

CHAPTER He-P 800 RESIDENTIAL AND HEALTH CARE FACILITY RULES

PART He-P 820 INDIVIDUAL HOME CARE SERVICE PROVIDERS

He-P 820.01 Purpose. The purpose of this part is to set forth the mandatory registration requirements for all individuals who solicit and provide personal care services or homemaker services for compensation pursuant to RSA 151.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.02 Scope.

(a) This part shall apply to any individual who solicits and provides personal care services or homemaker services except:

- (1) Agencies that are certified by the department as other qualified agencies delivering personal care services in accordance with RSA 161-H and He-P 601;
- (2) Home care service provider agencies that are licensed under He-P 822;
- (3) Agencies or entities that are licensed under He-P 809;
- (4) Persons providing only meal services in an individual's permanent or temporary residence;
- (5) Persons 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;
- (6) Persons who provide personal care services or homemaker services without compensation;
- (7) Persons who provide personal care services or homemaker services for compensation, but who do not solicit those services;
- (8) Persons who provide personal care services or homemaker services only to a family member(s); and
- (9) Persons under the age of 18 who provide personal care services or homemaker services.

(b) Employees of an agency in (a)(1)-(3) above who solicit and provide personal care services or homemaker services for compensation outside the scope of their employment shall not be exempt from registration as an individual home care service provider.

(c) Because RSA 151:2, V, requires registration for an individual home care service provider to operate, and RSA 541-A:1, VIII, defines a "license" as a "form of permission required by law", even if called "registration", then requirements in RSA 151 which refer specifically to "license" or "licensing" shall also apply to the registration of individual home care service providers.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.03 Definitions.

(a) "Administrative remedy" means a corrective action imposed upon a registrant in response to non-compliance with RSA 151 or He-P 820.

(b) "Applicant" means an individual who is seeking a "registration certificate" in order to operate as a registered individual home care service provider under RSA 151.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) “Client” means any person receiving services from an individual who is registered in accordance with RSA 151 and He-P 820.

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

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

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

(g) “Homemaker” means an individual whose scope of services is limited to providing homemaker services as reflected on the registration certificate.

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

(i) “Individual home care service provider (IHCSP)” means “individual homecare service provider” as defined in RSA 151:2-b, V, namely “any individual not employed by a home health care provider licensed under RSA 151:2, I(b) who solicits and provides personal care services or homemaker services for compensation to clients in their places of residence; provided that the client is not a family member.” This term includes a registered individual home care service provider under RSA 151:2, V.

(j) “Investigation” means the process used by the department to respond to allegations of non-compliance with RSA 151 and He-P 820.

(k) “Personal care services” means non-medical, hands-on services provided to a client, including, but not limited to, helping with activities of daily living such as grooming, toileting, eating, dressing, bathing, getting into or out of a bed or chair, walking, or reminding the client to take medications.

(l) “Registration” means the mandatory requirement established by RSA 151:9-a, XII, that an individual shall give notice to the department that he or she plans to solicit and provide personal care services or homemaker services for compensation. The “registration” is certified on a document called a “registration certificate” that authorizes the individual to provide these services for compensation.

(m) “Registration certificate” means the document issued by the department to an applicant or registrant that includes the name of the registrant and his or her physical address, the effective date and the registration number, any waivers granted to the registrant, upon renewal of a registration the new effective date of the registration, and at the registrant’s option, the registrant’s business name.

(n) “Solicit” or “solicits” means to advertise with audio, video or print media, or by word of mouth as an individual home care service provider as defined in RSA 151:2-b, V, and He-P 820, or to actively seek or request compensation for providing individual home care services to a client as defined in RSA 151:2-b, V, and He-P 820.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.04 Initial Registration Application Requirements.

(a) Each applicant for registration shall comply with the requirements of RSA 151:9-a, XII, and submit the following to the department:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(1) A completed application form entitled “Application for Individual Home Care Service Provider Registration,” (7/1/2012) that is signed by the applicant and which states:

“I affirm that I am familiar with and in full compliance with the provisions of RSA 151:2, V, and He-P 820. I also affirm that I have not been convicted of a felony in this or any other state, have not been convicted for sexual assault, other violent crime, assault, fraud, abuse, neglect, exploitation or any other criminal offense that suggests that they may pose a threat to the health, safety or well-being of a client, and have not been found to have committed assault, fraud, abuse, neglect or exploitation by the department or any other administrative agency in this or any other state. I understand that providing false information shall be grounds for denial or revocation of my registration and the imposition of a fine.”;

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

(3) The results of a criminal records check from the NH department of safety for the applicant; and

(4) The results of the state registry check, which is maintained by the department’s bureau of elderly and adult services pursuant to RSA 161-F:49.

(b) The application in He-P 820.04(a)(1) shall include the following advisory: “Advisory: The New Hampshire Department of Health and Human Services is authorized to require all licensed home care providers to read and understand the Home Care Clients’ Bill of Rights set forth in RSA 151:21-b, and to distribute the law to all of their clients. The Department recommends that all individual homecare service providers read and understand the Home Care Clients’ Bill of Rights and share the information with their clients.”

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

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

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.05 Processing of Applications and Issuance of Registrations.

(a) An application for an initial registration shall be complete when the department determines that all items required by He-P 820.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 820.04(a), the department shall notify the applicant in writing of the items required before the application can be processed.

(c) Any registration 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) Registration fees shall not be transferable to any other application(s).

(e) Unless a waiver has been granted in accordance with He-P 820.08, the department shall deny an application to register as an individual home care service provider after reviewing the information in He-P 820.04(a)(3) and (4) if, after review, it determines that the applicant or registrant:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Has been convicted of any felony in this or any other state;
  - (2) Has been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation; or
  - (3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person.
- (f) Following receipt and review of the application, the registration certificate signed by the commissioner shall be issued to the applicant if the department determines that the application meets all of the requirements in He-P 820.04(a) above.
- (g) Upon receipt of the registration certificate, the individual:
- (1) May use the title “registered individual home care service provider”; and
  - (2) Shall not use the title “licensed individual home care service provider”.
- (h) All registrations issued in accordance with RSA 151 shall be non-transferable by person.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.06 Registration Expirations and Procedures for Renewals.

- (a) A registration shall be valid on the date of issuance and expire the following year on the last day of the month it was issued unless a completed application for renewal has been received.
- (b) Each registrant shall complete and submit to the department an application form for renewal pursuant to He-P 820.04(a)(1) prior to the expiration date of the current registration.
- (c) Following receipt and review of the renewal application, a registrant shall be renewed if the department determines that the application meets all of the requirements in (b) above.
- (d) Any registrant who does not submit a complete application for renewal prior to the expiration of an existing registration shall be required to submit an application for initial registration pursuant to He-P 820.04.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.07 Requirements for Organizational or Service Changes.

- (a) The registrant shall provide the department with written notice that includes his or her current registration number no later than 30 days after any of the following changes:
- (1) Physical address of the registered individual;
  - (2) Mailing address of the business if different than the physical address in (1) above; and
  - (3) Name of the individual.
- (b) Upon receipt of the notice set forth in (a) above, the department shall issue a revised registration certificate to the registrant that includes the relevant changes.
- (c) A revised registration certificate shall also be issued when a new waiver has been granted.
- (d) Registration certificates issued under (c) above shall be valid for one year from the date of issuance.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.08 Waivers.

(a) Applicants or registrants seeking waivers of specific rules in He-P 820 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; and
- (2) A full explanation of why a waiver is necessary.

(b) A waiver shall be permanent.

(c) A request for waiver shall be granted if the commissioner determines that the granting of the waiver will not negatively impact the health, safety or well-being of clients, or that the waiver is not being granted to one applicant or registrant who is in the same situation as another applicant or registrant whose waiver has been denied.

(d) Waivers shall not be transferable.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.09 Complaints.

(a) The department shall investigate complaints that allege a violation of RSA 151 or He-P 820, as follows:

- (1) That an individual is soliciting and providing personal care services or homemaker services for compensation without being registered;
- (2) That an individual is representing himself or herself as being able to perform services for compensation that require a registration under RSA 151:2, V, but has not met the requirements of RSA 151; or
- (3) That an individual who is a registered individual home care service provider has been convicted of a felony in this or any other state, has been convicted for sexual assault or other violent crimes, or has been convicted of assault, fraud, abuse, neglect, exploitation or any other criminal offense that suggests they may pose a threat to the health, safety or well-being of a client.

(b) The complaint shall be in writing, except when impractical due to the complainant's inability to write, and contain the following information:

- (1) The name, address and telephone number of the individual making the complaint;
- (2) The name, address and telephone number, when practical, for the subject of the complaint; and
- (3) The allegations that support the complaint.

(c) For a registered individual if the complaint is founded, the department shall:

- (1) Provide written notification of the results of the investigation to the registrant;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Provide written notification to the registrant of the corrective action that must be taken to resolve the issues underlying the complaint; and
  - (3) Notify any other federal, state or local agencies of suspected violations of their statutes or rules based on the results of the investigation, if appropriate.
- (d) For an unregistered individual, subsequent to an investigation that has discovered a founded complaint, the department shall provide written notification to the individual that includes:
- (1) The date of investigation;
  - (2) The reasons for the investigation; and
  - (3) Whether or not the investigation resulted in a determination that the services being provided require registration under RSA 151:2, V.
- (e) If the department determines that the complaint is unfounded, the department shall so notify the person making the complaint and the subject of the complaint and take no further action.
- (f) If an individual does not respond to a written notice within 30 days of the date it was sent, or if the department does not agree with the individual's response, the department shall:
- (1) Issue a written warning to immediately comply with RSA 151 and He-P 820; and
  - (2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.
- (g) Any individual who fails to comply after receiving a warning as described in (f) above shall be subject to an action by the department for injunctive relief under RSA 151:17.
- (h) The fact that the department takes action for injunctive relief under RSA 151:17 shall not preclude the department from taking other action under RSA 151, He-P 820 or other applicable laws.
- (i) Complaint investigation files shall be confidential in accordance with RSA 151:13, and shall not be disclosed publicly but shall be released by the department on written request only:
- (1) To the department of justice when relevant to a specific investigation;
  - (2) To law enforcement when relevant to a specific criminal investigation;
  - (3) When a court of competent jurisdiction orders the department to release such information;  
or
  - (4) In connection with any adjudicative proceedings relative to the registrant solely for the purposes of the adjudicative action.

Source. #10013, eff 10-22-11; ss by 310206, eff 10-20-12

He-P 820.10 Administrative Remedies.

- (a) The department shall impose administrative remedies for violations of RSA 151, He-P 820 or other applicable rules, including:
- (1) Imposing a fine upon an unregistered individual, applicant or a registrant;
  - (2) Denial of an application; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Revocation of a registration.
- (b) When a fine is imposed, the department shall provide a written notice, as applicable, which:
  - (1) Identifies the reasons for which the fine was imposed; and
  - (2) Provides the individual with the following information:
    - a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to the payment of the fine; and
    - b. The automatic reduction of a fine by 25% if:
      1. The fine is paid within 10 days of the date on the written notice from the department;
      2. The unregistered individual, applicant or registrant submits a written statement waiving the right to an administrative hearing; and
      3. The issues that led to the imposition of the fine have been corrected.
- (c) The department shall impose fines as follows:
  - (1) For a failure to cease providing unregistered services after being notified by the department of the need for a registration, in violation of RSA 151:2, the fine shall be \$200.00 for an applicant or unregistered provider;
  - (2) For a failure to cease operations after a denial of a registration or after receipt of an order to cease and desist immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for an applicant or unregistered provider or a registrant shall be \$200.00;
  - (3) For advertising services or otherwise representing themselves as having a registration to provide services that they are not registered to provide, in violation of RSA 151:2, III, the fine for an applicant or unregistered provider shall be \$50.00;
  - (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 820.09(f), the fine for an unregistered provider or a registrant shall be \$50.00;
  - (5) For a failure to submit a renewal application for a registration prior to the expiration date, in violation of He-P 820.06(b), the fine for a registrant shall be \$10.00;
  - (6) For falsification of information contained on an application, the fine for an applicant or registrant shall be \$50.00 per offense; and
  - (7) Each day that the registrant continues to be in violation of the provisions of RSA 151 or He-P 820 shall constitute a separate violation and shall be fined in accordance with He-P 820.10.
- (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, State of New Hampshire” or cash in the exact amount due; and
  - (2) Cash, money order, or certified check shall be required when an applicant or registrant has issued payment to the department by check, and such check was returned for insufficient funds.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.11 Enforcement Actions and Hearings.

(a) Prior to imposing a fine, or denying or revoking a registration, the department shall send to the applicant or registrant a written notice that sets forth:

- (1) The reasons for the proposed action;
- (2) The action to be taken by the department; and
- (3) The right of an applicant or registrant to a hearing shall be conducted in the same manner as a licensee in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable.

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

- (1) An applicant or a registrant violated any of the provisions of RSA 151 or He-P 820 in a manner which poses a risk of harm to a client's health, safety or well being;
- (2) An applicant or a registrant has failed to pay a fine imposed under administrative remedies;
- (3) An applicant or a registrant has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order or certified check;
- (4) After being notified of and given an opportunity to supply missing information, an applicant or registrant fails to submit an application that meets the requirements of He-P 820.04;
- (5) An applicant, registrant or any representative of the applicant or registrant provides false or misleading information to the department;
- (6) A registrant has had a registration revoked and submits an application during the 5-year prohibition period specified in (g) below; or
- (7) The department makes a determination that one or more of the factors in He-P 820.05(e) is true.

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

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

(e) The department shall order the immediate revocation of a registration, the cessation of services, and the transfer of care of clients when it finds that the health, safety or well-being of clients is in jeopardy and requires emergency action in accordance with RSA 541-A:30, III.

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

(g) When an individual's registration has been denied or revoked, the applicant or registrant shall not be eligible to reapply for a registration for 5 years from:

- (1) The date of the department's decision to revoke or deny the registration became effective, if no request for an administrative hearing is requested; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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

(h) Notwithstanding (g) 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 should be awarded a waiver under He-P 820.08.

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

(j) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A or He-P 820.

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

He-P 820.12 Duties and Responsibilities of All Registrants.

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

(b) The registrant shall consider all clients to be competent and capable of making all decisions relative to their own service needs unless the client:

(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.

(c) Registrants may remind clients to take their medications, place medication container(s), including pill planners, within client reach, and open the medication container(s).

Source. #10013, eff 10-22-11; ss by #10206, eff 10-20-12

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 820.01 – He-P 820.03	RSA 151:9,I(a),(b); RSA 151:2, I(b); RSA 151:2-b
He-P 820.04 – He-P 820.06	RSA 151:2,I and II and RSA 151:9,I
He-P 820.07 – He-P 820.08	RSA 151:9,I(a)
He-P 820.09	RSA 151:9,I(e)
He-P 820.10	RSA 151:9,I(f),(g),(l),(m)
He-P 820.11	RSA 151:9,I(f),(h),(l)
He-P 820.12	RSA 151:9,I(a)