

RULEMAKING NOTICE FORM

Notice Number 2020-56

Rule Number He-C 900

<p>1. Agency Name & Address: Dept. of Health & Human Services Office of the Commissioner 129 Pleasant Street, Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 126-U:9, I</u> 3. Federal Authority: _____ 4. Type of Action: Adoption <u>X</u> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____</p>
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5. Short Title: **Limitations on Child Restraints and Seclusion Practices**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to adopt Chapter He-C 900 entitled “Child Restraint and Seclusion Practices” containing He-C 901, entitled “Limitations on Child Restraint and Seclusion Practices”. He-C 901 establishes the uniform standards and requirements for how the Department reviews records maintained by facilities regarding the use of seclusion and restraint as described in RSA 126-U:9, I(a). He-C 901 also establishes a uniform process for how the Department receives and investigates complaints of improper use of seclusion and restraint in facilities as described in RSA 126-U:9, I(b). He-C 901 applies to facilities as defined in RSA 126-U:1, III and foster family homes as defined in RSA 170-E:25, II(a)(1).

The proposed He-C 901:

- **Provides the purpose and scope of the rule;**
- **Provides the definitions associated with the rule;**
- **Establishes the written policy requirements for facilities and foster family homes;**
- **Establishes requirements for facilities on the duty to report and on record-keeping;**
- **Establishes requirements for foster family homes on the duty to report;**
- **Establishes annual reporting requirements for facilities, foster family homes, and the Department;**
- **Establishes the process and requirements in which the Department shall review restraint and seclusion records; and**
- **Establishes a complaint procedure to include the filing of complaints, review of complaints, and the investigation of complaints.**

6. (b) Brief description of the groups affected:

Groups affected by this rule include any facility as defined in RSA 126-U:1, III and foster family homes as defined in RSA 170-E:25, II(a)(1).

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section	State or Federal Statute the Rule Implements
He-C 901.01	RSA 126-U:9, I(a); RSA 126-U:9, I(b)
He-C 901.02	RSA 126-U:1, III; RSA 170-E:25, II(a)
He-C 901.03	RSA 126-U:1; RSA 170-E:25, II(a)
He-C 901.04	RSA 126-U:2; RSA 126-U; RSA 126-U:1, I; RSA 126-U:7-a; RSA 126-U:10
He-C 901.05	RSA 126-U:7; RSA 126-U:9
He-C 901.06	RSA 126-U:7-a; RSA 126-U:7, II
He-C 901.07	RSA 126-U:7-a; RSA 126-U:9
He-C 901.08	RSA 126-U:9
He-C 901.09	RSA 126-A:4,; RSA 126-U:9
He-C 901.10	RSA 126-A:4, III; RSA 126-U:1; RSA 125-U:7; RSA 126-U:7-a
He-C 901.11	RSA 169-C:29; RSA 126-U:4, RSA 126-U:5, RSA 126-U:5-a and RSA 126-U:5b; RSA 126-U:9

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Allyson Zinno** Title: **Administrative Rules Coordinator**
Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**
Administrative Rules Unit Fax#: **(603) 271-5590**
129 Pleasant Street, 2nd Floor E-mail: **allyson.zinno@dhhs.nh.gov**
Concord, NH 03301
TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, August 11, 2020**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, August 4, 2020 at 1:00pm.**
Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

This meeting can also be accessed via zoom using the below information:

Join Zoom Meeting: <https://nh-dhhs.zoom.us/j/2744551778?pwd=RnJxZFVPMlllOQ3pqQW5FZ09YR2xidz09>

Meeting ID: **274 455 1778**

Password: **866326**

One tap mobile: **+13126266799,,2744551778#,1#,866326# US (Chicago)**
+16465588656,,2744551778#,1#,866326# US (New York)

Dial by your location: **+1 312 626 6799 US (Chicago)**
+1 646 558 8656 US (New York)
+1 301 715 8592 US (Germantown)
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)

The following email address will be monitored during the meeting if there is any public access or technical problem during the meeting: allyson.zinno@dhhs.nh.gov.

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 20:040, dated June 10, 2020

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable, as this is a new rule.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

The Department of Health and Human Services states that while the proposed rule is consistent with current practice, it may nonetheless require additional administrative hours to review and complete an annual report on restraint and seclusion records and for the review and investigation of complaints. The Department states that any impact on costs is indeterminable. There will be no cost or benefit to any State special fund.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

The proposed rule may require additional administrative hours on the part of facilities and foster family homes, in order to ensure they have written policies, maintain records, and report appropriately on child seclusion and restraint. Any such cost is indeterminable.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-C 900 to read as follows:

CHAPTER He-C 900 CHILD RESTRAINT AND SECLUSION PRACTICES

PART He-C 901 LIMITATIONS ON CHILD RESTRAINT AND SECLUSION PRACTICES

He-C 901.01 Purpose.

(a) The purpose of this part is to set forth the uniform standards and requirements for how the department reviews records maintained by facilities regarding the use of seclusion and restraint as described in RSA 126-U:9, I(a).

(b) This part also establishes a uniform process for how the department receives and investigates complaints of improper use of seclusion and restraint in facilities as described in RSA 126-U:9, I(b).

He-C 901.02 Scope.

(a) This part shall apply to facilities as defined in RSA 126-U:1, III and foster family homes as defined in RSA 170-E:25, II(a).

He-C 901.03 Definitions.

(a) “Child” means child as defined in RSA 126-U:1, I.

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

(c) “Department” means the department of health and human services, or its designee.

(d) “Facility” means “facility” as defined in RSA 126-U:1, III.

(e) “Foster family home” means “foster family home” as defined in RSA 170-E:25, II(a).

(f) “Investigator” means the individual assigned by the Department who reviews complaints filed pursuant to RSA 126-U.

(g) “Restraint” means “restraint” as defined in RSA 126-U:1, IV.

(h) “Seclusion” means “seclusion” as defined in RSA 126-U:1, V-a.

(i) “Serious injury” means “serious injury” as defined in RSA 126-U:1, VI.

He-C 901.04 Written Policy Requirements.

(a) Each facility, with the exception of foster family homes, shall have a written policy and procedures for supporting children and managing the behavior of children consistent with RSA 126-U.

(b) The written policy in (a) above shall, at a minimum:

(1) Describe how and under what circumstances seclusion or restraint is used;

- (2) Be provided annually to the parent, guardian, or legal representative of each child at any facility; and
 - (3) Be made available, upon request, to the department or the external review committee, as described in He-C 901.10.
- (c) Foster family homes shall comply with the requirements in He-C 6446.

He-C 901.05 Duty to Report and Record-Keeping Requirements for Facilities Other Than Foster Family Homes.

(a) Unless prohibited by a court order, the director of the facility, or his or her designee, shall make reasonable efforts to verbally notify the child's parent, guardian, or legal representative as soon as possible whenever seclusion or restraint has been used on a child.

(b) The notification in (a) above shall be made:

(1) In a manner which provides actual notice to the parent, guardian, or legal representative, which means making direct contact or receiving confirmation that an electronic notification has been received; and

(2) No later than the end of the business day.

(c) A facility employee who uses seclusion or restraint or, if the employee is unable, his or her supervisor, shall immediately verbally notify the director of the facility, or his or her designee, of the occurrence.

(d) Within 5 business days of the occurrence, the employee or, if the employee is unable, his or her supervisor, shall submit a written notification to the director or his or her designee.

(e) The written notification in (d) above shall include the following information, pursuant to RSA 126-U:7, II:

(1) The date, time, and duration of the use of seclusion or restraint;

(2) A description of the actions of the child before, during, and after the occurrence;

(3) A description of any other relevant events preceding the use of seclusion or restraint, including the justification for initiating the use of restraint;

(4) The names of the persons involved in the occurrence;

(5) A description of the actions of the facility employees involved before, during, and after the occurrence;

(6) A description of any interventions used prior to the use of the seclusion or restraint;

(7) A description of the seclusion or restraint used, including any hold used and the reason the hold was necessary;

(8) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of seclusion or restraint;

- (9) A description of any property damage associated with the occurrence;
- (10) A description of actions taken to address the emotional needs of the child during and following the incident;
- (11) A description of future actions to be taken to control the child's problem behaviors;
- (12) The name and position of the employee completing the notification; and
- (13) The anticipated date of the final report.

(f) Unless prohibited by court order, the director of the facility, or his or her designee, shall, within 2 business days of receipt of the notification required in (d) above, send the information contained in the notification to the child's parent, guardian, or legal representative.

(g) The notification in (d) above shall be retained by the facility for review by the department in accordance with RSA 126-U:9.

(h) In cases involving death or serious injury to a child subject to restraint or seclusion, facilities shall immediately alert law enforcement of the incident.

(i) In addition to (h) above, the facility shall within 5 business days of the death or serious injury, submit a written report to the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities.

(j) The written report in (i) above shall:

- (1) Adhere to the notice requirements above; and
- (2) Be retained by the facility for review by the department in accordance with RSA 126-U:9.

He-C 901.06 Duty to Report Requirements for Foster Family Homes

(a) An individual in a foster family home who uses seclusion or restraint on a child shall verbally notify the department's foster care and adoption services unit, as soon as possible after the occurrence.

(b) An individual in a foster family home who uses seclusion or restraint on a child, shall within 5 business days submit a written report to the department.

(c) The notifications in (a) and (b) above shall:

- (1) Conform to the notice requirements in He-C 901.05(e); and
- (2) Be retained by the foster family home for review by the department in accordance with RSA 126-U:7-a.

(d) Unless prohibited by a court order, the department or outside foster care agency shall verbally notify the child's parent, guardian, or legal representative as soon as possible whenever seclusion or restraint has been used on a child.

(e) Unless prohibited by court order, the department shall, within 5 business days of receipt of the notification required in (b) above, send the information contained in the notification to the child's parent, guardian, or legal representative.

(f) In cases involving death or serious injury to a child subject to restraint or seclusion, the foster family home shall, immediately alert law enforcement of the incident.

(g) In addition to (f) above, the foster family home shall, within 5 business days of the death or serious injury, submit a written report to the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities.

(h) The written report in (g) above shall:

(1) Adhere to the notice requirements in He-C 901.05 (e); and

(2) Be retained by the foster family home for review by the department in accordance with RSA 126-U:7-a.

He-C 901.07 Annual Reporting Requirement.

(a) Facilities, other than foster family homes, shall submit an annual report to the department, by August 1st of each year, of any record(s) of seclusion and restraint usage from the prior fiscal year, unless the Department, its rules or contracts require a more frequent submission.

(b) The report in (a) above shall include, at a minimum, the number of reported incidents of restraint and seclusion usage, by month.

(c) Foster family homes shall report according to He-C 901.06.

(d) The department shall compile the reports from section (a) and (c) above and shall file an annual report pursuant to RSA 126-U:9, II.

He-C 901.08 Review of Restraint and Seclusion Usage Records.

(a) The department shall review the restraint and seclusion usage data reported in He-C 901.07.

(b) Pursuant to RSA 126-U:9, the department shall conduct periodic, regular review of records maintained by facilities regarding the use of seclusion and restraint.

(c) As part of the periodic, regular review of records in (b) above, the Department will convene an external review committee comprised of a minimum of 2 individuals designated by the commissioner.

(d) The external review committee in (c) above shall select a sample of records maintained pursuant to RSA 126-U of, at a minimum, 25% of the total number of a facility's annual records. The review committee shall be permitted to review all facility records should it find it necessary.

(e) As part of the review, the facility shall make its policies, as outlined in He-C 901.04, available to the external review committee.

(f) Each facility's records shall be subject to, at a minimum, an annual review by the external review committee in (c) above. Additional review may be conducted at regular intervals during a facility's licensure or certification renewal process, as applicable, or as part of the annual inspection of the facility.

(g) The external review committee will examine the records to determine whether each facility is in compliance with the requirements of RSA 126-U and He-C 900.

(h) Within 45 calendar days of the completion of its review of a facility's records, the external review committee shall submit a written report to the department.

(i) The report shall contain, at a minimum:

- (1) The name of the facility;
- (2) The date of the review;
- (3) The total number of records reviewed;
- (4) The date range of the records reviewed;
- (5) The total number of reports of seclusion and restraints;
- (6) The total number of improper use of seclusion and restraints;
- (7) Whether the review committee finds excessive use of improper use of seclusion and restraint by the facility and recommends that the Department requests a corrective action plan;
- (8) Whether the facility has a written policy regarding seclusion and restraints;
- (9) Whether the facility is in compliance with its policies; and
- (10) Whether the facility is in compliance with its duty to report and its record keeping requirements under He-C 901.05, He-C 901.06, and He-C 901.07.

(j) Facilities shall permit the state's federally-designated protection and advocacy agency for individuals with disabilities access to its seclusion and restraint reports.

He-C 901.09 Complaints Procedure.

(a) Any individual may file a complaint with the office of the ombudsman pursuant to RSA 126-A:4, III, alleging a facility violation of RSA 126-U.

(b) If a complaint is filed by an individual, on behalf of a facility or a foster family home, the written complaint shall adhere to the notice requirements in He-C 901.05 or He-C 901.06.

(c) For all other complainants, the oral or written complaint shall contain the following information:

- (1) The date or approximate date of the alleged incident;
- (2) The location of the alleged incident;
- (3) The name of the child or children subject to the alleged restraint or seclusion, if known;

- (4) The name of the facility employee or foster family home individual alleged to have restrained or secluded the child or children, if known;
- (5) A description of the alleged restraint or seclusion;
- (6) The date of complaint; and
- (7) The name of complainant if the complainant is willing to disclose his or her name.

(d) If a complainant requests to keep his or her identity confidential throughout the complaint process, the complainant's identity will not be disclosed except as may be necessary to resolve the complaint, or as required by law.

He-C 901.10 Review of Complaints.

(a) Unless filed with the office of the ombudsman pursuant to RSA 126-A:4, III, the complaint outlined in He-C 901.09 shall be reviewed and investigated by the following:

- (1) A facility as defined in RSA 126-U:1, III (a) and (c) – division of children, youth, and families (DCYF) special investigations unit;
- (2) A facility as defined in RSA 126-U:1, III (b) – childcare licensing unit;
- (3) A facility as defined in RSA 126-U:1, III (d)(1);(2);(3) – New Hampshire hospital, office of patient experience;
- (4) A facility as defined in RSA 126-U:1, III (d)(4);(5) - office of client and legal services; and
- (5) A facility as defined in RSA 126-U:1, III (e) and (f) – health facilities administration.

(b) The investigator shall not be affiliated with the facility or any person involved in the complaint.

(c) If the complaint is filed by an individual other than a parent, guardian, or legal representative, the investigator shall notify the parent, guardian, or legal representative that a complaint has been filed on behalf of the child pursuant to RSA 126-U:7, I and RSA 126-U:7-a.

(d) The investigator shall review and accept the complaint for investigation, if the alleged facts, if true, would constitute an improper use of seclusion and restraint under RSA 126-U.

(e) If the complaint of improper use of seclusion and restraint under RSA 126-U is unfounded, the investigator shall deny the complaint and notify the complainant.

He-C 901.11 Investigative Process.

(a) If a complaint is accepted, the investigator shall:

- (1) For cases involving serious injury or death, determine whether the allegations shall be referred to law enforcement for investigation as mandated by RSA 169-C:29;
- (2) For cases involving allegations of abuse and neglect, make reports as required under RSA 169-C:29;

- (3) Contact individuals and examine records and other documents that are reasonably necessary to investigate whether any violation of RSA 126-U occurred;
 - (4) Review findings of facts from other investigative agencies, if applicable;
 - (5) Review any protective measures for the child that the facility or foster family home has put in place before or after the complaint; and
 - (6) If no protective measures have been put in place, require the facility or foster family home to develop procedures to protect the child.
- (b) Once the investigator completes the investigation, he or she shall file a written report with the appropriate department program, as outlined in He-C 901.10, within 30 calendar days, including findings of fact, specifying the specific grounds, listed in RSA 126-U, upon which the findings are based and any appropriate remedial measures that address physical and other injuries, protect against retaliation, and reduce the incidence of violence pursuant to the intent of RSA 126-U.
- (c) The investigator may request an extension of time for good cause if, a circumstance occurred beyond a person's control that prevents that person from taking some required action, including:
- (1) Coordination of investigations with other agencies;
 - (2) Unavailability of witnesses; or
 - (3) Any other compelling reason or justification
- (d) A request for an extension of time shall be submitted, in writing, to the commissioner's office prior to the expiration of the 30 calendar days outlined in (b) above.
- (e) If the commissioner determines that good cause has been shown, a 30-day extension may be granted.
- (f) Any additional extension of time may be granted by the commissioner if the commissioner determines that such extension would be in the best interest of the parties involved.
- (g) The written report in (b) above shall include the following, as necessary:
- (1) Appropriate remedial measures to address physical or other injuries;
 - (2) Appropriate remedial measures to address protection against retaliation; and
 - (3) Appropriate remedial measures to reduce the incidence of violations of RSA 126-U including, but not limited to:
 - a. Training of an individual or a group of facility employees;
 - b. Revision of facility policies and procedures;
 - c. Revision of facility notice and record keeping practices; and
 - d. Compliance with conditions of restraint and seclusion pursuant to RSA 126-U:4, RSA 126-U:5, RSA 126-U:5-a and RSA 126-U:5b.

(h) The written report in (b) above shall be provided to the director of any facility, or foster family home, found to be in non-compliance with RSA 126-U.

(i) A redacted copy of the investigator's report shall be provided to the child's parent, guardian, or legal representative pursuant to RSA 126-U:7 and RSA 126-U:7-a in compliance with federal and state law.

(j) If a facility has been found to be in non-compliance with RSA 126-U, the appropriate department program, as outlined in He-C 901.10, may institute disciplinary proceedings pursuant to its respective administrative rules.

(k) In addition to any disclosure required by (h) and (i) above, the investigator's report shall be disclosed, upon request, to the parties in any adjudicatory proceeding arising out of the same incident as the complaint alleging violations of RSA 126-U.

APPENDIX

Rule Section	State or Federal Statute the Rule Implements
He-C 901.01	RSA 126-U:9, I(a); RSA 126-U:9, I(b)
He-C 901.02	RSA 126-U:1, III; RSA 170-E:25, II(a)
He-C 901.03	RSA 126-U:1; RSA 170-E:25, II(a)
He-C 901.04	RSA 126-U:2; RSA 126-U; RSA 126-U:1, I; RSA 126-U:7-a; RSA 126-U:10
He-C 901.05	RSA 126-U:7; RSA 126-U:9
He-C 901.06	RSA 126-U:7-a; RSA 126-U:7, II
He-C 901.07	RSA 126-U:7-a; RSA 126-U:9
He-C 901.08	RSA 126-U:9
He-C 901.09	RSA 126-A:4.; RSA 126-U:9
He-C 901.10	RSA 126-A:4, III; RSA 126-U:1; RSA 125-U:7; RSA 126-U:7-a
He-C 901.11	RSA 169-C:29; RSA 126-U:4, RSA 126-U:5, RSA 126-U:5-a and RSA 126-U:5b; RSA 126-U:9