.

7. A copy of the emergency back-up plan the agency provides to clients in the event a personal care worker fails to report to work and how the agency informs the client of these procedures. Indicate if the agency has a worker registry that the client may access to find a substitute worker;

8. A description on how training is provided to the individuals employed by your agency to provide personal care services and include what the qualifications of the person(s) providing the training and the type and frequency of ongoing training provided;

9. Details on the schedule for regular in service OQA staff training for OQA staff including an indication of:

i. If the OQA provides additional/ongoing training to caregivers, if the OQA determines additional training is needed; or

ii. If the OQA routinely provides additional training, and if so how often is the additional training provided; and

10. A copy of the training manual, workbook, or other written training instructions.

(c) For initial certification, each applicant shall submit the following documents to the department:

(1) A document demonstrating financial viability in one of the following forms:

- a. The most recent financial statement or annual report;
- b. The most recent financial audit;
- c. A letter from an accountant indicating financial viability of the agency; or
- d. A letter from a financial institution demonstrating financial solvency of the agency;

(2) Current proof of authorization from the secretary of state to do business in New Hampshire; and

(3) A copy of the Internal Revenue Service (IRS) notice that includes the organization's federal employer identification number.

(d) An OQA applying for renewal of certification shall submit:

(1) The information described above in (a) through (c) within 90 days of the expiration of the current certification;

(2) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 601.16, if applicable; and

(3) If requested by the department, any documentation related to plans of correction developed and implemented pursuant to He-P 601.08.

(e) If information required in (a) through (c) above are incomplete or missing, the department shall notify the applicant.

(f) The applicant shall provide the missing information to the department within 10 days of being notified of an incomplete application or missing supporting documentation.

(g) The department shall process the applications in accordance with RSA 541-A:29.

(h) Applications shall be denied in accordance with He-P 601.06.

(i) If an initial or renewal application is denied, the applicant or OQA shall not provide personal care services.

Adopt He-P 601.06 through He-P 601.09, previously effective 3-29-11 (Document #9898-A), and expired 3-29-19, to read as follows:

He-P 601.06 Denial of Certification Applications.

(a) The department shall deny an application for an initial or renewal certification if:

(1) After being notified of and given an opportunity to supply missing information, the applicant does not meet the requirements of He-P 601.05;

- (2) Any representative or employee of the applicant, OQA, or the agency's executive director is named as the perpetrator in a founded determination of abuse, neglect, or exploitation following a protective investigation conducted by the department pursuant to RSA 161-F:42-57, or following a similar investigation conducted by another state;
 - (3) Any representative or employee of the applicant knowingly provides materially false information to the department;
 - (4) Any representative or employee of the applicant fails to provide to the department the documents required by this rule;
 - (5) Any representative or employee of the applicant is found to be in violation of any provision of RSA 161-I, He-P 60, 1 or other applicable laws or rules;
 - (6) Any representative, or employee of the applicant is found to be permitting, aiding, or abetting the commission of any unlawful act;
 - (7) Any employee of the applicant, including personal care services workers has an administrative finding or criminal conviction as described in He-P 601.11, unless a waiver is granted; or
 - (8) The department finds that an applicant for a new certification, or the agency at the time of renewal of certification, is not in compliance with RSA 161-I, He-P 601 or other applicable laws or rules.
- (b) Any applicant aggrieved by the denial of an application may request an adjudicative proceeding in accordance with He-P 601.15.

He-P 601.07 Certification.

- (a) All certificates issued in accordance with He-P 601 shall be non-transferable.
- (b) Certificates issued to applicants shall indicate:
 - (1) The effective date of the certification;
 - (2) The expiration date of the certification;
 - (3) The certification number; and
 - (4) The name of the OQA.
- (c) A OQA shall inform the department, in writing, within 30 days of terminating the provision of personal care services for CFI.
- (d) A certification shall be valid on the date of issuance and expire the following year on the last day of the month in which it was issued.
- (e) If a OQA fails to submit a complete application for renewal, in accordance with He-P 601.05, the certificate shall expire.
- (f) Any OQA whose certification has expired without the OQA having submitted a complete application for renewal pursuant to He-P 601.05 above shall be treated as an applicant for a new certification.

(g) If the OQA is applying for renewal of its current certificate and the certificate expires, the OQA shall apply for an initial certification, and the certificate issued shall not be retroactive to the expiration of the expired certification.

(h) When there is a change of ownership of an OQA certified under He-P 601, the new owner shall submit the following to the department at least 30 days prior to the change of ownership:

- (1) A written request for a new certification, containing:
 - a. The reason for requesting the certification;
 - b. The name of the OQA as it appears on the current certificate;
 - c. The name of the new OQA that will appear on the new certification; and
 - d. The date upon which the change of ownership will take effect;
- (2) A completed application form and supporting documents described in He-P 601.05;
- (3) A document confirming the agency's financial viability in one of the following forms:
 - a. The most recent financial statement or annual report;
 - b. The most recent financial audit;
 - c. A letter from an accountant indicating the financial solvency of the new owner of the OQA; or
 - d. A letter from a financial institution demonstrating the financial solvency of the new owner of the OQA;
- (4) A copy of any certificate of amendment of organizational filings issued by the New Hampshire secretary of state, if applicable;
- (5) A copy of the IRS notice that includes the new owner's federal employer identification number; and
- (6) A letter from the current OQA owner, containing:
 - a. An acknowledgment of the impending change of ownership; and
 - b. The date when the change of ownership will become final.

(i) When a certificate is lost, destroyed, or damaged, the OQA shall request a replacement certificate in writing from the department within 10 days of discovering the loss.

(j) Any certification that is replaced due to a change in name or ownership shall expire on the same day as the old certification.

(k) The department shall conduct announced or unannounced on site inspections, as necessary, of the OQA.

He-P 601.08 Plans of Correction.

(a) If the department finds the OQA is not in compliance with these rules, the department shall issue a written report including:

- (1) The name and address of the physical location of the OQA;
 - (2) A listing of all rules with which the OQA failed to comply; and
 - (3) Evidence supporting the finding of non-compliance with each identified rule.
- (b) Within 21 days of the date of issuance of the report the OQA shall submit either:
- (1) A written plan of correction; or
 - (2) Information as to why each deficiency did not exist.
- (c) The department shall evaluate the information submitted in (b) above and render a written decision concerning:
- (1) The merits of the plan of correction, if one is submitted; or
 - (2) Whether a written plan of correction is necessary, if a plan was not submitted.
- (d) The plan of correction submitted in accordance with (b)(1) above shall specify:
- (1) How the OQA has corrected or intends to correct and prevent the occurrence of each deficiency; and
 - (2) The date by which each deficiency will be corrected.
- (e) The department shall issue a certificate if it determines that the plan of correction:
- (1) Addresses each identified deficiency in a manner which achieves full compliance with rules cited in the report in (a) above;
 - (2) Does not create a new violation of statute or rule as a result of its implementation; and
 - (3) States a completion date.
- (f) The department shall reject a plan of correction that fails to comply with (e) above.
- (g) If the proposed plan of correction is rejected, the department shall notify the OQA in writing of the reason(s) for rejection.
- (h) Within 21 days of the date of the written notice under (g) above, the OQA shall submit a revised plan of correction that:
- (1) Includes proposed alternatives that address the reason(s) for rejection; and
 - (2) Is reviewed in accordance with (e) above.
- (i) If the revised plan of correction is rejected, the department shall deny the certification request.
- (j) The OQA shall submit written documentation to the department that verifies the implementation of the accepted plan of correction.

He-P 601.09 Revocation of Certification.

- (a) The department shall revoke a certification, following written notice pursuant to (b) below and opportunity for a hearing pursuant to He-C 200, due to any of the following reasons:

- (1) Any founded report of abuse, neglect, or exploitation of an individual by an OQA staff person or personal care services worker, if:
 - a. Such abuse, neglect, or exploitation is reported on the state registry of abuse, neglect, and exploitation in accordance with RSA 161:F-49;
 - b. Such person(s) continues to have contact with the individual; and
 - c. Such finding has not received a waiver;
 - (2) Unless a waiver is granted, any OQA employee or personal care services worker, who has an administrative finding or criminal conviction as described in He-P 601.11;
 - (3) The OQA fails to perform criminal background checks on pursuant to He-P 601.11;
 - (4) An applicant or a licensee violated RSA 161-I or He-P 601 in a manner which poses a risk of harm to a client's health, safety or well-being;
 - (5) The OQA or any representative or employee of the OQA provides materially false or misleading information to the department;
 - (6) The OQA fails to permit or interferes with any inspection or investigation conducted by the department;
 - (7) The OQA fails to provide required documents to the department; or
 - (8) At an inspection, the OQA is not in compliance with these rules or other applicable rules.
- (b) Certification shall be revoked upon the written notice by the department to the OQA stating the specific rule(s) with which the OQA does not comply.
- (c) Any OQA aggrieved by the revocation of the certificate may request an adjudicative proceeding in accordance with He-P 601.15.
- (d) The revocation shall not become final until the period for requesting an adjudicative proceeding has expired or, if the OQA requests an adjudicative proceeding, until such time as the administrative appeals unit issues a decision upholding the department's action.
- (e) A OQA shall not accept additional individuals if a notice of revocation of certification has been issued.
- (f) Any applicant, OQA, or executive director who has had a certification revoked, shall be prohibited from applying for a new or renewed certification for a period of 5 years.
- (g) If an OQA's certification has been revoked the OQA shall:
- (1) Notify the individual, his or her representative, and the individual's case manager;
 - (2) Notify OQA employees; and
 - (3) Discontinue operation immediately.

Adopt He-P 601.10, previously effective 3-29-11 (Document #9898-A), as amended in paragraph (n), previously effective 7-26-11 (Document #9959), and expired 3-29-19 in paragraphs (a)-(m) and (o)-(ak), and expired 7-26-19 in paragraph (n), so that He-P 601.10 reads as follows:

He-P 601.10 Duties and Responsibilities of Other Qualified Agencies. An OQA shall:

- (a) Provide personal care services and/or intermediary services or both as defined in He-P 601.03;
- (b) Monitor and ensure the quality of personal care services and/or intermediary services provided to individuals;
- (c) Develop and implement a written person-centered plan that will guide the provision of personal care services, as follows:
 - (1) The person-centered plan shall be developed in conjunction with the individual and the individual's representative, if any;
 - (2) The OQA shall communicate with the individual's case manager in order to ensure the person-centered plan is consistent with and addresses the applicable service needs identified in the comprehensive care plan; and
 - (3) The person-centered plan shall contain:
 - a. A description of the individual's needs and the scope of personal care services;
 - b. The dates upon which service will begin and end;
 - c. The frequency of the service(s);
 - d. Information on the individual's health condition, medications, and frequency, allergies, and special dietary needs;
 - e. The anticipated goals and outcomes of service provision; and
 - f. A description of an individualized contingency plan that addresses unexpected situations that could jeopardize the individual's health or welfare, and which:
 1. Identifies alternative resources in the event that normally scheduled personal care service providers are unavailable; and
 2. Addresses special evacuation needs that require notification of the local emergency responders;
- (d) Forward a copy of the person-centered plan in (c) above to the case manager, upon the completion or revision of the plan, and document the date it was sent;
- (e) Describe the roles and responsibilities of individuals, representatives, OQA providers and personal care service workers under the agency-directed and consumer-directed personal care services options, as applicable;
- (f) Notify individuals of his or her rights and responsibilities including:
 - (1) The right to select their own personal care service worker;
 - (2) The process for referring the individual's selected personal care service worker to the OQA for hire; and
 - (3) The OQA's criteria for selecting or not selecting the personal care service worker chosen by the individual;

- (g) Develop and implement a system for receiving and processing complaints including:
 - (1) A complaint and appeal process;
 - (2) Referrals to the department's ombudsman program in accordance with RSA 161-F:10-19; and
 - (3) Reports made in accordance with RSA 161-F:46;
- (h) Prepare and distribute person-centered plans, both initial and revised, to individuals and representatives upon request;
- (i) Prepare and maintain a policies and procedures manual that contains:
 - (1) Written policies and procedures for all operational tasks performed and services provided by the agency including agency-directed or consumer-directed personal care services or both;
 - (2) A confidentiality policy;
 - (3) A drug free work place statement;
 - (4) A prohibition of sexual harassment statement;
 - (5) An individual site and home safety checklist;
 - (6) A universal precautions policy; and
 - (7) A proper lifting techniques and body mechanics policy;
- (j) Develop and maintain a system for customer service and for the provision of personal care services, including:
 - (1) A toll-free number by which individuals can access OQA customer services including a statement of the OQA's business hours and appropriate staff contacts;
 - (2) A system for returning all calls received during and after regular business hours and prior to the close of the next business day after receipt, respectively;
 - (3) A system for tracking communications with and complaints/grievances from individuals and for resolving issues in an effective manner;
 - (4) A communication access plan for the provision of communication access for clients with limited English proficiency, deafness or hearing loss, vision loss, or speech impairments; and
 - (5) The availability of alternative communication formats;
- (k) Establish terms and conditions of employment;
- (l) Ensure that the personal care service worker is able to meet the needs of the individual to be served;
- (m) Prior to employment, conduct and document:
 - (1) A criminal background check pursuant to RSA 161-I:6-a, and He-P 601.11; and
 - (2) A NH central registry check pursuant to RSA 161-F:49;

- (n) Prior to personal care service workers providing services to an individual:
 - (1) Have evidence of a 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;
 - (2) Allow the personal care service worker to begin providing services if the TB test results are negative for the first step, and the personal care service worker is awaiting the results of the second step of the TB test; and
 - (3) Comply with the requirements of the Centers for Disease Control “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;
- (o) Complete reference checks for potential personal care service workers if requested by the individual in writing via letter, e-mail, or fax;
- (p) Provide information to individuals or their representatives about employing a consumer-directed personal care service worker including, but not limited to:
 - (1) Techniques for interviewing and screening personal care service workers;
 - (2) Preparing interview questions;
 - (3) How to schedule and conduct an interview with a prospective personal care services worker;
 - (4) The process for referring selected personal care service workers to the OQA for hire;
 - (5) The process for informing candidates that they have not been selected for employment; and
 - (6) Techniques for supervising personal care service workers;
- (q) Develop a process for receiving and reviewing completed personal care service worker applications;
- (r) Develop a personal care service worker’s employment package including but not limited to:
 - (1) A personal care service worker’s handbook;
 - (2) An employment application;
 - (3) INS Form I-9, Verification of Citizenship and Alien Status, with instructions and completed example;
 - (4) IRS Form W-4, Employee’s Withholding Allowance Certificate with instructions and completed example;
 - (5) IRS Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC);
 - (6) The hiring criteria and requirements used by the OQA for rejecting a personal care service worker for employment who was recruited and referred by an individual;
 - (7) A confidentiality policy;

- (8) A drug free work place statement;
 - (9) A statement on the prohibition of sexual harassment statement;
 - (10) A statement signed by the individual or the representative and the personal care service workers stating that the worker has the necessary knowledge, skills, and experience to meet the individual's personal care services needs;
 - (11) The agreement form signed by every individual or representative agreeing to abide by OQA policies and procedures;
 - (12) Payroll pay days schedule that the personal care service worker's paychecks are issued; and
 - (13) The payroll schedule illustrating when verification of the personal care service worker's time worked are to be completed;
- (s) Develop and maintain a system for collecting and verifying the following information:
- (1) The name and address of the individual receiving personal care services;
 - (2) The name of the personal care service worker;
 - (3) The day of the week, date, and amount of time spent providing each occurrence of personal care services; and
 - (4) The total number of units of service provided during the time period documented;
- (t) Include the following on paper timesheets when they are used:
- (1) The signature of the individual receiving or directing the personal care services indicating that the service was provided in accordance with the care plan, and to the individual's satisfaction; and
 - (2) The signature or equivalent evidence/verification of the personal care service worker indicating that the information provided is accurate and signifying that the employee understands that falsification of information provided could lead to prosecution;
- (u) Develop and implement a process for distributing personal care service worker's payroll checks, ensuring that:
- (1) The OQA is in compliance with federal and state minimum wage and overtime laws;
 - (2) Only approved hours are reimbursed; and
 - (3) The OQA has the option of paying workers via direct deposit or mailing paychecks to workers' homes;
- (v) Assist individuals and representatives to develop of an emergency back-up plan in the event that the personal care service worker fails to report for work;
- (w) Implement procedures for:
- (1) Comparing the information verified in (s) above with the individual's person-centered plan described in (c);

(2) Notifying the individual or representative when information regarding the time worked does not reconcile and facilitating the resolution of issues before payroll is processed;

(3) The evaluation of the personal care service worker performance; and

(4) The termination of a personal care service worker;

(x) For OQAs that offer consumer-directed personal care services, develop and maintain a personal care service worker registry that individuals and representatives can access when recruiting their personal care service workers;

(y) Ensure that:

(1) Individuals or their representatives train their consumer-directed personal care service workers; and

(2) Workers providing consumer-directed personal care services can access other training opportunities as deemed necessary by the individual or their representative receiving services;

(z) Provide orientation to personal care service workers that includes but is not limited to:

(1) Agency policies and processes including those dealing with confidentiality;

(2) The individual's bill of rights;

(3) Mandated adult protective services (APS) reporting;

(4) Health insurance portability and accountability act (HIPAA) basics;

(5) Blood-borne pathogens and universal precautions; and

(6) Basic lifting techniques;

(aa) Conduct skills training at the agency or individual's home, including a description of the skills training topics available;

(ab) Develop techniques for orienting and training personal care service workers and document the training provided;

(ac) Report to the appropriate authority any individual who is suspected of being abused, neglected, exploited, or self-neglecting, in accordance with the adult protection law, RSA 161-F:46;

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

(ae) Possess and maintain written proof of insurance coverage as required by applicable state or local laws and rules;

(af) Comply with the department's quality assurance procedures in accordance with RSA 126-A:4, IV and these rules;

(ag) Identify, report, and manage:

(1) Personal care service worker-related injuries;

(2) Individual's injuries; and

- (3) General incidence reporting;
- (ah) Maintain and make available safety information, including, but not limited to:
 - (1) An individual site and home safety checklist;
 - (2) Procedures for identifying and reporting personal care service worker's injuries;
 - (3) Procedures for addressing emergencies;
 - (4) Emergency contact people and telephone numbers to contact at the OQA; and
 - (5) Procedures regarding universal precautions and safe lifting techniques;
- (ai) Establish a disaster recovery plan for computer files that addresses:
 - (1) The estimated time for the return to operation; and
 - (2) The accuracy of software and data at return to operation;
- (aj) Ensure all personnel utilize universal precautions as defined in He-P 601.03(w); and
- (ak) Comply with and make available upon request any licensing or certification requirements required by applicable federal, state, or local laws and/or rules.

Adopt He-P 601.11 through He-P 601.16, previously effective 3-29-11 (Document #9898-A), and expired 3-29-19, to read as follows:

He-P 601.11 Personnel Requirements.

- (a) OQAs shall employ the following:
 - (1) An executive director;
 - (2) A director of personal care services;
 - (3) Professional staff adequate to provide consumer-directed programs and guidance to individuals receiving personal care services; and
 - (4) Personal care service workers.
- (b) The executive director and director of personal care services shall:
 - (1) Be at least 21 years of age; and
 - (2) Be able to demonstrate knowledge regarding the philosophy and application of consumer-direction to personal care services.
- (c) If the OQA has a change in its executive director, the OQA shall notify the department in writing of the change no later than 90 days after the employment start date of the new executive director.
- (d) The new executive director shall meet the requirements in (b) above.
- (e) Each staff member or personal care service worker shall:
 - (1) Be at least 17 years of age;

(2) Be found by the OQA executive director or his or her designee to have the knowledge and skills necessary to successfully perform the tasks necessary to meet the needs of the individual receiving services.

(f) For all new hires prior to employment, the OQA shall:

(1) Verify the person's qualifications; and

(2) Verify that the person is not listed on the BEAS state registry pursuant to RSA 161-F:49 or does not have a finding of abuse, neglect, or exploitation following a similar investigation conducted by another state.

(g) For potential employees whose scope of employment will include the provision of services in an individual's home or otherwise involves direct contact with an individual, the following shall apply:

(1) The OQA shall obtain and review a criminal conviction record check in accordance with RSA 161-I:6-a; and

(2) Without a waiver granted in accordance with He-P 601.16 the OQA shall not make a final offer of employment if the person has been convicted of a felony.

(h) Waivers of (g)(2) above shall be effective for the length of the person's employment, unless additional convictions occur.

(i) For employees hired prior to the 2020 effective date of these rules who have a conviction described in (g)(2), the OQA shall submit waiver requests in accordance with He-P 601.16 no later than the expiration date of the OQA's current certification.

(j) For personal care service workers with a misdemeanor conviction, prior to the initiation of services to each individual served, the OQA shall:

(1) Disclose to the individual or his or her representative the personal care service worker's conviction and discuss the impact of the individual's selection on the provision of services, including the following:

a. Whether or not the conviction poses a threat to the health and safety of the individual;

b. What safeguards will be in place to maintain the health and safety of the individual, if the personal care service worker were to provide services; and

c. Whether or not the individual consents to the personal care service worker providing services, after being so informed; and

(2) Maintain the following in the service record:

a. Documentation of the date on which the conviction was discussed with the individual or his or her representative as described in (1) above;

b. The steps taken to implement the safeguards described in (1)b. above; and

c. A signed statement from the individual indicating that he or she has been informed of the conviction as describe in (1) above and consents to the personal care service worker providing services.

(k) All personnel shall sign separate statements indicating whether or not that they:

- (1) Have had a felony conviction in this or any other state;
- (2) Have been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect, or exploitation, or pose a threat to the health, safety, or well-being of a client;
- (3) Have 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
- (4) Understand they are required to report any administrative finding or criminal conviction to the OQA during the duration of their employment.

(l) All personnel shall report any administrative finding or felony or misdemeanor criminal conviction to the OQA during the duration of their employment.

(m) All professional staff hired by the OQA shall be licensed or registered as required by applicable state or federal laws.

(n) The executive director shall carry out all of the policies and procedures of the OQA.

(o) The executive director, president, or CEO shall be responsible for:

- (1) Administering agency management and fiscal matters;
- (2) Implementing the goals and objectives of the agency;
- (3) Implementing all written policies and procedures of the certified other qualified agency;
- (4) Employing and terminating staff, in conjunction with individuals receiving consumer-directed personal care services;
- (5) Designating, in writing, a staff member who is responsible for administering the agency in the absence of the executive director;
- (6) Planning, organizing, and directing activities that may be delegated;
- (7) Appointing the director of personal care services; and
- (8) Ensuring the accuracy of informational materials and activities.

He-P 601.12 Documentation, Recordkeeping and Reporting.

(a) Personnel records shall be maintained by the OQA for all employees.

(b) Each employee's personnel record shall include the following:

- (1) The name, address, and telephone number of the employee;
- (2) The employee's qualification for the position, including, as applicable, education, training, and his or her referral for hire by an individual;
- (3) The employee's prior work experience and employment references;
- (4) Proof of age;
- (5) A copy of a valid photo identification;
- (6) A completed INS Form I-9 Verification of Citizenship and Alien Status, if applicable;

- (7) Copies of all required federal and state employment tax and insurance related forms;
 - (8) A signed verification by the employee that he or she has received a copy of the OQA's policy setting forth the rights and responsibilities of individuals served and the rights and responsibilities of the employee;
 - (9) A statement signed by the employee and the consumer receiving the personal care services or the consumer's representative that the employee has the skills and experience and has received orientation by the agency and training sufficient to meet the needs of the individual;
 - (10) A signed statement in accordance with He-P 601.11(k);
 - (11) A record of all training received; and
 - (12) Documentation of completed criminal background check pursuant to RSA 161-I:6-a and central registry check pursuant to RSA 161-F:49.
- (c) The OQA shall ensure that all records are legible, current, and accurate.
- (d) Personnel records shall be retained for 7 years after discharge of a personal care service worker.
- (e) The OQA shall arrange for the storage and retrieval of personnel records in the event that the OQA ceases operation.
- (f) Personnel records shall be maintained in a confidential manner as follows:
- (1) Active and archived personnel records shall be maintained in a locked, metal container, room, or cabinet at the organization;
 - (2) Individual personnel records shall not contain information pertaining to other employees;
 - (3) Access to personnel files shall be limited as authorized by federal, state, or local law or regulations;
 - (4) Personnel files shall be readily available to any persons authorized to review such records including the department during any complaint investigation; and
 - (5) Computerized files shall be protected by access restrictions.
- (g) Service records for each individual shall be maintained by the certified OQA for all services provided to individuals.
- (h) Service records shall include, but not be limited to:
- (1) The individual's name, address, telephone number, and date of birth;
 - (2) If the individual has designated a representative, the representative's name, date of birth, relationship to the individual, address, and phone number, when applicable;
 - (3) An emergency contact name, the contact's relationship to the individual, address and telephone number;
 - (4) The name of individual's case manager and his or her contact information;
 - (5) Medicaid and other insurance information, as applicable;
 - (6) A copy of the individual's person-centered plan and all updates;

- (7) The names of the individual's back-up personal care service worker(s) and back-up plan;
 - (8) The personal care service-related training provided to each personal care service worker by the individual or his or her representative;
 - (9) Copies of payroll summary reports;
 - (10) Documentation of all assessments of the individual that are conducted by the OQA;
 - (11) Documentation of all communications with the individual and with the individual's case manager;
 - (12) Documentation of the information required in He-P 601.11(j)(2) including the implementation of safeguards in accordance with He-P 601.11(j)(2)b., if applicable;
 - (13) A signed acknowledgement of receipt of the individual's bill of rights signed by the individual or his or her representative;
 - (14) A signed acknowledgement of the individual or the representative's receipt of the manual as described in (e) above;
 - (15) Documentation of the personal care services provided in accordance with He-P 601.10(s); and
 - (16) Documentation of termination of services including:
 - a. The date of discharge;
 - b. The health and functional status of the individual at discharge;
 - c. Discharge planning information;
 - d. Any discharge referrals which have been made; and
 - e. Reason for discharge.
- (i) Service records for each individual shall be maintained as follows:
- (1) The OQA shall ensure that all individuals' service records are legible, current and accurate;
 - (2) Individuals' service records shall be retained for 7 years after discharge of an individual;
 - (3) An OQA shall arrange for storage and access as needed of individuals' service records in the event the OQA ceases operation;
 - (4) Individuals' service records shall be maintained in a confidential manner including the following:
 - a. Separate individual service records shall be maintained for each individual receiving personal care services and shall contain all information required in (h) above;
 - b. Service records shall be retained at the OQA;
 - c. Service records shall be maintained in accordance with the HIPAA;

d. An OQA shall develop and implement a policy that shall determine the method by which written release of information contained in the individual's service record shall occur;

e. All files shall be accessible only to the staff designated by the OQA director and protected by federal, state, or local law or regulation;

f. Except to the extent prohibited by the requirement in (4)e. above, each service record shall be readily available to the professional staff, health care worker, and any persons legally authorized to review such records ; and

g. An OQA shall provide the individual with a copy of his or her service record upon receipt of the request from that individual;

(5) An OQA shall have a system in place and a policy and procedure for preparing and distributing billing summary reports to individuals or representatives for each billing period; and

(6) Copies of each report, specified in (5) above, shall be kept in the individual's service record;

(7) The billing summary report shall include, but not be limited to:

a. The individual's name, address and telephone number;

b. The individual's Medicaid identification number, when applicable;

c. The name of the individual's case manager and his or her telephone number;

d. The billing period;

e. The total hours per week and hours per day of personal care services rendered;

f. The total number of billing units;

g. The billing rate per hour; and

h. The total amount billed per week.

(j) The OQA shall maintain the original versions of each employee's properly executed time sheets or records demonstrating electronic documentation of the employee's time worked;

(k) The OQA shall make available to the department the individual's service records and related documents necessary for the purposes of verification of compliance with the scope, duration, and intent of the department's support plan developed for the individual.

(l) The OQA shall not engage in falsification of any documents or records related to individuals' personal care service provision and billing.

(m) Each OQA shall post the following documents in an area of the premises that is conspicuous and open to individuals and the general public:

(1) The agency's current certificate;

(2) All investigation reports issued by the department and other relevant regulatory agencies for the previous 12 months;

- (3) Any notice of a pending hearing or order pertaining to the certified other qualified agency that has been issued by the department or a court during the previous 24 months;
- (4) A copy of the individual's bill of rights as defined in He-P 601.03 (n);
- (5) A copy of the OQA's policies and procedures relative to the implementation of the individual's bill of rights and responsibilities;
- (6) A copy of the OQA's complaint procedure; and
- (7) A notice stating that complaints regarding the OQA may be submitted to:

Department of Health and Human Services
Bureau of Elderly and Adult Services
129 Pleasant St. Concord, NH 03301
1-800-351-1888, ext. 7857 or (603) 271-9212.

He-P 601.13 Representative.

(a) The individual, his or her legal guardian, or a person granted power of attorney by the individual may designate a representative to act on the individual's behalf:

- (1) When directing personal care services being provided; and
- (2) Under the following conditions:
 - a. The persons named below shall not serve as representatives for purposes of personal care services:
 1. The personal care worker providing the services;
 2. The individual's case manager; and
 3. Anyone having a financial relationship with any agency providing personal care services or intermediary services to the individual; and
 - b. The personal care representative shall be designated through a written document signed by the individual or his or her legal guardian or by the person granted power of attorney, and a witness, stating that:
 1. The personal care representative's role only applies to decisions made regarding the personal care services described in this rule;
 2. The appointment of a personal care representative can be revoked at any time by either party; and
 3. The responsibilities of the personal care representative shall be to:
 - (i) Have weekly face-to-face contact with the individual and the personal care worker;
 - (ii) Have monthly contact with the CFI case manager concerning personal care services;
 - (iii) Ensure that the personal care worker is taking the individual's care preferences into consideration; and

(iv) Communicate concerns or satisfaction to the other qualified agency regarding the personal care worker, when appropriate.

(b) An OQA shall have written policies and procedures for:

- (1) Verifying that each individual's representative meets department requirements;
- (2) Obtaining from the individual or his or her guardian or his or her power of attorney the representative's name, address, telephone number, and scope of authority;
- (3) Collecting and keeping current a copy of the written document, signed by the individual or his or her guardian or his or her power of attorney stating the information included in section (a)(2)b. above;
- (4) Communicating with the individual's representative issues and their satisfaction with the personal care services being received by the individual; and
- (5) Obtaining from the individual or his or her guardian or from his or her power of attorney any changes in representation within 30 days of the date that the change occurs and keeping this information current.

He-P 601.14 Monitoring the Quality of Services.

(a) An OQA shall comply with the department's quality assurance procedures in accordance with RSA 126-A:4, IV and these rules.

(b) OQAs providing personal care services shall:

- (1) Develop a quality assurance program which shall assess patterns and trends of activities which affect the quality of care and the application of the philosophy of consumer-direction; and
- (2) Initiate action to develop or modify currently existing agency policies to assure that an optimum quality of care and the level of consumer choice whereby an individual shall have the option to receive personal care services, including agency-directed or consumer-directed services or both, through a home health agency or an other qualified agency and direction for all individuals receiving personal care services.

(c) An OQA shall ensure that an appropriate staff member, other than the personal care worker:

- (1) Conducts by mail individual and representative satisfaction surveys that shall be:
 - a. Available in alternative formats upon request;
 - b. Mailed within 60 days of when the agency began serving the individual or representative; and
 - c. Conducted on an annual basis after the initial survey;
- (2) Conducts satisfaction surveys with individuals who have representatives based on the schedule outlined in (1)a. and b. above; and
- (3) Verifies if the person-centered plans are being carried out by comparing documentation of provided services with services required in the person-centered plan in addition to (1) and (2) above.

He-P 601.15 Appeals.

(a) The department shall notify applicants or OQA of the department's decision to deny or revoke a certification of the right to request an administrative appeal in accordance with RSA 541-A and He-C 200.

(b) If an applicant or OQA fails to request an administrative appeal in writing within 30 days of the date of the notice, the action of the department shall become final.

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

(d) Further appeals of department decisions under this section shall be governed by RSA 541.

He-P 601.16 Waivers.

(a) Applicants or OQA seeking waivers of specific rules requirements in He-P 601 shall submit written requests for waivers to the commissioner.

(b) The written request for a waiver shall include:

- (1) Identification of the specific section of the rule for which a waiver is being sought;
- (2) A full explanation of why the applicant or OQA believes the waiver is necessary;
- (3) A full explanation of alternatives proposed by the applicant or the OQA; and
- (4) The period of time for which the waiver is sought, which shall be no longer than 12 months after the waiver request date, except as allowed by He-P 601.11(h).

(c) A request for a waiver shall be granted only if the commissioner of the department determines that the alternative proposed by the applicant or OQA:

- (1) Meets the objective or intent of the rule; and
- (2) Either:
 - a. Does not negatively impact the health or safety of the individuals being served by the OQA; or
 - b. Is administrative in nature and does not affect the quality of care provided to individuals.

(d) All waivers, except as allowed by He-P 601.11(h), shall expire on the same day as the certificate or 12 months after the request, whichever is sooner.

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

(f) Waivers shall not be transferable.

(g) If a OQA wishes to extend the waiver beyond the period of time in (d) above , the OQA shall apply for a new waiver at least 60 days prior to the expiration of the existing waiver by submitting the information required by (b) above.

(h) The request to extend a waiver shall be subject to (b) through (g) above.

Appendix A: Incorporation by Reference

Rule	Title	Publisher; How to Obtain; and Cost
He-P 601.10(n)(3)	Centers for Disease Control and Prevention’s “Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings” (2005 Edition)	Publisher: Centers for Disease Control and Prevention Cost: Free of Charge The incorporated document is available at: https://www.cdc.gov/tb/publications/slidesets/infectionguidelines/default.htm

Appendix B

Rule	Specific State Statute which the Rule Implements
He-P 601.01-601.02	RSA 161-I:1
He-P 601.03	RSA 161-I:2
He-P 601.03(a)	RSA 151:2-b, IV
He-P 601.04	RSA 161-I:7
He-P 601.05	RSA 541-A:29; RSA 161:I:7
He-P 601.06-601.09	RSA 161-I:7
He-P 601.09	RSA 541-A:29; RSA 161-I:7
He-P 601.10	RSA 161-I:6; RSA 161-I:6-a; RSA 161-I:7
He-P 601.11	RSA 161-I:5; RSA 161-I:7
He-P 601.12	RSA 161-I:7,I(e)
He-P 601.13	RSA 161-I:4,II & 7,IV
He-P 601.14	RSA 161-I:7
He-P 601.15	RSA 541-A:16, I(b)
He-P 601.16	RSA 541-A:22,IV