

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

Statutory Authority: RSA 151:9

PART He-P 809 HOME HEALTH CARE PROVIDERS

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

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

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

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

- (a) All facilities listed in RSA 151:2, II(a)-(g);
- (b) Agencies that are certified by the department as other qualified agencies delivering personal care services in accordance with RSA 161-H;
- (c) Entities that are licensed under another home health care license and are providing only the services permitted under that license;
- (d) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use; and
- (e) For a period ending on September 25, 2019, emergency medical services units and emergency medical care providers operating under the jurisdiction and regulatory oversight of the New Hampshire department of safety, bureau of emergency medical services, in compliance with the “mobile integrated healthcare protocol” contained in the New Hampshire patient care protocols, incorporated by reference in Sac-C 5902.01.

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

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

New. #9466, eff 5-2-09; ss by #10939, eff 9-25-15; ss by #12640, eff 10-3-18

He-P 809.03 Definitions.

- (a) “Abuse” means any one of the following:

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(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 a patient;

(2) "Physical abuse" means the misuse of physical force which results or could result in physical injury to a patient; and

(3) "Sexual abuse" means contact or interaction of a sexual nature involving a patient with or without his or her informed consent.

(b) "Activities of daily living (ADL)" means basic daily routine tasks such as eating, transferring, toileting, bathing, dressing, and self-management of medications.

(c) "Administer" means "administer" as defined by RSA 318:1, I, namely "an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person for immediate consumption or use."

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

(e) "Admission" means accepted by a licensee for the provision of services to a patient.

(f) "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 or a surrogate decision-maker in accordance with RSA 137-J:35.

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

(h) "Area of non-compliance" means any action, failure to act, or other set of circumstances that cause a licensee to be out of compliance with RSA 151, He-P 809, or other federal or state requirements.

(i) "Assessment" means an evaluation of the patient to determine the care and services that are needed.

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

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

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

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

(l) "Change of ownership" means a change in the controlling interest of an established HHCP to a successor business entity.

(m) "Commissioner" means the commissioner of the department of health and human services or his or her designee.

(n) "Community health services" means services that are provided in community settings, including but not limited to foot clinics, flu shot clinics, educational programs and nutrition services.

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(o) “Critical incident stress management (CISM)” means an adaptive, short-term psychological helping-process that focuses solely on an immediate and identifiable problem. Its purpose is to enable people to return to their daily routine more quickly and with less likelihood of experiencing post-traumatic stress disorder.

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

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

(r) “Direct care” means hands-on care and services provided to a patient, including but not limited to medical, nursing, psychological, or rehabilitative treatments.

(s) “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 areas of non-compliance.

(t) “Do not resuscitate order (DNR order)” means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs. This term includes “do not attempt resuscitation order (DNAR order)”.

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

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

(w) “Exploitation” means the illegal use of a patient’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 patient 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 patient’s health care and other personal needs.

(y) “Home health care provider (HHCP)” means any organization or business entity, whether public or private, whether operated for profit or not, which is engaged in arranging or providing, directly or through contract arrangement, one or more of the following services:

- (1) Nursing services;
- (2) Home health aide services; or
- (3) Other therapeutic and related services, which can include, but are not limited to;
 - a. Physical and occupational therapy;
 - b. Speech pathology;
 - c. Nutritional services;
 - d. Medical social services;
 - e. Personal care services; and

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f. Homemaker services which may be of a preventative, therapeutic, rehabilitative, health guidance, or supportive nature to persons in their places of residence.

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

(aa) “Incident command system (ICS)” means a standardized on-scene emergency management system specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents.

(ab) “Infectious waste” means those items specified by Env-Sw 904.

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

(ad) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 809 or to respond to allegations, pursuant to RSA 151:6, of non-compliance with RSA 151 and He-P 809.

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

(ae) “License” means the document issued by the department to an applicant at the start of operation as an HHCP which authorizes operation in accordance with RSA 151 and He-P 809, and includes the name of the licensee, the name of the business, the physical address, the license classification, the effective date, and license number.

(af) “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 for which the HHCP is licensed.

(ag) “Licensed practitioner” means a:

- (1) Medical doctor;
- (2) Physician’s assistant;
- (3) Advanced practice registered nurse (APRN);
- (4) Doctor of osteopathy;
- (5) Doctor of naturopathic medicine; or
- (6) Any other practitioner with diagnostic and prescriptive powers licensed by the appropriate state licensing board.

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

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

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

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

(al) “Orders” means a document, produced verbally, electronically or in writing, by a licensed practitioner for medications, treatments, recommendations, and referrals, and signed by the licensed practitioner using terms such as authorized by, authenticated by, approved by, reviewed by, or any other term that denotes approval by the licensed practitioner.

(am) “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.

(an) “Patient” means any person admitted to or in any way receiving care, services, or both from a HHCP licensed in accordance with RSA 151 and He-P 809. Patient includes patient as used in RSA 151:20 and RSA 151:21.

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

(ap) “Patient rights” means the privileges and responsibilities possessed by each patient provided by RSA 151:21-b.

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

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

(as) “Personnel” means an individual who is employed by the facility, who is a volunteer, or who is an independent contractor who provides direct care or personal care services to patients.

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

(au) “Point of care testing (POCT)” means laboratory testing performed using either manual methods or hand held instruments at or near the site of patient care.

(av) “Point of care devices” means testing involving a system of devices, typically including:

- (1) A lancing or finger stick device to get the blood sample;
- (2) A test strip to apply the blood sample; or
- (3) A meter or monitor to calculate and show the results including:
 - a. Blood glucose meters, also called “glucometers”;

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- b. Prothrombin time (PT) and international normalized ratio (INR) anticoagulation meters;
or
- c. Cholesterol meter.

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

(ax) “Pro re nata (PRN) medication” means medication taken as circumstances may require in accordance with licensed practitioner’s orders.

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

(az) “Professional staff” means:

- (1) Physicians;
- (2) Physician assistants;
- (3) Advanced practice registered nurses;
- (4) Registered nurses;
- (5) Registered physical therapists;
- (6) Speech therapists;
- (7) Licensed practical nurses;
- (8) Licensed respiratory therapists;
- (9) Occupational therapists;
- (10) Medical social workers; and
- (11) Dietitians.

(ba) “Reportable incident” means an occurrence of any of the following while the patient is in the care of HHCP personnel:

- (1) The unanticipated death of the patient; or
- (2) An injury to a patient that is potentially due to abuse or neglect.

(bb) “Self-administration of medication with assistance” means an act whereby the patient takes his or her own medication after being prompted by personnel but without requiring physical assistance from others beyond placing the container within reach, opening the medication container, reading the medication label to the patient, and utilizing hand over hand technique pursuant to Nurs 404.03(b).

(bc) “Self-administration of medication without assistance” means the participant is able to take his or her own medication(s) without the assistance of personnel, including prompting.

(bd) “Self-directed medication administration” means an act whereby a patient, who has a physical limitation that prohibits him or her from self-administration of medication without assistance, directs

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personnel to physically assist in the medication process, which does not include assisting with infusions, injections or filling insulin syringes.

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

(bf) “Volunteer” means an unpaid person who assists with the provision of personal care services, food services, or activities, and who does not provide direct care or assist with direct care. This term does not include visitors or those persons who provide religious services or entertainment.

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

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.04 Initial License Application Requirements.

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

(1) A completed application form entitled “Application for Residential or Health Care License,” (September 2018 edition) signed by the applicant or 2 of the corporate officers affirming and certifying the following:

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

b. For any HHCP to be newly licensed:

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

c. For any HHCP to be newly licensed and to be located within a radius of 15 miles of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. 485.610 (b) and (c):

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

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

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- 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 \$250 fee, in accordance with RSA 151:5, XI(b), payable in cash in the exact amount of the fee, or, if paid by check or money order, the exact amount of the fee made payable to the "Treasurer, State of New Hampshire";

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

(5) Written local approvals as follows:

a. For the proposed licensed premises the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials or if there is no such official(s), from the board of selectmen or mayor:

- 1. The health officer verifying that the applicant complies with all applicable local health requirements;
- 2. The building official verifying that the applicant complies with all applicable state and local building codes and ordinances;
- 3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
- 4. The fire chief verifying that the applicant complies with the state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5,I, by the state fire marshal with the board of fire control and local fire ordinances applicable for a business; and

b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and upon completion of the construction project; and

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

(b) The applicant shall mail or hand-deliver the documents to:

Department of Health and Human Services
Office of Legal and Regulatory Services
Health Facilities Administration
129 Pleasant Street
Concord, NH 03301

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

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

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New. #12640, eff 10-3-18

He-P 809.05 Processing of Applications and Issuance of Licenses.

- (a) An application for an initial license shall be complete when the department determines that all items required by He-P 809.04(a) have been received.
- (b) If an application does not contain all of the items required by He-P 809.04(a), the department shall notify the applicant in writing of the items required before the application can be processed.
- (c) Any licensing fee submitted to the department in the form of a check or money order and returned to the state for any reason, shall be processed in accordance with RSA 6:11-a.
- (d) Licensing fees shall not be transferable to any other application(s).
- (e) Unless a waiver has been granted in accordance with He-P 809.10, the department shall deny a licensing request in accordance with He-P 809.13(b) if 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, theft, abuse, neglect, or exploitation in this or any other state;
 - (3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, theft, abuse, neglect, or exploitation of any person; or
 - (4) Otherwise poses a threat to the health, safety, or well-being of patients.
- (f) An inspection shall be completed in accordance with He-P 809.09 prior to the issuance of a license.
- (g) The applicant shall have on hand and available for inspection at the time of the initial onsite inspection the results of a criminal records check from the NH department of safety for all current personnel.
- (h) Following a clinical inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 809.
- (i) All licenses issued in accordance with RSA 151 shall be non-transferable by person or location.
- (j) A written notification of denial, pursuant to He-P 809.13(b)(1), shall be sent to an applicant applying for an initial license if it has been determined by the inspection in (h) above and a maximum of 2 follow-up inspections that the prospective premises are not in full compliance with RSA 151 and He-P 809.
- (k) A written notification of denial, pursuant to He-P 809.13(b)(4), shall be sent to an applicant applying for an initial license if the department has received no communication from the applicant within 3 months of sending written notification to the applicant that their application is complete and an inspection needs to be scheduled.

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New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

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New. #12640, eff 10-3-18

He-P 809.06 License Expirations and Procedures for Renewals.

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

(b) Each licensee seeking renewal shall:

(1) Complete and submit to the department an application form pursuant to He-P 809.04(a)(1) at least 120 days prior to the expiration of the current license;

(2) The current license number;

(3) A request for renewal of any existing non-permanent waiver previously granted by the department, in accordance with He-P 809.10(f), as applicable. If such a request is not received, the rule(s) for which the waiver was previously requested shall not continue to be waived beyond the expiration of the current license;

(4) A list of any current employees who have a permanent waiver granted in accordance with He-P 809.17(d); and

(5) A copy of any non-permanent or new variances applied for or granted by the state fire marshal.

(c) Following an inspection, as described in He-P 809.09, 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) Has submitted a POC that has been accepted by the department and implemented by the licensee if areas of non-compliance were cited at the last licensing inspection or investigation; and

(3) Is found to be in compliance with RSA 151 and He-P 809 at the renewal inspection.

(d) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license and does not intend to cease operation shall be required to submit an application for initial license pursuant to He-P 809.04 and shall be subject to a fine in accordance with He-P 809.13(c)(5).

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.07 Branch Offices and Drop Sites.

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

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

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

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

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

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

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

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New. #12640, eff 10-3-18

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

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

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

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

- (1) A change in ownership; or
- (2) A change in licensing classification.

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

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(d) When there is a change in address due to a physical location change , the HHCP shall provide the department with:

- (1) A letter which contains the license number, new address, and date of the move; and
- (2) Local approval form as specified in He-P 809.04(a)(5).

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

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

- (1) Ownership, unless the current licensee is in full compliance then an inspection shall be conducted as soon as practical by department; or
- (2) A change in licensing classification.

(g) A new license shall be issued for a change in ownership.

(h) A revised license and license certificate shall be issued for a change in address.

(i) A revised license and license certificate shall be issued for a change in name.

(j) A license and license certificate shall be issued at the time of initial licensure.

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

- (1) A change in administrator;
- (2) When a waiver has been granted;
- (3) When there is a change in services; or
- (4) When a branch office has been added.

(l) The HHCP shall inform the department in writing no later than 5 days prior to a change in administrator, or as soon as practicable in the event of a death or other extenuating circumstances requiring an administrator change and provide the department with the following:

- (1) A resume identifying the name and qualifications of the new administrator;
- (2) Copies of applicable licenses for the new administrator;
- (3) The results of a criminal records check from the NH department of safety for the new administrator; and
- (4) Results of bureau and elderly adult registry check.

(m) Upon review of the materials submitted in accordance with (l) above, the department shall make a determination as to whether the new administrator meets the qualifications for the position, as specified in He-P 809.15(d).

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

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(o) A restructuring of an established HHCP that does not result in a transfer of the controlling interest of the facility, but which might result in a change in the name of the facility or corporation, shall not constitute a change in ownership and a new license shall not be required.

(p) The HHCP shall inform the department in writing via e-mail, fax, or mail of any change in the e-mail address as soon as practicable and in no case later than 10 days of the change as this is the primary method used for all emergency notifications to the facility.

(q) If a licensee chooses to cease operation of an HHCP, the licensee shall submit written notification to the department at least 60 days in advance which shall include a written closure plan that ensures adequate care of patients until they are transferred or discharged to an appropriate alternate setting.

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New. #12640, eff 10-3-18

He-P 809.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 809, as authorized by RSA 151:6 and RSA 151:6-a, the applicant or licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the HHCP; and
- (3) Any records required by RSA 151 and He-P 809.

(b) The department shall conduct an inspection to determine full compliance with RSA 151, He-P 809, and other federal or state requirements prior to:

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

(c) In addition to (b) above the department shall conduct an inspection, as necessary, to verify the implementation of any POC accepted or issued by the department.

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

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(e) If areas of non-compliance were cited in a statement of findings, the licensee shall submit a POC, in accordance with He-P 809.12(c), within 21 days of the date on the letter that transmits the inspection report.

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

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 809 shall submit a written request for a waiver to the commissioner that includes:

(1) The specific reference to the rule for which a waiver is being sought;

(2) A full explanation of why a waiver is necessary; and

(3) A full explanation of alternatives proposed by the applicant or licensee, which shall be equally as protective of public health and patients as the rule from which a waiver is sought or provide a reasonable explanation why the applicable rule should be waived.

(b) Waivers shall be permanent unless the department specifically places a time limit on the waiver.

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

(1) Meets the objective or intent of the rule;

(2) Does not negatively impact the health, safety, or well-being of the patients; and

(3) Does not negatively affect the quality of patient 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 a non-permanent waiver beyond the approved period of time, the licensee shall apply for a new waiver with the renewal application or at least 60 days prior to the expiration of the existing waiver, as appropriate, by submitting the information required by (a) above.

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

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

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

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He-P 809.11 Complaints.

- (a) The department shall investigate any complaint that meets the following conditions:
- (1) The alleged violation(s) occurred not more than 6 months prior to the date the department was made aware of the allegation(s);
 - (2) The complaint is based upon the complainant's first-hand knowledge regarding the allegation(s) or on information reported directly to the complainant by a person who has first-hand knowledge regarding the allegation(s); and
 - (3) There is sufficient specific information for the department to determine that the allegation(s), if proven to be true, would constitute a violation of any of the provisions of RSA 151 or He-P 809.
- (b) When practicable, the complaint shall be in writing and contain the following information:
- (1) The name and address, if known, of the HHCP, or the alleged unlicensed individual or entity;
 - (2) The name, address, and telephone number of the complainant; and
 - (3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151 or He-P 809.
- (c) Investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the complaint, including, but not limited to:
- (1) Requests for additional information from the complainant or the facility;
 - (2) Physical inspection of the licensed premises;
 - (3) Review of relevant records; and
 - (4) Interviews with individuals who might have information that is relevant to the investigation.
- (d) For a licensed HHCP, the department shall:
- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if areas of non-compliance were found as a result of the investigation;
 - (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;
 - (3) Notify the licensee in writing and take no further action if the department determines that the complaint is unfounded, under (a) above, or does not violate any statutes or rules; and
 - (4) Require the licensee to submit a POC in accordance with He-P 809.12(c) if the inspection results in areas of non-compliance being cited.
- (e) The following shall apply for the unlicensed individual or entity:
- (1) The department shall provide written notification to the owner or person responsible that includes:

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- a. The date of investigation;
- b. The reasons for the investigation; and
- c. Whether or not the investigation resulted in a determination that the services being provided require licensing under RSA 151:2, IV;

(2) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 business days from the date of the notice required by (1) above to submit a completed application for a license;

(3) If the owner of an unlicensed facility does not comply with (2) above, the department shall issue a written warning to immediately comply with RSA 151 and He-P 809; and

(4) Any person or entity who fails to comply after receiving a warning as described in (3) above, shall be subject to an action by the department for injunctive relief under RSA 151:17 and an administrative fine in accordance with He-P 809.13(c)(1).

(f) 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 administrative or judicial proceedings relative to the licensee.

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

New. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.12 Administrative Remedies.

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

- (1) Requiring a licensee to submit a POC in accordance with (c) below;
- (2) Imposing a directed POC upon a licensee in accordance with (d) below;
- (3) Imposing conditions upon a licensee; or
- (4) Monitoring of a license.

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

- (1) Identifies each area in which the licensee is not in compliance with RSA 151 or a provision of these rules ; and
- (2) Identifies the specific remedy(s) that has been proposed.

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

(1) Upon receipt of a statement of findings, the licensee shall submit a written POC for each item, written in the appropriate place on the statement and containing:

- a. How the licensee intends to correct each area of non-compliance;
- b. What measures will be put in place, or what system changes will be made to ensure that the area of non-compliance does not recur, to include how the measures will be evaluated for effectiveness;
- c. The date by which each area of non-compliance shall be corrected; and
- d. The position of the employee responsible for the corrective action.

(2) The licensee shall submit a written POC to the department within 21 days of the date on the letter that transmitted the statement of findings, 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 patient will not be jeopardized as a result of granting the extension;

(3) The department shall review and accept each POC and accept each plan that:

- a. Achieves compliance with RSA 151 and He-P 809;
- b. Addresses all areas of non-compliance as cited in the statement of findings;
- c. Prevents a new violation of RSA 151 or He-P 809 as a result of the implementation of the POC; and
- d. Specifies the date upon which the areas of non-compliance 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 within 14 days, of the reason for rejecting the POC;

b. The licensee shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected unless, within the 14-day period, the licensee requests an extension, via telephone or in writing, and the department grants the extension, based on the following criteria:

1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14-day period but has been unable to do so; and
2. The department determines that the health, safety or wellbeing of a patient will not be jeopardized as a result of granting the waiver;

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c. The revised POC shall comply with (c)(1) above and be reviewed in accordance with (c)(3) above; and

d. If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, unless the department has granted an extension, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with He-P 809.13(c)(11);

(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 an on-site 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 809.12(b); and
- b. Issued a directed POC in accordance with (d) below and a fine in accordance with He-P 809.13(c)(11).

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

- (1) As a result of an inspection, areas of non-compliance were identified that require immediate corrective action to protect the health and safety of the patients or personnel;
- (2) A revised POC is not submitted within 14 days of the written notification from the department or such other date as applicable if an extension was granted by the department; or
- (3) A revised POC submitted by the licensee 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:

- (1) Impose a fine;
- (2) Deny the application for a renewal of a license in accordance with He-P 809.13(b); or
- (3) Revoke the license in accordance with He-P 809.13(b).

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

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

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

(i) The deadline to submit a POC in accordance with He-P 809.12(c)(2) above shall not apply until the notice of the determination in (h) above has been provided to the applicant or licensee.

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

(k) The department shall impose state monitoring under the following conditions:

(1) Repeated non-compliance on the part of the facility in areas that impact the health, safety, or well-being of patients; or

(2) The presence of conditions in the HHCP that negatively impact the health, safety, or well-being of patients.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.13 Enforcement Actions and Hearings.

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

(1) The reasons for the proposed action;

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

(3) If a fine is imposed, the automatic reduction of the fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the area of non-compliance has been corrected, or a POC has been accepted and approved by the department; and

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

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

(1) An applicant or a licensee violated a provision of RSA 151 or He-P 809 in a manner which posed a risk of harm to a patient's health, safety, or well-being of a patient;

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

(3) An applicant or a licensee has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order or certified check;

(4) After being notified of and given an opportunity to supply missing information, or schedule an initial inspection an applicant or licensee fails to submit an application that meets the requirements of He-P 809.04;

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

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- a. Provides false or misleading information to the department;
 - b. Prevents, interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
 - c. Fails to provide requested files or documents to the department;
- (6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 809.12(c), (d), and (e);
 - (7) The licensee has submitted a POC that has not been accepted by the department in accordance with He-P 809.12(c)(5) and has not submitted a revised POC as required by He-P 809.12(c)(5);
 - (8) The licensee is cited a third time under RSA 151 or He-P 809 for the same violation within the last 5 inspections;
 - (9) A licensee, or its corporate officers, has had a license revoked and submits an application during the 5-year prohibition period specified in (j) below;
 - (10) Unless a waiver has been granted, upon inspection, the applicant or licensee is not in compliance with RSA 151 or He-P 809;
 - (11) Unless a waiver has been granted, the department makes a determination that the applicant, administrator, or licensee has been found guilty of or plead guilty to a felony assault, theft, fraud, abuse, neglect, or exploitation of any person, in this or any other state, or had an investigation for abuse, neglect, or exploitation adjudicated and founded by the department or any administrative agency in this or any other state;
 - (12) The applicant or licensee employs an administrator who does not meet the qualifications for the position under circumstances in which the department has not granted a waiver; or
 - (13) The applicant has had a license revoked by any division or unit of the department within 5 years prior to the application.
- (c) The department shall impose fines on unlicensed individuals, applicants, or licensees 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 entity;
 - (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist operations, in violation of RSA 151:2 and RSA 541-A:30, or continuing to operate after a failure to renew the license by the expiration date, the fine for an applicant, unlicensed entity or a licensee shall be \$2000.00;
 - (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III, and He-P 809.14(g), the fine for an applicant, licensee, or unlicensed entity 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 809.11(e)(4), the fine for an unlicensed entity or a licensee shall be \$500.00;

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- (5) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 809.06(e), the fine for a licensee shall be \$100.00;
- (6) For a failure to notify the department prior to a change of ownership, in violation of He-P 809.08(a)(1), the fine for a licensee shall be \$500.00;
- (7) For a failure to notify the department prior to a change in the physical location, in violation of He-P 809.08(a)(2), the fine for a licensee shall be \$1000.00;
- (8) For a failure to notify the department of a change in e-mail address, in violation of He-P 809.08(n), the fine shall be \$100.00;
- (9) For a failure to allow access by the department to the HHCP's premises, programs, services, patients, or records, in violation of He-P 809.09(a)(1)-(2), the fine for an applicant, unlicensed entity or licensee shall be \$2000.00;
- (10) 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, or the date of an extension as granted, in violation of He-P 809.12(c)(2) or (5), the fine for a licensee shall be \$500.00;
- (11) For a failure to implement or maintain the corrective action set forth in any POC that has been accepted or issued by the department, in violation of He-P 809.12(c)(8), the fine for a licensee shall be \$1000.00;
- (12) For a failure to establish, implement, or comply with licensee policies, as required by He-P 809.14(b), (d), and (s) the fine for a licensee shall be \$500.00;
- (13) For a failure to provide services or programs required by the licensing classification and specified by He-P 809.14(c), the fine for a licensee shall be \$500.00;
- (14) For a failure to transfer a patient whose needs exceeds the services or programs provided by the HHCP, in violation of RSA 151:5-a, the fine for a licensee shall be \$500.00;
- (15) For providing false or misleading information or documentation to the department, in violation of He-P 809.14(f), the fine shall be \$1000.00 per offense;
- (16) For a failure to meet the needs of the patient, as described in He-P 809.14(i)(2), the fine for a licensee shall be \$1000.00 per patient;
- (17) For employing an administrator or other personnel who do not meet the qualifications for the position, without having a waiver granted by the department in accordance with He-P 809.14, the fine for a licensee shall be \$500.00;
- (18) When an inspection determines that a violation of RSA 151 or He-P 809 for which a fine was previously imposed, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:
 - a. If the same area of non-compliance is cited within 2 years of the original non-compliance, the fine for a licensee shall be \$1000; or
 - b. If the same area of non-compliance is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be triple the original fine, but not to exceed \$2000.00;

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(19) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 809 shall constitute a separate violation and shall be fined in accordance with He-P 809.13(c); and

(20) If the applicant or licensee is making good faith efforts to comply with above, as verified by documentation or other means, the department shall not issue a daily fine.

(d) 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"; 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.

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

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

(g) The department shall order the immediate suspension of a license, the cessation of services, patient when it finds that the health, safety, or well-being of patients is in jeopardy and requires emergency action in accordance with RSA 541:A-30.

(h) If an immediate suspension is upheld, the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 809 is achieved.

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

(j) When a HHCP's license has been denied or revoked, , the applicant, licensee, or administrator shall not be eligible to apply for a license or be employed as an administrator for at least 5 years if the denial or revocation specifically pertained to their role in the program.

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

(1) The date of the department's decision to revoke or deny the license if no appeal is filed; or

(2) The date a final decision upholding the action of the department is issued, if a request for an administrative hearing is made and a hearing is held.

(l) Notwithstanding (j) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 809.

(m) If the department has reasonable information or evidence that a licensee, applicant, administrator, or others are circumventing (k) above by applying for a license through an agent or other individual and will retain ownership, management authority, or both, the department shall deny the application.

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

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Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.14 Duties and Responsibilities of All Licensees.

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

(b) The licensee shall have written policies and procedures to include:

(1) The rights and responsibilities of admitted patients in accordance with the “Home Care Clients’ Bill of Rights” under RSA 151:21-b;

(2) The policies described in He-P 809; and

(3) A policy that ensures the safety of all persons present on the licensed premises where firearms are permitted.

(c) The licensee shall define, in writing, the scope and type of services to be provided by the HHCP, which shall include at a minimum, the core services listed in He-P 809.15.

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

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

(2) Revising them as needed.

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

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

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

(h) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.

(i) Licensees shall:

(1) Manage and operate the HHCP;

(2) Meet the needs, as determined by the care plan, of the patient during those hours that the HHCP personnel is in the patient’s home;

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

(4) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the HHCP;

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- (5) Appoint an administrator;
 - (6) Verify the qualifications of all personnel;
 - (7) Accept new patients based upon the availability of personnel to meet the patients' requested service needs;
 - (8) Require all personnel to follow the orders of the licensed practitioner for every patient that has such orders and encourage the patient to follow the licensed practitioner's orders; and
 - (9) Implement any POC that has been accepted or issued by the department.
- (j) The licensee shall consider all patients to be competent and capable of making all decisions relative to their own health care unless the patient:
- (1) Has a guardian or conservator appointed by a court of competent jurisdiction; or
 - (2) Has a durable power of attorney for health care that has been activated in accordance with RSA 137-J or a surrogate decision-maker in accordance with RSA 137-J:35.
- (k) The licensee shall only accept a patient whose needs can be met through the program and services offered under the current license.
- (l) If the licensee accepts a patient who is known to have a disease reportable under He-P 301 or an infectious disease, which is any disease caused by the growth of microorganisms in the body which might or might not be contagious, the licensee shall follow the required procedures and personnel training for the care of the patients, as specified by the United States Centers for Disease Control and Prevention "2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" (June 2007 edition), available as noted in Appendix A.
- (m) The licensee shall report all positive tuberculosis test results for personnel to the office of disease control in accordance with RSA 141-C:7, He-P 301.02, and He-P 301.03.
- (n) The licensee shall post the following documents in a public area:
- (1) The license and current license certificate issued in accordance with RSA 151:2;
 - (2) All inspection reports for the last 12 months issued in accordance with He-P 809.09(d);
 - (3) A copy of the Home Care Patient' Bill of Rights specified by RSA 151:21-b;
 - (4) A copy of the licensee's policies and procedures relative to the implementation of patient rights and responsibilities;
 - (5) A copy of the licensee's complaint procedure, including a statement that complaints may be submitted, in writing, to the:

Department of Health and Human Services
Office of Legal and Regulatory Services
Health Facilities Administration,
129 Pleasant Street
Concord, NH 03301 or by calling 1-800-852-3345; and
 - (6) The licensee's plan for fire safety, evacuation, and emergencies, identifying the location of, and access to, all fire exits.

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(o) For reportable incidents the licensees shall:

(1) Complete an investigation to determine if abuse or neglect could have been a contributing factor to the incident;

(2) Fax to 271-5574 or, if a fax machine is not available, convey by electronically via webmail at <https://www.dhhs.nh.gov/oos/bhfa/contact.htm> and click on the e-mail link, or regular mail, the following information to the department within 48 hours of a reportable incident:

- a. The HHCP name;
- b. A description of the incident, including identification of injuries, if applicable;
- c. The name of the licensee(s) or personnel involved in, witnessing, or responding to the reportable incident;
- d. The name of the patient involved and the name of any witnesses to the reportable incident;
- e. The date and time of the reportable incident;
- f. The action taken in direct response to the reportable incident, including any follow-up;
- g. If medical intervention was required, by whom and the date and time;
- h. Whether the patient's guardian, agent, or personal representative, if any, was notified;
- i. The signature of the person reporting the reportable incident; and
- j. The date and time the patient's licensed practitioner was notified;

(3) If abuse or neglect is suspected, the licensee shall notify the department with a written report within 5 days describing the actions taken by personnel, the final outcome or continuation of the reportable incident, and actions taken to prevent a reoccurrence if it was not submitted in the initial report;

(4) Contact the department immediately by telephone, fax, or e-mail to report the information required by (1) above in the case of the death of any patient who dies within 10 days of a reportable incident;

(5) Provide the information required by (3) above in writing within 72 hours of the unexpected death of any patient or the death of any patient who dies within 10 days of a reportable incident if the initial contact was made by telephone or if additional information becomes available subsequent to the time the initial contact was made; and

(6) Submit any further information requested by the department.

(p) The licensee shall admit and allow any department representative to inspect the HHCP and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 809 as authorized by RSA 151:6 and RSA 151:6-a.

(q) The licensee shall, upon request, provide a patient or their guardian agent, or surrogate decision-maker if applicable, with a copy of his or her patient record, pursuant to the provisions of RSA 151:21, X.

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

(s) Any licensee that maintains electronic records shall develop a system with written policies and procedures to protect the privacy of patients 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 patients and personnel; and
- (3) Systems to prevent tampering with information pertaining to patients and personnel.

(t) At the time of admission the licensee shall give a patient and their guardian, agent, or surrogate decision-maker if applicable, a listing of all applicable HHCP charges and identify what care and services are included in the charge.

(u) The licensee shall give a patient a written notice at least 30 days before any increase is imposed in the cost or fees, for any HHCP services, except for patients receiving Medicaid whose financial liability is determined by the state's standard of need, or patients funded by the department's Choices for Independence program in accordance with He-E 801 and which limitation shall only pertain to costs and fees under the direction of these programs.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.15 Required Services.

- (a) The licensee shall have a written contractual agreement for all services provided by arrangement.
- (b) Any contractual agreement to provide care and services shall:
 - (1) Identify the care and services to be provided;
 - (2) Specify the qualifications of the personnel that will be providing the care and services;
 - (3) Require that the HHCP must authorize the services; and
 - (4) Stipulate the HHCP retains professional responsibility for all care and services provided.
- (c) The licensee shall provide staff for the following positions:
 - (1) An administrator to oversee the HHCP, except as allowed by (e)(1) below; and
 - (2) A director of patient services.
- (d) Any new administrator shall possess at least a bachelor's degree in business or a health related field, or be a registered nurse (RN).
- (e) The administrator shall:
 - (1) Designate, in writing, an alternate administrator who shall assume the responsibilities of the administrator in his or her absence; and

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- (2) Be permitted to hold more than one position at the HHCP if:
 - a. The individual meets the qualifications of all positions; and
 - b. The duties and responsibilities of the positions can be accomplished by one individual.
- (f) Any new director of patient services shall have at least 2 years' experience supervising personnel or providing direct home health care services and:
 - (1) Be a New Hampshire–licensed or compact registered nurse; or
 - (2) Have a bachelor's degree in a health related field.
- (g) The director of patient services shall be responsible for the overall delivery of patient care and services.
- (h) At the time of admission, personnel of the HHCP shall:
 - (1) Provide, both orally and in writing, to the patient, or the patient's guardian or agent, if applicable, the HHCP's:
 - a. Policy on patient rights and responsibilities, including a copy of the home care Clients' Bill of Rights, pursuant to RSA 151:21-b;
 - b. Complaint procedure;
 - c. List of services that are to be provided by the HHCP; and
 - d. List of the care and services that are provided by an independent contractor;
 - (2) Obtain written confirmation acknowledging receipt of the items in (1) above from the patient, or the patient's guardian or agent, if applicable;
 - (3) Collect and record the following information:
 - a. Patient's name, home address, home telephone number, and date of birth;
 - b. Name and telephone number of an emergency contact and guardian or agent, if applicable;
 - c. Name of patient's primary care provider and the provider's address and telephone number, as applicable;
 - d. Written and signed consent for the provision of care and services; and
 - e. Copies of all legal directives such as durable power of attorney, guardianship, or living will, as applicable;
 - f. Copy of order activating durable power of attorney, if applicable; and
 - g. Copy of DNR order, if applicable; and
 - (4) Obtain documentation of informed consent and consent for release of information.
- (i) Each patient shall have a health assessment conducted by professional personnel in the specific discipline providing care, as authorized by their provider, to determine the level of care and services required by the patient, except as allowed by (k) and (l) below:

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- (1) Prior to initiating care for the specified discipline;
 - (2) At least every 90 days thereafter; and
 - (3) Whenever there is a significant change in the patient's condition.
- (j) The assessment required by (i) above shall contain at a minimum the following:
- (1) Pertinent diagnoses including mental status;
 - (2) Goals and objectives of the services that shall be provided by the HHCP;
 - (3) Estimated duration and frequency of care and services;
 - (4) Any equipment required;
 - (5) Prognosis;
 - (6) Functional limitations;
 - (7) Rehabilitation potential;
 - (8) Activities that are limited;
 - (9) Nutritional requirements;
 - (10) Medications and treatments administered or assisted by personnel of HHCP;
 - (11) Any safety precautions; and
 - (12) Discharge planning or referral information as applicable.
- (k) Patients receiving only homemaker services shall not require an assessment or a care plan.
- (l) For patients receiving only personal care services, the assessment in (i) above shall:
- (1) Be performed initially and every 6 months thereafter by a registered nurse, licensed practical nurse (LPN), or the director of patient services to determine the services required; and
 - (2) At a minimum include (j)(1), (4), (6), (8), (9), (10), and (11) above.
- (m) If the assessment required by (i) or (l)(1) and (2) above is completed by an LPN or the director of patient services who is not a registered nurse, the assessment shall be reviewed and co-signed by the registered nurse or physician prior to the development of the patient's care plan.
- (n) For those patients receiving direct care or personal care services, the licensee shall develop a care plan within 3 business days of admission or prior to the initiation of services, if later, that is based on the results of the assessment required by (i) and (l) above.
- (o) The care plan required by (n) above shall include:
- (1) The date of the assessment;
 - (2) A description of the problem or need;

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- (3) The goals for the patient, if applicable, and identifying which services require medical, nursing, or other therapeutic professional care and which of these services can be provided by personal care service providers as defined by He-P 809.03(aq);
 - (4) The action or approach to be taken by HHCP personnel;
 - (5) The responsible person(s) or position;
 - (6) The date of re-evaluation, reassessment, and resolution; and
 - (7) Documentation that the patient and their legal representative, if applicable, were involved in the development of the care plan and any revisions made to the plan.
- (p) The care plan shall be prepared by an interdisciplinary team that includes:
- (1) The personnel performing the assessment;
 - (2) Other personnel in disciplines as determined by the patient's needs; and
 - (3) The patient or the patient's legal representative.
- (q) The care plan shall be reviewed and revised at least every 90 days by the interdisciplinary team, or every 6 months if only personal care services are provided, and shall be made available to all personnel that assist the patient in the implementation of the plan.
- (r) The licensee shall have an order for any service for which such order is required by the licensing statute of the licensed practitioner. Such orders shall be renewed at least annually.
- (s) All personnel of the HHCP shall follow the orders of the licensed practitioner and carry out the goals stated in the care plan, as applicable.
- (t) The licensee shall develop a discharge plan with the input of the patient or the patient's legal representative, if any, including:
- (1) Date and reason for discharge;
 - (2) Discharge instructions and referrals, if applicable;
 - (3) Discharge or transfer summary; and
 - (4) Written and signed order for discharge, if applicable.
- (u) Written notes shall be documented in the patient's record at the time of each visit for:
- (1) All care and services provided by the HHCP including the:
 - a. Date and time of the care or service;
 - b. Description of the care or service;
 - c. Progress notes, including, as applicable:
 1. Changes in the patient's physical, functional, and mental abilities;
 2. Changes in the patient's behaviors such as eating or sleeping patterns; and
 3. The patient's pain management, if applicable; and

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d. Signature and title of the person providing the care or service; and

(2) Any reportable incident involving the patient when HHCP personnel are in the patient's home.

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

(1) The written confirmation required by (h)(2) above;

(2) The identification data required by (h)(3) above;

(3) Consent and medical release forms, as applicable;

(4) Consent for release of information, as applicable;

(5) The record of the assessments required by (i) or (l) above;

(6) All orders from a licensed practitioner, including the date and signature of the licensed practitioner required by (r) above;

(7) All care plans required by (n) above including documentation that the patient or their legal representative participated in the development of the care plan;

(8) All written notes required by (u) above;

(9) All daily medication records required by He-P 809.16(g)(7)d. and f.;

(10) A discharge plan or transfer summary as required by (t) above;

(11) Documentation of service authorization, if required, for a patient receiving third party payment including but not limited to Medicaid waiver services; and

(12) Documentation of any patient refusal to follow their licensed practitioner's written and signed orders.

(w) Patient records shall be available to:

(1) The patient, the patient's guardian, the patient's agent, and the patient's surrogate decision-maker;

(2) HHCP personnel as required by their job responsibilities and subject to the licensee's policy on confidentiality;

(3) Any individual given written authorization by the patient, the patient's guardian, the patient's agent, or the patient's surrogate decision-maker;

(4) Any individual authorized by a court of competent jurisdiction; and

(5) The department or any individual authorized by law.

(x) The licensee shall develop and implement a method for the written release of information in patient records that is consistent with federal and state law.

(y) The HHCP shall store all paper and electronic backup files of patient records in the primary or branch office except when they are being utilized by authorized personnel.

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(z) Paper records shall be safeguarded against loss, damage, or unauthorized use by being stored in locked containers, cabinets, rooms, or closets except when they are being used by authorized personnel.

(aa) Electronic records shall be maintained as required by He-P 809.14(s).

(ab) Records shall be retained for a minimum of 4 years after discharge and in the case of minors, until one year after reaching age 18, but no less than 4 years after discharge.

(ac) The HHCP shall arrange for storage of, and access to, patient records as required by (ab) above in the event that the HHCP ceases operation.

(ad) If the HHCP is providing home hospice care, it shall be licensed in accordance with He-P 823.

(ae) Only personnel with documented phlebotomy training may collect human blood specimens from patients for laboratory testing.

(af) If CLIA-waived laboratory testing is performed by personnel of the HHCP, the licensee shall obtain a CLIA Certificate of Waiver and follow all CLIA requirements in the performance of the laboratory testing including the documentation of training and competency review of all testing personnel.

(ag) If the licensee collects human specimens for laboratory testing, it shall follow the manufacturer's instructions and/or the reference laboratory's instructions for collection and storage of human specimens.

(ah) If the licensee test human specimens, it shall be licensed as a laboratory in accordance with He-P 808, except the licensee may perform the following CLIA-waived point of care test without obtaining a laboratory license in accordance with He-P 808:

- (1) Glucose;
- (2) PT/INR;
- (3) Dipstick Urinalysis; and
- (4) Occult blood.

(ai) The licensee shall hold the appropriate CLIA certificate to perform any laboratory tests.

(aj) Licensee collecting human specimens for laboratory testing shall require a collecting station license in accordance with He-P 817 except when collected by a trained registered nurse or licensed nursing assistant.

(ak) Training consists of collection, storage, and transport of the specimens.

(al) Training will be done by a registered nurse trained in the collection, storage and transport of human specimens.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.16 Medication Services.

(a) All medications and treatments shall be administered in accordance with the orders of the licensed practitioner or other professional with prescriptive powers.

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(b) HHCP personnel who are not authorized by law to administer medications may remind and prompt patients to take their medications at the proper time, place medication container(s), including pill planners, within patient reach, opening the medication container when patient is present, reading the medication label to the patient, and utilizing hand over hand technique, as defined in 809.03 (bb), as per the care plan without requiring documentation of specific medications taken.

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

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

(e) The licensee shall allow the patient to self-direct medication administration, as defined in He-P 809.03(bb), if the patient:

- (1) Has a physical limitation due to a diagnosis that prevents the patient from self-administration of medication with or without assistance;
- (2) Obtains an annual written verification of the patient's physical limitation and self-directing capabilities from the patient's licensed practitioner or the assessment performed by an RN according to He-P 809.15(i) and such documentation is included in the patient record; and
- (3) Verbally directs personnel to:
 - a. Assist the patient with preparing the correct dose of medication by pouring, applying, crushing, mixing, or cutting; and
 - b. Assist the patient to apply, ingest, or instill the ordered dose of medication.

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

- (1) Maintain a list of medications currently being taken by the patient;
- (2) Administer all medications in accordance with the orders of the licensed practitioner;
- (3) Maintain an order, or a copy thereof, in the patient's record that includes:
 - a. The patient's name;
 - b. The medication name, strength, prescribed dose, and route of administration;
 - c. The frequency of administration;
 - d. The indications for usage of all PRN medications; and
 - e. The date ordered;
- (4) Only use medications that have been kept in the original containers, as dispensed by the pharmacy, licensed practitioner's samples, or over the counter medications;
- (5) Require that any change or discontinuation of medications shall be pursuant to an order from a licensed practitioner or other individual authorized by law;

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- (6) Require that all telephone orders for medications or treatments are:
- a. Taken only by a licensed health care professional if such action is within the scope of their practice act;
 - b. Immediately transcribed and signed by the individual taking the order; and
 - c. Counter-signed by the ordering practitioner as soon as possible and with a documented reason if signed more than 30 days after the telephone order being taken;
- (7) Require that the medication to be administered by HHCP personnel be:
- a. Prepared immediately prior to administration; and
 - b. Prepared, identified, and administered by the same person in compliance with RSA 318 and RSA 326-B;
- (8) Require that when personnel are assisting or administering medication, they remain with the patient until the patient has taken all of the medication, excluding infusion therapy;
- (9) Maintain documentation for all medications either assisted by or administered by HHCP personnel that includes:
- a. The name of the patient;
 - b. A list of any allergies or allergic reactions to medications;
 - c. The name, strength, dose, frequency, and route of administration of the medications;
 - d. The date and time medication was taken;
 - e. The signature and identifiable initials and job title of:
 - 1. The person assisting or administering the medication; or
 - 2. The person administering or assisting the patient taking his or her medication;
 - f. Documented reason for any medication refusal or omission; and
 - g. For PRN medications, the reason the patient required the medication and the effect of the PRN medication at the time of the next patient contact; and
- (10) Develop and implement a system for reporting to the patient's prescribing, licensed practitioner any.
- a. Observed adverse reactions to or side effects of medication; and
 - b. Medication errors such as incorrect medications.

(g) If the HHCP provides "self-administration of medication with assistance" medication services to a patient as defined by He-P 809.03(bb), the HHCP shall:

- (1) Maintain, in the home, a list of medications currently being taken by the patient;
- (2) Assist with self-administration of medications in accordance with the orders of the licensed practitioner;

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

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2. The RN shall cross out the previous order on the daily medication record, indicating that the dose has been changed, and write the new order in the next space available on the medication record; and

3. The change in dosage, without a change in prescription label as described in (1) and (2) above, shall be allowed for a maximum of 90 days from the date of the new medication order, until the medications in the marked container are exhausted or, in the case of PRN medications, until the expiration date on the container, whichever occurs first;

(8) Maintain documentation for all medications assisted by HHCP personnel that includes:

- a. The name of the patient;
- b. A list of any allergies or allergic reactions to medications;
- c. The name, strength, dose, frequency, and route of administration of the medications;
- d. The date and time medication, including PRN medications, was taken;
- e. The signature, identifiable initials, and job title of the person assisting the patient taking his or her medication; and
- f. Documented reason for any medication refusal or omission;

(9) Develop and implement a system for reporting to the patient's prescribing, licensed practitioner any:

- a. Observed adverse reactions to or side effects of medication; or
- b. Medication errors such as incorrect medications; and

(10) Require LNAs who assist patients with self-administration of medications to comply with the board of nursing requirements according to RSA 326-B

(h) A home health personal care service provider shall successfully complete a medication assistance education program taught by a licensed nurse, licensed practitioner, or pharmacist, whether in person or through other means such as electronic media, prior to assisting a patient with self-administration of medication with assistance, self-directed medication administration, or administration via nurse delegation.

(i) The medication assistance education program required by (h) above shall, at a minimum, include training on the following subjects:

- (1) Infection control and proper hand washing techniques;
- (2) The 5 rights, including:
 - a. The right patient;
 - b. The right medication;
 - c. The right dose;
 - d. Administered at the right time; and
 - e. Administered via the right route;

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- (3) Documentation requirements;
- (4) General categories of medications such as antihypertensive medications or antibiotics;
- (5) Desired effects and potential side effects versus adverse effects of medications; and
- (6) Medication precautions and interactions.

(j) For patients who qualify for the use of therapeutic cannabis, the licensee shall keep a copy of the registry identification card in the patient's record.

(k) The licensee shall develop, maintain, and implement a patient specific policy relative to the therapeutic use of cannabis that identifies how the cannabis will be handled and administered to the patient.

(l) If allowed by the policy in (k) above, cannabis shall be treated in a manner similar to controlled medications with respect to assisting qualifying patients with the therapeutic use of cannabis.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.17 Personnel.

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

- (1) Duties of the position;
- (2) Physical requirements of the position; and
- (3) Qualifications and educational requirements of the position.

(b) For all applicants for employment, for all volunteers, and for all independent contractors who will provide direct care or personal care services to patients the licensee shall:

- (1) Obtain a criminal record check from the New Hampshire department of safety, except, pursuant to RSA 151:2-d, VI, for those licensed by the New Hampshire board of nursing;
- (2) Review the results of the criminal records check in (1) above in accordance with (c)(1)-(2) below; and
- (3) Verify the qualifications of all applicants prior to employment.

(c) Unless a waiver is granted in accordance with He-P 809.10 and (e) below, the licensee shall not offer employment, contract with, or engage a person in (b) above, for any position if the individual:

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

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(d) If the information identified in (c) above regarding any person identified in (b) above, is learned after the person is hired, contracted with, or engaged, the licensee shall immediately notify the department and either:

- (1) Cease employing, contracting with, or engaging the person; or
- (2) Request a waiver of (c) above.

(e) If a waiver of (c) above is requested, the department shall review the information and the underlying circumstances in (c) above and shall either:

- (1) Notify the licensee that the person cannot or can no longer be employed, contracted with, or engaged by the licensee, after investigation, it determines that the person poses a threat to the health, safety, or well-being of a patient; or
- (2) Grant a waiver of (c) above if, after investigation, it determines that the person does not pose a current threat to the health, safety, or well-being of a patient(s).

(f) The licensee shall:

- (1) Not employ, contract with, or engage, any person in (b) above who is listed on the BEAS state registry unless a waiver is granted by BEAS;
- (2) Only employ, contract with, or engage board of nursing licensees who are listed on the nursing assistant registry or licensing site with the NH board of nursing.

(g) In lieu of (b) and (f) above, the licensee may accept from independent agencies contracted by the licensee to provide direct care or personal care services a signed statement that the agency's employees have complied with (b) and (f) above and do not meet the criteria in (c) and (f) above.

(h) All personnel shall:

- (1) Meet the educational and physical qualifications of the position as listed on their job description;
- (2) Not have been convicted of a felony, sexual assault, other violent crime, assault, fraud, theft, 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 or any administrative agency in this or any other state;
- (3) Be licensed, registered, or certified as required by state statute;
- (4) Receive an orientation prior to contact with a patient that includes:
 - a. The HHCP's policy on patient rights and responsibilities and complaint procedures as required by RSA 151:20;
 - b. The duties and responsibilities of the position they were hired for;
 - c. The HHCP's policies, procedures, and guidelines;
 - d. The HHCP's infection control program;
 - e. The HHCP's fire evacuation and emergency plans which outline the responsibilities of personnel in an emergency;

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- f. The mandatory reporting requirements such as RSA 161:F:46-48 and RSA 169-C:29-31; and
 - g. Body mechanics training;
- (5) Complete mandatory annual in-service education, which includes a review of the HCCP's:
- a. Policies and procedures on patient rights and responsibilities;
 - b. Infection control program; and
 - c. Fire and emergency procedures;
- (6) Be at least 18 years of age if working as direct care personnel unless they are:
- a. An LNA working under the supervision of an RN in accordance with Nur 700; or
 - b. Part of an established educational program working under the supervision of an RN;
- (7) Prior to contact with patients or food, submit to the HHCP the results of a physical examination or health screening performed by a licensed nurse or a licensed practitioner and 2-step tuberculosis (TB) testing, mantoux method, or other method approved by the Centers for Disease Control, both conducted not more than 12 months prior to employment, contract, or engagement;
- (8) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first test are negative for TB; and
- (9) Comply with the requirements of the Centers for Disease Control and Prevention "Guidelines for Preventing the Transmission of *M. tuberculosis* in Health-Care Settings" (2005 edition), available as noted in Appendix A, if the person has either a positive TB test, or has had direct contact or potential for occupational exposure to *M. tuberculosis* through shared air space with persons with infectious tuberculosis.
- (i) In lieu of (h)(8) above, independent agencies contracted by the facility to provide direct care or personal care services may provide the licensee with a signed statement that its employees have complied with (h)(7) and (9) above before working at the HHCP.
- (j) The scope of services provided by a personal care service provider shall be as follows:
- (1) Basic personal care and grooming to include:
- a. Sponge bathing;
 - b. Gathering and handing the patient materials related to bathing;
 - c. Regulating the bath or shower water temperature and running the water;
 - d. Hair care including shampooing;
 - e. Skin care to include application of preventive skin care products;
 - f. Filing of nails;
 - g. Assisting with oral hygiene;
 - h. Shaving of patient using an electric razor; and

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- i. Dressing to include putting on or removing clothing, shoes, and stockings;
- (2) Transfer assistance as follows:
 - a. Weight bearing assistance such as steadying the patient and arranging items to assist the transfer of the patient; and
 - b. Non-weight bearing assistance on a case-by-case basis as specified by the HHCP;
 - (3) Mobility assistance as follows:
 - a. Accompanying the patient as he or she moves from one location to another, removing obstacles from his or her path, opening doors, and handing the patient his or her cane or walker;
 - b. Pushing a wheelchair which has been fitted to the patient; and
 - c. On a case-by-case basis steadying the patient as he or she ambulates;
 - (4) Assistance with toileting and toileting hygiene measures as follows:
 - a. Assistance with the use of the toilet, commode, bedpan, and urinal;
 - b. Assistance with the use of products related to hygiene care such as disposable incontinent briefs or pads;
 - c. Assistance with cleaning after elimination;
 - d. Assisting with cleaning the patient after instances of vomiting, diarrhea, and incontinence;
 - e. Assistance with ostomy care in a long term, well healed, trouble free ostomy, such as assisting in application of the stoma bag on a case-by-case basis as individually trained by the appropriate professional staff; and
 - f. Assistance with catheter care only by emptying the urinary drainage bag on a case-by-case basis as individually trained by the appropriate professional staff;
 - (5) Assistance with personal appliances as follows:
 - a. Insertion and cleaning dentures;
 - b. Insertion and cleaning hearing aids;
 - c. Cleaning and putting on eye glasses; and
 - d. Assisting with application of some types of braces, splints, slings, and prostheses on a case-by-case basis as determined by the HHCP and individually trained by the appropriate professional staff; and
 - (6) Assistance with nutrition, hydration, and meal preparation as follows:
 - a. Preparation of the meal;
 - b. Arranging food including cutting up or mashing the food;

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- c. Filling the patient's fork or spoon;
- d. Encouraging the patient to eat or drink; and
- e. Feeding the patient by mouth on a case-by-case basis as determined by the agency.

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

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

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

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

(n) LNAs who are working as personal care service providers shall be deemed as already having received the training required in (m) above but shall be required to receive the training required by (h)(4) above.

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

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

(q) The director of patient services shall:

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

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

(r) All personnel shall sign a statement at the time the initial offer of employment is made and then annually thereafter stating that they:

(1) Do not have a felony conviction in this or any other state;

(2) Have not been convicted of a sexual assault, other violent crime, assault, fraud, theft, abuse, neglect, or exploitation or pose a threat to the health, safety, or well-being of a patient; and

(3) Have not had a finding by the department or any administrative agency in this or any other state for assault, fraud, theft, abuse, neglect, or exploitation of any person.

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

(t) All personnel shall follow the orders of the licensed practitioner for each patient and encourage patients to follow the practitioner's order.

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

(v) The employee records required by (u) above shall include the following:

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

a. Identification data, including date of birth; and

b. The education and work experience of the employee;

(2) A signed statement acknowledging the receipt of the HHCP's policy setting forth the patient rights and responsibilities and acknowledging training and implementation of the policy as required by RSA 151:20;

(3) A job description signed by the individual that identifies the:

a. Position title;

b. Qualifications and experience; and

c. Duties required by the position;

(4) Record of satisfactory completion of the orientation program required by (h)(4) above and any required continuing education program;

(5) A copy of each current New Hampshire license, registration, or certification in a health care field, if applicable;

(6) Documentation that the required physical examination or health screening, and TB test results or radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;

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- (7) Documentation of annual in-service education as required by (h)(5) above;
- (8) Documentation of training as required by (m) above;
- (9) The statement signed at the time of the initial offer of employment and renewed annually thereafter by all personnel as required by (r) above;
- (10) Documentation of the criminal records check; and
- (11) The results of the registry checks in (f) above.

(w) The HHCP shall maintain the records, but not necessarily a separate file, for all volunteers and for all independent contractors who provide direct care or personal care services to patients or who will be unaccompanied by an employee while performing non-direct care or non-personal care services within the facility, as follows:

- (1) For volunteers, the information in (v)(2) and (6)-(10) above; and
- (2) For independent contractors, the information in (v)(2), and (4)-(12) above, except that the letter in (h) and (j) above may be substituted for (v)(6), (9), and (10) above, if applicable.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.18 Quality Improvement.

(a) The HHCP shall develop and implement a quality improvement program that reviews policies and services and maximizes quality by preventing or correcting identified problems.

(b) As part of the HHCP quality improvement program, a quality improvement committee shall be established.

(c) The HHCP shall determine the size and composition of the quality improvement committee based on the size of the facility and the care and services provided.

(d) The quality improvement committee shall:

- (1) Determine the information to be monitored;
- (2) Determine the frequency with which information will be reviewed;
- (3) Determine the indicators that will apply to the information being monitored;
- (4) Evaluate the information that is gathered;
- (5) Determine the action that is necessary to correct identified problems;
- (6) Recommend corrective actions to the licensee; and
- (7) Evaluate the effectiveness of the corrective actions.

(e) The quality improvement committee shall meet at least quarterly.

(f) The quality improvement committee shall generate dated, written minutes after each meeting.

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(g) Documentation of all quality improvement activities shall be maintained on-site for at least 2 years.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.19 Infection Control and Sanitation.

(a) The HHCP shall develop and implement an infection control program that educates and provides procedures for the prevention, control, and investigation of infectious and communicable diseases.

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

- (1) Proper hand-washing techniques;
- (2) The utilization of universal precautions;
- (3) The management of patients with infectious or contagious diseases or illnesses;
- (4) The handling, storage, transportation, and disposal of those items identified as infectious waste in Env-Sw 904; and
- (5) Reporting of infectious and communicable diseases as required by He-P 301.

(c) The infection control education program shall address at a minimum the:

- (1) Causes of infection;
- (2) Effects of infections;
- (3) Transmission of infections; and
- (4) Prevention and containment of infections.

(e) Personnel infected with a disease or illness transmissible through food, fomites, or droplets, shall not prepare food or provide direct care in any capacity until they are no longer contagious unless they utilize appropriate infection control equipment as required by the facility's policy and procedures on infection control.

(f) Pursuant to RSA 141-C:1, personnel with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the person is on tuberculosis treatment and has been determined to be non-infectious by a licensed practitioner.

(g) Personnel with an open wound who prepares food or provides direct care in any capacity shall cover such wound at all times by an impermeable, durable, tight-fitting bandage.

(h) Personnel infected with scabies or lice/pediculosis shall not provide direct care to patients or prepare food until such time as they are no longer infected.

(i) If the HHCP has an incident of an infectious disease reported in (b)(5) above, the HHCP shall contact the public health nurse in the county in which the patient resides and follow the instructions and guidance of the nurse.

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(j) Sterile supplies and equipment shall:

- (1) Be stored in dust-proof, moisture-free storage areas; and
- (2) Not be mixed with dirty supplies.

(k) If the HHCP has soiled items at its licensed premises, they shall be disposed of according to the facility's infection control policies.

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

(m) The HHCP shall develop and implement a point of care testing policy, if they provide POCT that educates and provides procedures for the proper handling and use of POCT devices, as well as prevention, control, and investigation of infectious and communicable diseases.

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

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.20 Physical Environment and Emergency Preparedness.

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

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

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

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

(d) Each licensee shall develop a written emergency plan that covers any situation that prevents the HHCP from providing patient services and which:

- (1) Includes site-specific plans for the protection of all persons on-site in their licensed premises in the event of fire, natural disaster, severe weather, and human-caused emergency to include, but not be limited to, a bomb threat;
- (2) Is approved by the local emergency management director or fire department, as appropriate;
- (3) Is available to all personnel;
- (4) Is based on realistic conceptual events;
- (5) Is modeled on the incident command system (ICS) in coordination with local emergency response agencies;

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- (6) Provides that all personnel designated or involved in the emergency preparedness plan of the facility shall be supplied with a means of identification, such as vests, baseball caps, or hard hats, which shall be worn at all times in a visible location during the emergency;
- (7) Includes the HHCP's response to both short-term and long-term interruptions in the availability of utility service in the disaster or emergency, including establishing contingency plans for continuity of essential building systems or evacuation to include the following, as applicable:
- a. Electricity;
 - b. Water;
 - c. Ventilation;
 - d. Fire protection systems;
 - e. Fuel sources; and
 - f. Communications systems;
- (8) Includes a plan for alerting and managing personnel in a disaster, and accessing critical incident stress management (CISM), if necessary;
- (9) Includes a policy detailing the responsibilities of personnel for responding to an emergency while on duty in the home of a patient;
- (10) Includes an educational, competency-based program for personnel, to provide an overview of the components of the emergency management program and concepts of the ICS and the personnel's specific duties and responsibilities; and
- (11) If the HHCP is located within 10 miles of a nuclear power plant and is part of the New Hampshire Radiological Emergency Response Plan (RERP), includes the required elements of the RERP.
- (e) Each licensee shall annually review and revise, as needed, its emergency plan.

Source. #9466, eff 5-2-09; ss by #12167, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12640, eff 10-3-18

He-P 809.21 Community Health Services.

- (a) The following rules shall not apply to the HHCP when providing community health services:
- (1) He-P 809.14 (b), The Home Care Patients Bill of Rights; and
 - (2) He-P 809.15:
 - a. Paragraphs (a) and (b) on contractual agreement with patients;
 - b. Subparagraph (h)(1)a. on provision of the home care client Bill of Rights, procedures, and policies;
 - c. Subparagraph (h)(3)e. on obtaining copies of advance directives;

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- d. Paragraphs (i) and (j) on conducting health assessments;
- e. Paragraphs (n), (o), (p), and (q) on plan of care;
- f. Paragraph (t) on discharge plans; and
- g. Paragraphs (u), (v), and (w) on record-keeping requirements.

Source. #12640, eff 10-3-18

Appendix A: Incorporation by Reference Information

Rule	Title	Obtain at:
He-P 809.14(1)	United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007 edition)	Available free of charge from the CDC website at www.cdc.gov .
He-P 809.17(j)(9)	Centers for Disease Control and Prevention “Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings,” 2005 edition	Available free of charge from the CDC website at www.cdc.gov .

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Appendix B

Rule	Specific State or Federal Statutes the Rule Implements
He-P 809.01	RSA 151:9, I(a),(b)
He-P 809.02	RSA 151:9, I(a),(b); RSA 151:2, II(i)
He-P 809.03	RSA 151:9, I(a),(b)
He-P 809.04 – He-P 809.07	RSA 151:2, I and II; RSA 151:9, I
He-P 809.08	RSA 151:9, I(a)
He-P 809.09	RSA 151:9, I(e)
He-P 809.10	RSA 151:9, I(a)
He-P 809.11	RSA 151:9, I(e)
He-P 809.12	RSA 151:9, I(f),(g),(l),(m)
He-P 809.13	RSA 151:9, I(f),(h),(l)
He-P 809.14 – He-P 809.21	RSA 151:9, I(a)