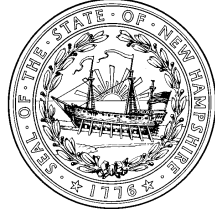


# NEW HAMPSHIRE



## RESIDENTIAL CHILD CARE LICENSING RULES Effective October 23, 2014



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CHAPTER He-C 4000 CHILD CARE LICENSING RULES

STATUTORY AUTHORITY: RSA 170-E:34, I

PART He-C 4001 NH RESIDENTIAL CHILD CARE LICENSING RULES

He-C 4001.01 Definitions.

(a) “Administer” means 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 resident for immediate consumption or use.

(b) “Applicant” means a person, corporation, partnership, voluntary association or other organization, either established for profit or otherwise, who intends to operate one or more residential child care programs, and who indicates that intent to the department by submitting an application and the application attachments required by He-C 4001.02.

(c) “Authorized staff” means program staff that have completed training in medication safety and administration who are responsible for administration of medications to residents.

(d) “Child” means “child” as defined in RSA 170-E:25, I.

(e) “Child abuse” means the infliction on a child of any of the behaviors set forth in RSA 169-C:3, II (a) - (d).

(f) “Child care institution” means “child care institution” as defined in RSA 170-E:25, III.

(g) “Child endangerment” means the negligent violation of a duty of care or protection owed to a child or negligently inducing a child to engage in conduct that endangers his or her health or safety.

(h) “Child neglect” means any of the behaviors or circumstances set forth in RSA 169-C:3, XIX (a) or (b).

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

(j) “Corporal punishment” means use of aggressive physical contact or other action designed to cause the resident discomfort, used as a penalty for behavior disapproved of by the punisher.

(k) “Corrective action plan” means “corrective action plan” as defined in RSA 170-E:25, VI.

(l) “Department” means “department” as defined in RSA 170-E:25, VII.

(m) “Direct care staff” means program staff who are responsible for the direct supervision and care of residents.

(n) “Directed corrective action plan” means a corrective action plan that is developed and issued by the department.

(o) “Field trip” means any excursion off the premises of the residential child care program with residential child care staff, other than routine or unplanned local travel such as walks in the neighborhood, travel to the local library, or other routine travel such as travel to and from school, employment, local appointments or travel to do local errands.

(p) “Group home” means “group home” as defined in RSA 170-E:25, II(b).

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(q) “Guardian” means “guardian” as defined in RSA 170-E:25, IX.

(r) “Homeless youth” means a person 16 through 20 years of age who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care or who lacks a fixed, regular and adequate residence.

(s) “Homeless youth program” means “homeless youth program” as defined in RSA 170-E:25, II(d).

(t) “Household member” means any person who resides in a child care program other than child care personnel or children admitted to the child care program.

(u) “Incident” means:

(1) Resident behavior that is extreme, including, but not limited to, behavior that is assaultive, destructive, self-injurious, or self-destructive;

(2) Any behavior leading to physical intervention or seclusion of a resident; or

(3) An occurrence involving an accident or injury, or requiring outside agency involvement.

(v) “Independent living” means transition to adulthood whereby the resident negotiates living on his or her own with a set of skills and goals based on the resident’s needs and interests.

(w) “Independent living home” means “independent living home” as defined in RSA 170-E:25, X.

(x) “License” means “license” as defined in RSA 170-E:25, XI.

(y) “License capacity” means the maximum number of residents that can be admitted to and present in the residential child care program, as authorized by the license issued.

(z) “Licensed health care practitioner” means a physician, advanced practice registered nurse (APRN), physician’s assistant, dentist, optometrist and other licensed professionals with prescriptive authority.

(aa) “Medication” means a drug prescribed for a resident by a licensed health care practitioner and over-the-counter medications.

(ab) “Medication log” means a written record of medications administered to a resident.

(ac) “Medication occurrence” means any error in the administration of a medication as prescribed or in the documentation of such administration, with the exception of a resident’s refusal.

(ad) “Medication order” means:

(1) Written directions provided by a licensed health care practitioner for a specific drug to be administered to a resident;

(2) Verbal directions provided by a licensed health care practitioner to authorized staff for a specific drug to be administered to a resident; or

(3) The prescription label attached to the prescription container.

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(ae) “Monitoring visit” means an announced or unannounced visit made to a residential child care program by department personnel for the purpose of assessing compliance with the standards set by rule adopted by the commissioner pursuant to RSA 541-A.

(af) “Parent” means a father, mother, legal guardian or other person or agency responsible for the placement of a resident.

(ag) “Permanency” means a permanent connection with at least one adult committed to helping the homeless youth meet his or her needs throughout his or her life.

(ah) “Physical intervention” means a behavior management technique in which staff use the minimum amount of physical contact on a resident, which is necessary for the circumstances, in accordance with RSA 627:6, II(b) and RSA 126-U, to protect the resident, other residents present, the staff, and the general public.

(ai) “Pre-service training” means training or education required to meet the minimum qualifications for the position of program director, as specified in He-C 4001.19 (e), or direct care staff, as specified in He-C 4001.19 (f).

(aj) “Program director” means the individual who has responsibility for the daily operation of the residential child care program.

(ak) “Program staff” means all staff, both professional and non-professional, including direct care staff, who are responsible for the supervision, care, or treatment of residents.

(al) “Pro re nata (PRN)” means a drug ordered to be taken as needed under specific conditions.

(am) “Regular contact” means being in the presence of residents at the residential child care program for more than 5 hours per week.

(an) “Repeat violation” means a violation of a specific licensing rule or law for which the program has been previously cited during the past 5 years, which has not been removed as a result of an informal dispute resolution or overturned as a result of an adjudicatory procedure and that posed a health or safety risk to residents.

(ao) “Resident” means a child who has been admitted to a residential child care program.

(ap) “Residential child care program (program)” means “child care agency” as defined in RSA 170-E:25, II.

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

(ar) “Runaway” means a child who is absent without leave or permission from the program that is responsible for the supervision of that child.

(as) “Sanitize” means to clean by removing all organic material then wiping down or washing with a disinfecting or germicidal solution consisting of one tablespoon of regular strength chlorine bleach to one gallon of water which is mixed fresh daily, or a commercial product which is designed to kill germs and which, when used in accordance with manufacturer’s directions, does not pose a health or safety risk to residents.

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

(au) “Short term” means a placement which is intended to last for 60 days or less, unless the residential child care program has written documentation on file that the 60 day period has been extended by

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the department's division for children, youth and families (DCYF), juvenile justice services (JJS), or by the referring agency.

(av) "Time out" means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident the opportunity to regain self-control or as a consequence to a specific behavior.

(aw) "Treatment plan" means the program's written, time-limited, goal-oriented plan for the child and family, which includes strategies to address the issues that brought the child into placement, and which is developed by the family, program staff and the agency responsible for the placement of the child. This includes, but is not limited to, a child specific planning document prepared in cooperation with DCYF, JJS, a school district or other placing or sending organization. A treatment planning document that complies with certification requirements satisfies licensing requirements.

(ax) "Unit" means the department's child care licensing unit.

He-C 4001.02 Application Form and Attachments.

(a) All applicants for licensure shall complete and submit an application form to the department, which includes:

- (1) Whether the application is for a new, renewed or revised license;
- (2) Whether the program will operate a group home, child care institution, independent living home, or homeless youth shelter;
- (3) Whether the applicant, owner, or business organization intends to provide short term placements;
- (4) The name, physical address, mailing address and telephone number of the program;
- (5) The name, telephone number and mailing address of the applicant, owner or business organization;
- (6) An e-mail address for the program and the applicant, owner, or business organization, if available;
- (7) Federal tax identification number if one has been assigned;
- (8) A list of all buildings in which residents will be cared for which identifies:
  - a. The building identifier;
  - b. The building's purpose or function;
  - c. The type(s) of residential child care services that the applicant, owner or business organization intends to offer in the building as specified in He-C 4001.02 (a)(2) above; and
  - d. The proposed number of residents and age range to be cared for in each residential building;
- (9) The total requested resident capacity of the program;
- (10) How the program is owned and organized, whether private, partnership, or other organization type, including name of business organization, business identification number, the names, title/position, and telephone numbers of the officers of the business or board members, if applicable;
- (11) Whether the program will be operating as for-profit or non-profit;
- (12) The name, birth name(s) and date of birth of the program director;
- (13) The qualifications of the program director, including education and experience;
- (14) For persons who have regular contact with residents in the residential child care program, excluding residents who are admitted to the program, and including any applicant, owner, officer of the business organization, program director, executive director, board member, household member, program staff, intern, volunteer or any other individual in the state of New Hampshire or the United States, information and details disclosed by the individual on their application for employment, or otherwise known by the program, regarding the following:



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- a. Criminal convictions in a state other than New Hampshire;
  - b. Current criminal investigations in any state;
  - c. Current investigations of child abuse or neglect in any state;
  - d. Previous findings of child abuse or neglect in a state other than New Hampshire;
  - e. Current investigation of juvenile delinquency for juvenile household members; and
  - f. Previous adjudications of juvenile delinquency for juvenile household members;
- (15) The information required by (14) above shall include:
- a. The name and position or affiliation of the individual;
  - b. Whether this information is a charge, allegation, conviction, finding, or current investigation;
  - c. The name and city of the court of DCFY office in which the case was handled, as applicable; and
  - d. The date of any conviction or finding;
- (16) A statement dated and signed by the program director and the applicant, or an individual legally authorized to sign for the applicant attesting to the following:

“I HAVE READ AND AM IN COMPLIANCE WITH ALL APPLICABLE RULES IN He-C 4001”;

“I UNDERSTAND THAT THE DEPARTMENT MAY INVESTIGATE ANY CRIMINAL CONVICTION RECORD, FINDING OF CHILD ABUSE OR NEGLECT, OR INVESTIGATION OF OR FINAL DETERMINATION REGARDING ANY JUVENILE DELINQUENCY AND WILL MAKE A DETERMINATION REGARDING WHETHER THE INDIVIDUAL POSES A CURRENT RISK TO THE HEALTH, SAFETY OR WELL BEING OF CHILDREN”;

“I UNDERSTAND THAT THE DEPARTMENT MAY DELAY ITS DECISION TO APPROVE OR DENY THIS APPLICATION PENDING THE OUTCOME OF ANY INVESTIGATION, WHEN THE APPLICANT, OWNER, OR PROGRAM DIRECTOR, ARE NAMED AS THE PERPETRATOR IN ANY CURRENT INVESTIGATION OF ANY CRIME, OR IN AN ALLEGATION OF ABUSE OR NEGLECT”;

“I UNDERSTAND THAT PROVIDING FALSE INFORMATION ON THIS APPLICATION OR ANY OF THE ATTACHMENTS, OR FAILING TO DISCLOSE ANY INFORMATION REQUIRED ON THE APPLICATION, OR REQUIRED TO BE SUBMITTED WITH THIS APPLICATION, SHALL BE CONSIDERED GROUNDS FOR LICENSE DENIAL OR REVOCATION”;

“I HAVE READ THE NH RESIDENTIAL CHILD CARE PROGRAM LICENSING RULES, AND UNDERSTAND THAT FAILURE TO MAINTAIN MY PROGRAM IN COMPLIANCE WITH THE APPLICABLE RULES, MAY JEOPARDIZE MY LICENSE/PERMIT”;

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“I AUTHORIZE ANY POLICE DEPARTMENT, COURT SYSTEM OR HUMAN SERVICE AGENCY IN THIS OR ANY OTHER STATE TO RELEASE COPIES OF ANY CRIMINAL RECORDS OR CHILD ABUSE OR NEGLECT RECORDS TO THE DEPARTMENT”; and

“ALL INFORMATION PROVIDED AS PART OF THIS APPLICATION AND IN THE REQUIRED ATTACHMENTS IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE”;

(17) The position of the individual who signed pursuant to (16) above, such as applicant, board president, board secretary, executive director, or program director;

(18) For each building, a floor plan diagram of indoor residential childcare space which shall specify:

- a. Room dimensions;
- b. Location of exits;
- c. How each room will be used;
- d. The location of bathrooms and bathroom fixtures, including toilets, sinks, bathtubs and showers;
- e. The location of other hand-washing sinks; and
- f. The length, width and ceiling height of each bedroom;

(19) For each building, a diagram of outdoor play and recreation space which shall specify:

- a. The overall dimensions of the outdoor play space including the length and width of the space;
- b. The locations of exits, gates and stationary outdoor play or recreation equipment, including the location of and type of fencing, if any, including gates;
- c. The location of the outdoor play space in relation to the indoor space; and
- d. The location and description of any outdoor water and street hazards including the presence of and location of any pools, ponds, streams, rivers, streets, roads, or other hazards that are in close proximity;

(20) For renewal or revisions applications, diagrams as specified in (18) and (19) above if changes have been made in the residential child care space since the last application submitted to the department; and

(21) For renewal or revision applications, a check mark in the box on the form, indicating when no changes have been made to residential child care space since the last application submitted to the department.

(b) Residential child care programs that have multiple buildings on the same or adjoining property may apply for a single license for those multiple buildings provided that:

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- (1) In accordance with residential child care space requirements specified in He-C 4001.16, each residence has adequate square footage, common living space and complete bathroom units for the number of residents who will reside in each building;
- (2) An individual who meets at least the minimum qualifications of a direct care staff is designated in charge in each building; and
- (3) All program staff and residents are aware of the identity of the direct care staff who is designated in charge in each building.

(c) With the application, the applicant shall submit to the department a completed "Health Officer Inspection Report for Residential Child Care Agencies" form (10/2014 edition) completed by the local health officer or duly appointed designee, for each building inspected, documenting that within the 12 months of the date the department receives the application, the premises have been inspected and approved by a local health officer or duly appointed designee for operation as a residential child care program.

(d) With the application, the applicant shall submit to the department a completed NH State Fire Code compliance report documenting that, within the 12 months of the date the department receives the application, the premises have been inspected by the local fire department or the state fire marshal's office, for compliance with the applicable parts and sections of the State Fire Code as adopted under Saf-C 6000, State Fire Code, and approved to operate as a residential child care program.

(e) The NH State Fire Code compliance report required under (d) above shall include the following:

(1) Completed by either program personnel or the fire inspector:

- a. The name, address, telephone number, and license number of the residential child care program;
- b. The name of the applicant;
- c. The type of residential child care to be provided; and
- d. The number and age range of residents for whom the applicant intends to provide care; and

(2) Completed by the fire inspector:

- a. The date the premises were inspected by the fire inspector;
- b. For each building which will be used by residents:
  1. An indication regarding whether the fire inspector approves or does not approve the premises to operate as a residential child care program;
  2. Any areas of non-compliance with the State Fire Code, Saf C-6000; and
  3. Any conditions or restrictions placed by the fire inspector, including but not limited to, any limits relative to the number and age range of residents to be cared for in the program or any rooms, levels or other areas of the premises not approved for use by residents;
- c. An indication whether or not the fire inspector:

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1. Approves or does not approve the residential agency type(s) to operate; or
2. When a conditional approval is granted:

- (i) Details regarding what action must be taken; and
- (ii) The date the conditional approval will expire;

- d. The printed name, address, telephone number, and title of the fire inspector;
- e. The dated signature of the fire inspector; and
- f. The city or town in which the fire inspector has authority.

(f) With the application, the applicant shall submit to the department documentation from the applicable town or city that the program has been granted zoning approval or a statement that no zoning approval is required.

(g) The zoning documentation required in (f) above shall include the following:

- (1) The name and address of the program;
- (2) The name of the applicant;
- (3) Any zoning requirements or restrictions imposed by the town or city regarding the existence of the program, including any limits regarding ages or number of residents to be cared for in the program, and any buildings on the property that do not have zoning approval; and
- (4) The signature of an individual authorized to sign on behalf of zoning, and date signed.

(h) With the application, the applicant shall submit to the department a household and personnel form containing the information required in (i) below for each of the following:

- (1) The applicant;
- (2) All household members;
- (3) All program staff;
- (4) All volunteers, interns, and child care assistants; and
- (5) All other individuals, other than residents admitted to the program or their family members, who will have regular contact with the residents.

(i) The household and personnel form required under (h) above shall include the following:

- (1) The name and address of the program;
- (2) The license number, if the program is licensed; and
- (3) The following information for each individual listed:
  - a. First and last name, and middle initial;
  - b. Any other name used, including birth name, maiden name and previous married names, as applicable;

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c. Date of birth; and

d. For individuals age 17 and older, the date the criminal record release authorization form was submitted to department of safety.

(j) For each name submitted on the household and personnel form in accordance with (i) above, each individual listed, age 17 and older, shall submit directly to the department of safety:

(1) A notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any, to the department; and

(2) A complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety.

(k) The only exception to (j)(2) above shall be a person who is or has been employed or volunteered at a child care institution, child care agency, or child day care agency within the previous 3 years, who has already submitted a complete set of fingerprints as described in (j)(2) above. Such person shall only be required to undergo a New Hampshire state criminal records check through the department of safety by submitting a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's state criminal records, if any, to the department.

(l) With the application, the applicant shall submit to the department documentation of education and experience that shows that the program director meets the requirements for his or her position, as specified in He-C 4001.19(e).

(m) The documentation of education and experience required under (l) above shall include the following:

(1) Copies of transcripts, certificates, diplomas, or degrees as applicable; and

(2) A resume or other documentation of previous experience.

(n) With the application, applicants that are incorporated shall submit to the department a list of the names, addresses and telephone numbers of the current board members.

He-C 4001.03 Procedures for License Renewal and Revisions.

(a) No less than 3 months prior to the expiration date of the current license, each licensee shall submit to the department:

- (1) An application form for license renewal, completed in accordance with He-C 4001.02 (a);
- (2) The application attachments specified in He-C 4001.02 (c) through (e), (h) through (j) and (n); and
- (3) The application attachments specified in He-C 4001.02 (l) and (m), if there has been a new program director since the previous application was filed.

(b) Licensees shall be subject to a lapse in license if they submit their application materials after the date their current license expires.

(c) Prior to adding additional program types, as specified in He-C 4001.02 (a)(2), changing the type(s) of program for which a program is licensed, increasing the number of residents in one or more buildings, unless the increased number has been previously approved in writing by the department and does not result in the program exceeding its license capacity, or re-locating the program, the residential child care program shall:

- (1) Submit an application for license revision, completed in accordance with He-C 4001.02; and
- (2) When there is a relocation or revision that will exceed any limits or condition on the current health officer inspection report, NH State Fire Code compliance report or zoning approval, submit the application attachments, identified in He-C 4001.02 (c) through (g) for each building for which it is seeking a license revision.

(d) A licensee shall notify the department in writing when he or she wishes to change the name of the program, so that a revised license that reflects the name change can be issued.

He-C 4001.04 Time Frames for Departmental Response to Applications.

(a) Pursuant to RSA 541-A:29, the department shall approve or deny an application no later than 120 days from receipt of the application and any additional information requested by the department.

(b) The 120 days specified in (a) above shall begin on the date on which all requested information is received by the department.

(c) Any outstanding corrective action plan for violations of rule or statute shall be considered additional information under (a) above.

He-C 4001.05 Board of Directors.

- (a) Each program that is incorporated shall have a duly appointed board of directors.
- (b) The applicant or licensee shall:
  - (1) If incorporated, provide a list of the names, addresses and telephone numbers of current members of the board of directors and a copy of current rules of the board of directors are on file and made promptly available on the premises of the program for review by the department upon request during all visits; and
  - (2) If governed by any other governing body, provide a list of the names, addresses and telephone numbers of current members of the governing body, and a copy of any rules by which the governing body will operate are on file and made promptly available on the premises of the program for review by the department upon request during all visits.
- (c) The board of directors for programs that are incorporated and the owner or governing body for programs that are not incorporated shall maintain a sufficient degree of oversight of the program's operations to ensure that the program is complying with the provisions of RSA 170-E, this part, and any policies and procedures adopted by the program.



He-C 4001.06 Statements of Findings and Corrective Action Plans.

(a) The department shall issue a statement of findings to the program when it determines that the program has one or more violations of any of the provisions of RSA 170-E or He-C 4001.

(b) The program director or designee shall complete a written corrective action plan for each violation included on the statement of findings.

(c) The corrective action plan required in (b) above shall describe:

(1) How the licensee intends to correct each violation including any interim measures the program director or designee has implemented to protect the health and safety of residents until the violation can be corrected;

(2) What measures will be put in place, or what systemic changes will be made to ensure that the violation does not recur; and

(3) The date by which each violation was corrected or will be corrected.

(d) The program director or designee shall complete corrective action plans and return them to the department in accordance with the following:

(1) The corrective action plan shall not include the names of individuals; and

(2) The statement of findings and corrective action plan shall be:

a. Signed and dated by the program director or designee; and

b. Returned to the department no later than 3 weeks from the date the statement of findings is sent out by the department.

(e) The program director or designee shall not alter the statement of findings or corrective action plan once it has been submitted to the department.

(f) The only exceptions to (d)(2)b. above shall be as follows:

(1) When a program director or designee requests an informal dispute resolution in accordance with He-C 4001.08, the corrective action plan due date shall be 3 weeks from:

a. The date the program receives notice of the department's decision regarding the informal dispute resolution if the department is not issuing a revised statement of findings; or

b. The date the department issues the revised statement of findings as a result of the informal dispute resolution; and

(2) A program director or designee who cannot complete and return a corrective action plan by the due date may request and receive an extension from the department.

(g) The criteria for acceptability shall be whether the corrective action plan, when implemented, will achieve compliance with RSA 170-E and He-C 4001.

(h) The department shall reject a corrective action plan when the plan fails to:

(1) Achieve compliance with RSA 170-E, He-C 4001, or any other applicable licensing rules;

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- (2) Address the violation as written;
- (3) Address all violations cited on the statement of findings;
- (4) Prevent a new violation of RSA 170-E, He-C 4001, or any other applicable law; or
- (5) State a completion date.

(i) When the corrective action plan submitted to the department by the program in accordance with (d) and (f) above is not acceptable, the department shall notify the licensee in writing of the reason for rejecting the proposed corrective action plan and:

- (1) Attempt to resolve the problem through a telephone consultation with the executive director or program director, when the unacceptable corrective action plan needs only simple, minor modifications or additions to make it acceptable; or
- (2) Issue a revised corrective action plan to the program with a notice advising the program why the original corrective action plan submitted by the program is not acceptable.

(j) When a program is issued a revised corrective action plan, it shall:

- (1) Make any revisions to the corrective action plan as approved by the department; and
- (2) Return and implement the revised corrective action plan in accordance with (d) above.

(k) The department shall verify that a corrective action plan, as submitted and accepted, has been implemented by any of the following:

- (1) Reviewing materials submitted by the licensee;
- (2) Conducting a follow-up inspection; or
- (3) Reviewing compliance during any subsequent visit conducted in accordance with RSA 170-E:31, IV, RSA 170-E:32, II or RSA 170-E:40, II.

(l) When the findings of any inspection or investigation indicate that immediate corrective action is required to protect the health and safety of the residents or personnel, the department shall order the immediate implementation of a directed corrective action plan developed by the department.

(m) The existence of a corrective action plan shall not prohibit the department from taking other enforcement action available to it under He-C 4001, RSA 170-E, RSA 541-A or other law.

(n) All statements of findings issued for violations of any of the provisions of RSA 170-E or He-C 4001, and the corrective action plans submitted in response to those violations, shall be considered public information on or after the corrective action plan due date as specified in (d)(2)b. and (f)(1) and (2) above.

(o) An applicant or licensee may appeal a violation cited on a statement of findings only as part of an adjudicatory process regarding enforcement action taken against a license.

He-C 4001.07 Complaints, Investigations and Background Checks.

(a) In accordance with RSA 170-E:40, I and II, the department shall conduct an investigation of any complaint that meets the following conditions:

(1) The alleged violations 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 resident who has first hand knowledge regarding the allegation(s);

(3) The complaint contains 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 He-C 4001 or RSA 170-E; or

(4) The complaint is received from any source and alleges a violation that occurred at any time if the complaint alleges:

a. Physical injury;

b. Verbal or emotional abuse so severe as to create a risk of psychological trauma; or

c. One or more residents were placed in danger of physical injury.

(b) After the investigation of a complaint has been completed, the department shall:

(1) When it determines that the complaint is unfounded or does not violate any statutes or rules, notify the program and take no further action;

(2) When it determines that the complaint is founded, prepare a statement of findings listing the violations found as a result of the investigation and any other violations found during the visit; and

(3) Notify the licensee in writing of the findings.

(c) The records compiled during an investigation shall be confidential as required by RSA 170-E:40, III.

(d) When the department determines that an individual poses a threat to a child, in accordance with RSA 170-E:29, III or IV, or RSA 170-E:29-a, it shall provide notice to the individual and to the residential child care program that:

(1) The individual has been determined by the department to pose a threat to a resident; and

(2) That the program shall take immediate action to prohibit the individual from being on the premises of the residential child care program and from having access to the residents admitted to the program.

(e) The department shall include in its notice under (d) above:

(1) The basis for the determination that the individual poses a risk; and

(2) The need for the residential child care program to inform the department in writing of the specific action it has taken as required under (d)(2) above.

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(f) When the department investigates an individual's criminal conviction records under RSA 170-E:29-a, VI, and determines that the individual does not pose a current threat to the safety of children, it shall notify the program of that determination, and provide the program with a copy of the report of NH state criminal convictions received from the NH department of safety.

He-C 4001.08 Informal Dispute Resolution.

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

(b) 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.

(c) The department shall review the evidence presented and provide a written notice to the applicant or licensee of its decision.

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

He-C 4001.09 Enforcement Action and Administrative Appeals.

(a) The department shall revoke or suspend a license or deny an application for a new license, license renewal or license revision, in accordance with the provisions of RSA 170-E:27, II, RSA 170-E:29, III and IV, RSA 170-E:29-a, and RSA 170-E:35 if:

(1) After being notified of and given an opportunity to supply missing information, the application does not meet the requirements of He-C 4001.02;

(2) After being notified by the department that an adult or a juvenile who is not a resident admitted to the program may pose a risk to residents, the applicant or licensee refuses to submit a corrective action plan which ensures that the individual is removed from employment or from the household and will not have access to the residents in care;

(3) An applicant or licensee has endangered or continues to endanger one or more residents by a negligent violation of a duty of care or protection owed to the child or negligently inducing such child to engage in conduct that endangers his health or safety;

(4) The applicant or licensee has been found guilty of abuse, neglect, exploitation of any person or has been convicted of child endangerment, fraud or a felony against a person in this or any other state by a court of law, or has been convicted of any crimes as referenced in RSA 170-E:29, III or IV, or RSA 170-E:29-a, or had a complaint investigation for abuse, neglect, or exploitation substantiated by the department or in any other state;

(5) The applicant, licensee or designee of the applicant knowingly provides materially false or misleading information to the department, including information on the application or in the application attachments;

(6) The applicant, licensee or any representative or employee of the applicant fails to cooperate with any inspection, investigation or visit by the department;

(7) The applicant or licensee violates any of the provisions of RSA 170-E:24 –49 or He-C 4001;

(8) The applicant or licensee has demonstrated a history or pattern of multiple or repeat violations of RSA 170-E, or He-C 4001, that pose or have posed a health or safety risk to residents; or

(9) The applicant or licensee fails to submit an acceptable corrective action plan or fully implement and continue to comply with a corrective action plan that has been accepted by the department in accordance with He-C 4001.06.

(b) If a license has been revoked, or has expired without timely application for renewal having been made in accordance with He-C 4001, operation shall be discontinued immediately.

(c) The department shall notify applicants or licensees affected by a decision of the department to deny, revoke or suspend a license of their right to an administrative appeal in accordance with RSA 170-E:36.

(d) If an applicant or licensee fails to request an administrative appeal in writing within 10 days of the receipt of the notice required by RSA 170-E:36, I, the action of the department shall become final.

(e) Administrative appeals under this section shall be conducted in accordance with RSA 170-E:36, II, III, and IV, RSA 170-E:37, RSA 541-A and He-C 200.

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(f) Further appeals of department decisions under this section shall be governed by RSA 541-A and RSA 170-E:37.

(g) Any licensee who has been notified of the department's intent to revoke or suspend a license or deny an application for a license renewal may be allowed to continue to operate during the appeal process except as specified in (h) below.

(h) When the department includes in its notice of revocation or suspension an order of immediate closure, pursuant to RSA 170-E:36, III or RSA 541-A:30, III, the program shall immediately terminate its operation and not operate during the appeal process except under court order, or as provided by RSA 541-A:30, III.

(i) The department shall initiate a suspension of a license rather than revocation when it determines that the action is being initiated against a program that does not have a history of repeat violations of licensing rules or statute and the action is based on a violation or situation which is:

- (1) Related to a correctable environmental health or safety issue, including but not limited to, a problem with a program's water supply, septic system, heating system, or structure; and
- (2) Documented by the program as being temporary in nature.

(j) Except for (h) above, any suspension of a license that has not been appealed, or any suspension of a license that has been upheld on appeal shall remain in effect until the department notifies the program whose license was suspended that the suspension has been removed because:

- (1) The violation which resulted in the suspension has been corrected; or
- (2) The suspension was based on loss of fire or health officer approval and the local fire inspector or inspector from the state fire marshal's office, or health officer has reinstated the previously rescinded approval.

(k) Upon receipt of notice of the department's intent to revoke, suspend, deny or refuse to issue or renew a license, the applicant or licensee receiving the notice shall immediately provide the department with a list of the names, addresses and phone numbers of the person or agency responsible for the placement of each current resident.

(l) Based upon information provided under (k) above, the department shall notify the person or agency responsible for the placement of each current resident that the department has initiated action to revoke or suspend the license or deny an application for a license renewal.

(m) The department shall send a copy of the notice required in (l) above to the following entities:

- (1) The health officer and fire inspector in the town in which the program is located;
- (2) The state office of the United States Department of Agriculture, Child and Adult Food Program, if the residential child care program participates in that program;
- (3) The New Hampshire department of education if the program has a school on the premises; and
- (4) The director of DCYF.

(n) When a program's license has been revoked or denied, the department has refused to renew a license, or an application has been denied by the department, if the enforcement action specifically pertained

to their role in the program, the applicant, licensee, program director or executive director, shall not be eligible to reapply for a license, or be employed as an executive director or program director for at least 5 years from:

- (1) The date of the department's decision to revoke or deny the license, if no appeal is filed; or
- (2) The date an order is issued upholding the action of the department, if that action has been appealed.

(o) Notwithstanding (n) above, the department shall accept an application submitted after the decision to revoke or deny becomes final, provided there has been no violation of RSA 170-E:27, II, RSA 170-E:35, I, or RSA 170-E:35, XIII, only under the following circumstances:

- (1) The applicant or licensee, when licensed, did not demonstrate a pattern of repeat violation of licensing rules or statute;
- (2) The denial was based on the applicant or licensee's inability or failure to correct a violation caused by a temporary condition which has been corrected; or
- (3) The licensee or applicant who was denied an initial application shows that circumstances have substantially changed such 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 170-E and He-C 4001.

(p) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 170-E, RSA 541-A, He-C 4001 or other law.

(q) Requests for reconsideration or appeal of any decision by a hearings officer shall be filed within 30 days of the date of the decision.



He-C 4001.10 Duties and Responsibilities of the Licensee.

- (a) The program shall abide by the provisions specified on the license.
- (b) Program staff shall:
  - (1) Display a copy of the current license issued by the department in a prominent location in each building in which residents are housed; and
  - (2) Not alter the license issued by the department.
- (c) A license shall not be transferable to a new owner or new location.
- (d) Any licensee, program staff or other person involved with a program who has reason to suspect that a resident is being abused or neglected shall report the suspected abuse to DCYF at 1-800-894-5533.
- (e) Program staff shall safeguard the confidentiality of all records and personal information regarding any resident.
- (f) Applicants, licensees and all program staff shall keep confidential all records required by the department pertaining to the admission, progress, health and discharge of residents under their care and all facts learned about residents and their families with the following exceptions:
  - (1) Program staff shall, upon request, make available to the department all records that programs are required by RSA 170-E or He-C 4001 to keep, and to such records as necessary for the department to determine staffing patterns and staff attendance; and
  - (2) Other than as specified in (f)(1) above, program staff shall release information regarding a specific resident only as directed by a parent of that resident, or upon receipt of written authorization to release such information, signed by that resident's parent, unless otherwise restricted by applicable state or federal law.
- (g) Information collected by the department during the application process may be released:
  - (1) To the applicant, licensee or his or her designated representative;
  - (2) Upon receipt of written authorization by the applicant or licensee to release information; or
  - (3) To federal, state and local officials or the entities that provided reports.
- (h) Except for law enforcement agencies or in an administrative proceeding against the applicant or licensee, the department shall keep confidential any information collected during an investigation, unless it receives an order from a court of competent jurisdiction ordering the release of specific information.
- (i) Applicants, licensees, members of the board of directors or other governing body, program staff, child care interns, child care assistants, and volunteers shall cooperate with the department during all departmental visits authorized under RSA 170-E and He-C 4001.
- (j) For the purposes of (i) above, cooperation shall include, but not be limited to not interfering with efforts by representatives of the department to:
  - (1) Enter the premises and complete an inspection;

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(2) Document evidence or findings by taking written statements, and by photographing toys, equipment and learning materials or conditions inside or outside residential child care space and other areas of the premises accessible to residents;

(3) Make an audio recording of conversations with individuals who have consented to the audio recording;

(4) Interview program staff, members of the board of directors or other governing body, child care interns, child care assistants, volunteers, residents enrolled in the program and any other individual whom the department determines might have information relevant to the issues being evaluated; and

(5) Review and reproduce any forms or reports which the applicant or licensee is required to maintain or make available to the department under He-C 4001.

(k) Administrators, other program staff or other individuals shall not:

(1) Require or request that the individual being interviewed ask that another person be present for the interview;

(2) Attempt to influence the response of any individual being interviewed by signaling them during the interview, telling them what to say, or threatening them with retaliation for providing information to the department; or

(3) Require staff or residents who have been interviewed to provide statements to program administration regarding their interview.

(l) Any violation of (k) above or any attempt by or on behalf of program staff, administrators, or other individuals to prevent program staff, residents, or other individuals from responding to questions by the department, or from making a good faith report to the department regarding any concerns they have about the operation of the program relating to statutory or regulatory requirements shall be considered failure to cooperate with the department as specified in (i) and (j) above.

(m) Except for He-C 4001.12(a), all records and written policies required by He-C 4001 shall be maintained on file and shall be made promptly available on the premises of the program for review or be submitted to the department upon request as follows:

(1) For 2 years from the date the resident is discharged;

(2) For 2 years from the date of termination for records related to employees; and

(3) For all other records 2 years from the date the record was created.

(n) The exception to (m) above shall be when program staff shows good cause as to why the requested reports or records are not immediately available. In such case, the provider shall make the records available within 2 business days, or otherwise obtain an extension from the unit. Good cause shall include circumstances beyond the licensee's control or other extenuating circumstances.

(o) The program director or designee shall:

(1) Submit a new household and personnel form for new staff, new household members and new interns, assistants, volunteers, janitorial staff, office staff, vocational staff or other persons at the residential child care program who begin having regular contact with residents, no later than the start date of employment or the date that the individual is present in the program;

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(2) For persons who have regular contact with residents in the residential child care program, including any applicant, owner, officer of the corporation, program director, executive director, household member, program staff, intern, child care assistant, volunteer or other persons, submit information and details disclosed by the individual on their application for employment, or otherwise known by the program, regarding the following:

- a. Criminal convictions in a state other than New Hampshire;
- b. Current criminal investigations in any state;
- c. Current investigations of child abuse or neglect in any state;
- d. Previous findings of child abuse or neglect in a state other than New Hampshire;
- e. Current investigation of juvenile delinquency for juvenile household members; or
- f. Previous adjudications of juvenile delinquency for juvenile household members; and

(3) If the information identified in (2)a.-f. above regarding any of the persons specified in (1) above is learned after the individual is initially approved for contact with the residents, submit the information to the department immediately upon discovery.

(p) The household and personnel form required pursuant to (o) above shall be completed in accordance with He-C 4001.02(h) and(i).

(q) Along with the household and personnel form specified in (o) and (p) above, the licensee shall submit to the department of safety a criminal record release authorization form, completed in accordance with He-C 4001.02(j) and (k), for each individual who is listed on the household and personnel form.

(r) When the individual who has been identified and approved by the department as program director leaves the position, the licensee or designee shall:

- (1) Notify the department of the departure of the program director within 10 days;
- (2) Within 10 days of the departure of the director, notify the department of the name of the individual who is temporarily serving as the program director and who meets at least the minimum requirements of a direct care staff; and
- (3) Within 120 days of the date of departure of the program director, notify the department and submit information and documentation required under He-C 4001.02(l) and (m) for the new, qualified program director.

He-C 4001.11 Health Requirements for Program Staff and Adult Household Members.

(a) A written record of physical examination shall be on file for all program employees and household members who will have regular contact with residents.

(b) The written record of physical examination required in (a) above shall contain or identify:

(1) The name of the examinee;

(2) The date of the examination;

(3) Any contagious or other illness that would affect the examinee's ability to care for residents or pose a risk to the health or safety of residents;

(4) A record of a negative Mantoux Tuberculin (TB) test for individuals who are determined by a licensed health care practitioner to be at high risk for exposure to Tuberculosis or the results of a chest x-ray and medical assessment when the individual has a positive TB test due to prior exposure;

(5) Any known limitations or restriction that would affect the examinee's performance of his or her residential child care responsibilities or pose a risk to the health or safety of residents;

(6) The signature of the licensed health care practitioner and date signed; and

(7) The typed or printed name and telephone number of the licensed health care practitioner.

(c) The initial record of physical examination for newly hired program staff shall have been completed not more than 12 months preceding the date of hire or the date the individual began having regular contact with residents.

(d) When a newly hired program staff has not had a physical exam in accordance with (b) above, an appointment for a future physical exam shall be scheduled within 10 business days of the date the individual begins having regular contact with residents.

(e) Physical examinations required under (a) above shall be repeated at least every 3 years.

(f) A written record of the repeat physical examination required in (e) above shall be on file at the program within 60 days of the expiration date of the previous physical exam record on file at the program.

(g) When the program director or designee is aware that any program direct care staff, intern, child care assistant or volunteer have symptoms of illness that prevent them from being able to perform their duties or pose a health or safety risk to children, he or she shall prohibit that individual from caring for residents until the individual has received treatment which ensures that he or she does not have a communicable disease or is no longer symptomatic.

(h) When the program director or designee is aware that any program staff, intern, child care assistant, volunteer, resident, or household member has symptoms of a reportable communicable disease or is known to have a reportable communicable disease, the program director or designee shall contact the department's bureau of communicable disease control for instructions regarding:

(1) Whether the ill staff person is required to be excluded from the program;

(2) How to control the spread of contagious illness; and

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- (3) Reporting requirements in accordance with RSA 141-C:7 and He-P 301.
  - (i) The only exception to (h) above shall be for human immunodeficiency virus (HIV) infection, specifically the identity of any individual with HIV infection shall be held confidential in accordance with RSA 141-F:8.

He-C 4001.12 Communicable Disease Issues and Health Requirements for Residents and Other Children.

(a) Parental authorization for medical treatment shall be on the premises for each resident upon his or her first day of residence in the program, except for residents in short term placement, and available in accordance with He-C 4001.10(m).

(b) Physical examinations shall be completed for children admitted to the program as residents and children who reside on the premises of the program.

(c) A child health form or an equivalent record of physical examination documenting that a physical examination was completed within the past 12 months shall be on file for each child, as specified in (b) above, within 30 days of the date any child begins residing on the premises of the program.

(d) When a child has not had a physical examination as required in (c) above, the program shall schedule an appointment for a future physical exam within 10 business days of the date the child begins residing at the program.

(e) The child health form or equivalent record of physical examination required under (b) above shall include at least the following:

- (1) The name and date of birth of the child or resident;
- (2) The date of the exam;
- (3) A description of any health condition that might affect the child or resident's participation in the program;
- (4) Documentation of immunizations, including dates immunized;
- (5) A history of illness and hospitalizations;
- (6) Reports of any screening or assessment;
- (7) Notations about the child or resident's physical, mental and social development;
- (8) Any known allergies; and
- (9) The signature of a licensed health care practitioner and the date signed.

(f) Physical examinations as required under (b) above shall be completed:

- (1) At least every 12 months for each child younger than 6 years of age, with a 60-day grace period to allow the program to obtain the updated physical examination record; and
- (2) At least every 24 months for each child 6 years of age or older, with a 60-day grace period to allow the program to obtain the updated physical examination record.

(g) Each resident shall have a dental examination based upon a schedule, which shall:

- (1) Take into account the needs of the resident as determined by a licensed dentist; and
- (2) Provide for each resident to have a dental examination at intervals of 6 to 12 months.

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(h) If the program is unsuccessful in obtaining dental examinations in accordance with (g)(2) above, it shall document good faith efforts to schedule an exam.

(i) A written record documenting the date of the dental exam and treatment needed or provided, shall be maintained on the premises of the program in each resident's permanent record.

(j) Other medical exams and evaluations shall be completed for each resident as necessary to meet his or her medical needs.

(k) When a resident is believed to have a reportable communicable disease which was not diagnosed by a physician or other health care provider, the program director or designee shall report the known or suspected communicable disease to the department's bureau of communicable disease control in accordance with RSA 141-C:7 and He-P 301.

(l) The only exception to (k) above shall be for HIV infection, specifically, the identity of any individual with HIV infection shall be held confidential in accordance with RSA 141-F:8.

He-C 4001.13 Personal Hygiene.

- (a) Program staff and residents shall wash their hands as needed.
- (b) Individuals who are participating in food preparation or food service shall:
  - (1) Wash their hands as often as necessary to remove soil and contamination and prevent cross contamination;
  - (2) Cover any cuts or abrasions with a secure bandage; and
  - (3) Not participate in food preparation or food service activities when they have:
    - a. An infection;
    - b. A cut or wound which is running or weeping; or
    - c. A communicable disease that could be spread via food preparation or food service.
- (c) Program staff shall not wash their hands after diapering or toileting in sinks that are used for food preparation or clean up.
- (d) Program staff shall encourage each resident to brush their teeth each morning and before going to bed, and to shower daily.
- (e) Each resident shall have an opportunity to have a shower or bath, with adequate hot water, once each day.



He-C 4001.14 Prevention and Management of Injuries and Emergencies.

(a) All program staff responsible for the care and supervision of residents shall be familiar with the program's procedures for managing injuries and emergencies and have access to information necessary to handle emergencies.

(b) Each building that residents will spend time in shall be equipped with a telephone that is operable and accessible to residents and staff for incoming and outgoing calls.

(c) At least one residential child care program staff person, who is trained and currently certified in cardiopulmonary resuscitation (CPR) and first aid by the American Red Cross, American Heart Association, Emergency Care and Safety Institute, National Safety Council or other nationally recognized organization or an individual certified by such organization to train, shall be present:

(1) In each building that is used as a residence at all times, when residents are present; and

(2) When residents are participating in any field trips off the premises of the residential child care program.

(d) The residential child care program director or designee shall obtain and maintain on file, available for review by the department, copies of current CPR and first aid certifications documenting coverage as required in (c) above.

(e) Each building and program vehicle that is used by residents shall be equipped with first aid supplies adequate to meet the needs of the residents.

(f) The first aid supplies shall be stored in a container that is accessible by residential child care program staff but not accessible to residents.

(g) First aid supplies adequate to meet the needs of the residents shall be available during all field trips.

(h) When the first aid treatment provided for minor scrapes or bruises is not effective or when a resident's injury is more than a minor scrape or bruise, residential child care program staff shall:

(1) If the injuries appear to be life threatening or appear to be severe, call emergency medical services for transport to a medical facility by ambulance;

(2) For all other injuries, take the injured resident to a licensed health care practitioner for medical evaluation and treatment;

(3) As soon as possible after the injury occurs, notify the person or agency responsible for the resident's placement and the parents of the injured resident whenever possible; and

(4) Complete a written incident report as specified in He-C 4001.23 (a) and (b) within 24 hours of the incident.

(i) The program director or designee shall notify the unit, the parent, and the person or agency responsible for the resident's placement within 24 hours of the death of any resident.

(j) The program director or designee shall provide a written report, detailing the circumstances of the death, to the unit and the person or agency responsible for the resident's placement, within 72 hours of the death of any resident.

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(k) In (i) or (j) above, in cases involving serious injury or death to a resident subject to restraint or seclusion in a program, the program shall, in accordance with and addition to the provisions of RSA 126-U:10, notify the commissioner, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the notification required in RSA 126-U:7, II.

(l) The program director or designee shall conduct fire drills once each month in each building that is used as residential child care space.

(m) Monthly fire drills required in (l) above shall be held at varying times, including night time hours.

(n) Programs shall activate the actual fire alarm system for the building for at least 2 of the monthly fire drills required each year.

(o) Programs shall ensure that all residents and program staff evacuate the building during each fire drill including, if applicable, descent using the route designated on the posted fire evacuation plan.

(p) The staff person conducting the fire drill shall complete a written record of each fire drill that shall:

(1) Be maintained on file at the program for one year; and

(2) Be available for review by the fire inspector and the department.

(q) The written record of fire drills required under (p) above shall include at least the following:

(1) The date and time the drill was conducted, and whether the actual fire alarm system was activated;

(2) Exits used;

(3) Number of residents evacuated and total number of people in the building at the time of the drill;

(4) Name of the person conducting drill;

(5) Time taken to evacuate the building;

(6) Any problems encountered; and

(7) A plan for correcting those problems.

(r) The program director or designee shall conduct a fire drill in the presence of a representative of the department or the local fire department upon request by either of those entities.

(s) Program staff shall develop and implement written policies and procedures for:

(1) Addressing threats of self-harm and suicide attempts by residents;

(2) Addressing threatening behaviors such as physical and sexual assaults on other residents or staff;

(3) Implementing an emergency preparedness plan, which shall:

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- a. Be based on the incident command system and coordinated with the emergency response agencies in the community in which the residential program is located;
  - b. Contain guidelines for personnel responsible for critical tasks, including, but not limited to the role of center incident commander, child care, medical treatment, and parental notification; and
  - c. Include response actions for natural, human-caused or technological incidences including, but not limited to:
    1. Evacuation, both within building and off-site;
    2. Lockout;
    3. Drop and cover;
    4. Lockdown;
    5. Reverse evacuation; and
    6. Shelter-in-place;
- (4) Screening any child who runs away for indications that the child may be a victim of human trafficking and notifying necessary personnel; and
- (5) Pursuant to RSA 126-U:2, managing the behavior of children, including how and under what circumstances seclusion or restraint is used.
- (t) In each building of the residential program, the written policies and procedures in (s) above shall be in an area easily accessible and known to residential staff.

He-C 4001.15 Medication Services.

(a) The licensee shall develop and implement written policies and procedures regarding administration, documentation, including a system for maintaining counts of controlled drugs, protocols for medication occurrences, and control and safety of medication that are consistent with the requirements of this section.

(b) Administration of medications to residents shall be performed by authorized staff, registered nurse (RN), licensed practical nurse (LPN) or licensed health care practitioners, in accordance with the resident's treatment plan and the licensee's policies.

(c) Authorized staff shall know and understand the program's written policies and procedures regarding the administration, control and safety of medication.

(d) All residents shall be initially assessed to determine the level of support needed specific to medication administration.

(e) The assessment pursuant to (d) above shall include the resident's:

- (1) Medication order(s) and medications prescribed;
- (2) Health status and health history; and
- (3) Ability to manage his or her medication, consistent with the resident's treatment plan.

(f) Program staff shall obtain, or document their efforts to obtain, oral or written consent from the parent prior to administering any new or changed prescription medications.

(g) When the resident's parent(s) is responsible for supplying the program with the resident's medication, program staff shall contact the parent 2 weeks prior to the end of the supply of medication.

(h) When the responsibility of providing care to a resident is transferred to persons outside the program, for example for a home visit, and the resident is taking prescription medication:

- (1) The pharmacy container(s) shall be given to the person responsible for the resident;
- (2) The program shall document the medication name, strength, prescribed dose, route of administration, and quantity of each medication provided to the persons outside the program, upon the resident's transfer of care; and
- (3) Upon the resident's return to the program, the program shall document the return of any medications including medication name, strength, prescribed dose, route of administration, and quantity of each medication with a description of why the medication was not given as the medication order stated.

(i) Authorized staff shall administer only those prescription medications for which there is a medication order.

(j) Authorized staff shall administer medications only to the residents about whom they have current knowledge relative to their medication regimes.

(k) Authorized staff shall maintain a copy of each resident's medication orders in the resident's record.

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(l) Medication orders shall be valid for no more than one year unless otherwise specified by the licensed health care practitioner.

(m) Each medication order shall legibly display the following information:

- (1) The resident's name;
- (2) The medication name, strength, the prescribed dose and route of administration;
- (3) The frequency of administration;
- (4) The indications for usage of all medications to be used PRN; and
- (5) The dated signature of the licensed health care practitioner.

(n) Written orders from a licensed health care practitioner regarding any prescription medication that is to be administered PRN shall include:

- (1) The indications and any special precautions or limitations regarding administration of the medication;
- (2) The maximum dosage allowed in a 24-hour period; and
- (3) The dated signature of the licensed health care practitioner.

(o) In addition to (n) above, authorized staff shall administer PRN medication in accordance with:

- (1) A medication order; and
- (2) A PRN protocol approved by the licensed health care practitioner that includes the specific condition(s) for which the medication is given.

(p) Prior to the administration of medication, authorized staff shall obtain information specific to each medication, including, at a minimum:

- (1) The purpose and effect(s) of the medication;
- (2) Response time of the medication;
- (3) Possible side effects, adverse reactions, and symptoms of overdose;
- (4) Possible medication interactions; and
- (5) Special storage or administration procedures.

(q) In the event of a medication occurrence, an authorized staff shall forward written notification to the program director by the close of the next business day.

(r) When any medication that is administered by program staff results in serious adverse reactions including, but not limited to, impaired speech, mobility or breathing, semi-consciousness, or unconsciousness, program staff shall:

- (1) Immediately call 911 or notify a licensed health care practitioner for instructions regarding the need for emergency or other medical treatment;
- (2) Immediately comply with the instructions provided by the licensed health care practitioner;

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- (3) Remain with the resident until he or she is fully alert and oriented and has recovered all physical capabilities that had been impaired by the medication, or until responsibility for the resident's care is transferred to a licensed health care practitioner in a medical facility; and
- (4) Notify or document efforts to notify the parents within 24 hours.
- (s) Prior to administering medication to any resident, program staff shall complete and document training on medication safety and administration, as specified in (t) below.
- (t) Training in medication safety and administration, as required in (s) above, shall:
  - (1) Be delivered by a physician, APRN, RN, or LPN practicing under the direction of an APRN, RN or physician, or by another qualified individual;
  - (2) Be provided in person, via distance learning, a video presentation, or web-based; and
  - (3) Address the following:
    - a. The safe storage and administration of medication, including but not limited to:
      - 1. Administration of the correct medication;
      - 2. Administration of the correct dosage of the medication;
      - 3. Administration of the medication to the correct resident;
      - 4. Administration of the medication to the resident at the correct times and frequency;
      - 5. Administration of the medication to the resident by the correct method of administration;
      - 6. Infection control and aseptic procedures related to administration of medication; and
      - 7. Resident's rights regarding refusing medications;
    - b. Possible side effects and adverse reactions to the medications to be administered and required reporting regarding those issues;
    - c. Proper storage, disposal, security, error control and documentation as related to the medications to be administered;
    - d. Any other unusual occurrence related to the safe storage or administration of medication and reporting requirements regarding those issues;
    - e. Conditions or situations requiring emergency medical intervention; and
    - f. Methods of administration including, but not limited to oral, injection, topical application or inhalation.
- (u) In addition to (t) above, authorized staff shall complete 2 hours of training annually on medication safety and administration.

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(v) Documentation of training in medication safety and administration shall be maintained on file at the child care program available for review by the department.

(w) For each resident, program staff shall maintain medication information on file and available for review by the department, which includes, at a minimum:

- (1) A written medication order, as specified in (m) above, including special considerations for administration for each prescription medication being taken by a resident;
- (2) Written parental authorization to administer medication, if applicable;
- (3) The name and contact information of the parent, if applicable; and
- (4) Allergies, if applicable.

(x) In addition to (w) above, program staff shall maintain a daily medication log for each dose of medication administered to each resident.

(y) The medication log required in (x) above shall:

- (1) Be maintained on file in the program, available for review by the department;
- (2) Be completed by the authorized staff who administered the medication immediately after the medication is administered; and
- (3) For each medication prescribed, include at a minimum:
  - a. The name of the resident;
  - b. The date and time the medication was taken;
  - c. A notation of any medication occurrence or the reason why any medication was not taken as ordered or approved;
  - d. The dated signature of the authorized staff who administered the medication to the resident; and
  - e. For administration of a PRN, documentation shall also include the reason for administration.

(z) The licensee shall require that all telephone orders from a licensed health care practitioner or their agent, for medications, treatments and diets are documented in writing, including facsimiles, by the licensed health care practitioner within 24 hours.

(aa) In addition to (z) above, authorized staff shall record any changes regarding prescription medications in the resident's medication log.

(ab) All physician medication samples shall legibly display the information described in (m)(1)–(5) above.

(ac) No person other than a licensed health care practitioner shall make changes to the written order of a licensed health care practitioner regarding prescribed medication.

(ad) All medication maintained by the program shall be:

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- (1) Kept in locked storage accessible only to authorized staff;
- (2) Stored at the temperature and conditions recommended by the manufacturer or as directed on the prescription label;
- (3) Stored separately for each resident, and labeled with the resident's name to ensure correct identification of each resident's medication; and
- (4) Accompanied by:
  - a. The physician's written order, which may be the prescription label; and
  - b. The manufacturer's written instructions for dosage.

(ae) Medications such as insulin, inhalers and epi pens shall be permitted to be in the possession of a resident in accordance with the resident's ability, as specified in the resident's treatment plan.

(af) All medications belonging to staff shall be stored in a locked area, separate from residents' medications or otherwise inaccessible to residents.

(ag) The program director or designee may elect to have a supply of non-prescription medication available, including but not limited to acetaminophen, ibuprofen, aspirin, cold medicines, or antacids that may be administered to residents for minor illnesses, provided those medications are stored and administered in accordance with the requirements in this section.

(ah) All medication shall be kept in the original containers or pharmacy packaging and properly closed after each use unless otherwise allowed by law.

(ai) Any contaminated, expired or discontinued medication, whether prescription or over the counter, shall be destroyed within 7 days of identification as contaminated, expired or discontinued.

(aj) Destruction of prescription drugs under (ai) above shall:

- (1) Be accomplished by an authorized staff and witnessed by one staff; and
- (2) Be documented in the resident's medication record, including the legible, dated signature of the staff person who disposed of the drugs and the staff person who witnessed the disposal.

(ak) All medication shall be destroyed as per WD-DWGB-22-27 dated 2009.



He-C 4001.16 Residential Child Care Space.

(a) In all programs, space that is designated, inspected and approved as residential child care space shall not be used for any purposes or activities that could jeopardize the health or safety of residents or otherwise negatively impact the residential child care program.

(b) Residential child care programs shall provide:

(1) A living room or community space with comfortable furnishings, available and accessible to residents for regular and informal use for general relaxation and entertainment;

(2) Bedrooms that are separated by gender and that have:

a. A minimum of 50 square feet of floor space per occupant;

b. Ceilings that are at least 7 feet high at the highest peak;

c. An outside window; and

d. An operable door;

(3) An area that is suitable and available for private discussions and counseling sessions;

(4) Sturdy, comfortable furniture and furnishings, that are clean and in good repair;

(5) Bathroom facilities that provide residents with age appropriate privacy while changing clothes, showering, attending to personal hygiene, and using the toilet;

(6) When available on site, outdoor space that is maintained in a neat, safe, clean condition and is available to residents for active recreation; and

(7) Screens for all operable windows in the facility.

(c) If seclusion is used, then rooms used for seclusion shall be in compliance with the provisions of RSA 126-U:5-b.

He-C 4001.17 Health and Safety in the Residential Child Care Environment.

(a) Program staff shall maintain the residential child care environment free of conditions hazardous to residents, including but not limited to, the following:

- (1) Electrical hazards;
- (2) Guns, or live or spent ammunition;
- (3) Holes in flooring, loose floor tiles or loose throw rugs which present a slipping or tripping hazard;
- (4) Loose and flaking paint which is accessible to residents;
- (5) Unclean conditions, which demonstrate a lack of regular cleaning;
- (6) Adequate protections against insects and rodents; and
- (7) Garbage and rubbish stored in sanitary manner.

(b) When interior or exterior surfaces of a building built prior to 1978 are in deteriorating condition, including flaking, chipping and peeling paint, or are subject to renovations or construction, a U.S. Environmental Protection Agency certified Renovation, Repair, and Painting (RRP) contractor shall be utilized to make the deteriorated surfaces intact, in accordance with 40 CFR1.745.90(a) and (b)(2011) and He-P 1600.

(c) When there is information or evidence indicating that the building might contain asbestos hazards, the applicant, licensee, or designee shall submit evidence that the building has been inspected by a licensed asbestos inspector and is free of asbestos hazards or otherwise treated or contained in a manner approved by a licensed asbestos inspector.

(d) Program staff shall clearly label and store all toxic materials, including, but not limited to, cleaners, household chemicals and paint, separate from food items, in cabinets which are locked or otherwise inaccessible to residents.

(e) Notwithstanding (d) above, at the discretion of the program director, residents may be allowed to use household cleaning products to complete a specific task, provided the resident completing the task is under the supervision of program staff while the cleaning chemicals are accessible, and the cleaning products are not accessible to other residents not involved in the cleaning task.

(f) Program staff shall maintain on file at the residence documentation of current vaccinations as required by law for all pets and animals that are present on the premises of the program.

(g) Pets and animals that have been determined by the department to pose a health or safety risk to children shall not be permitted on the premises of the program, including, but not limited to, the following:

- (1) Bats;
- (2) Turtles;
- (3) Tortoises;
- (4) Snakes;
- (5) Iguanas;

- (6) Other lizards or reptiles;
  - (7) Hedgehogs;
  - (8) Parakeets; and
  - (9) Parrots and parrot-like birds.
- (h) All enclosed living areas used by residents shall:
- (1) Be ventilated by means of a mechanical ventilation system or one or more screened windows that can be opened, and will not pose a hazard to residents; and
  - (2) From September 1 through May 31, have a safe, functioning heating system, which is cleaned, serviced and maintained at least once annually and which ensures that whenever residents are present, or expected to arrive within one hour, the temperature is maintained at:
    - a. Not less than 65 degrees Fahrenheit during waking hours, except for areas being used for active physical exercise or recreation; and
    - b. Not less than 55 degrees Fahrenheit during sleeping hours.
  - (i) Program staff, child care interns, and volunteers shall not smoke or use tobacco products while they are responsible for the care of residents or within sight of residents, nor allow residents to smoke or use tobacco, have access to tobacco products or be exposed to second hand smoke.
  - (j) All living space and recreation areas used by residents shall be equipped with operable lighting sufficient to allow individuals to enter, exit and move about the premises of the program safely.
  - (k) All toys, equipment and learning materials shall be:
    - (1) In good repair;
    - (2) Safe;
    - (3) Free of lead paint or other poisonous material; and
    - (4) Cleaned as often as needed to keep them free of a build up of dirt.
  - (l) Licensees shall provide sufficient sturdy tables and chairs to ensure each resident's comfort for meals, snacks and for work or play at tables.
  - (m) Licensees shall provide each resident with a bed equipped with:
    - (1) A pillow and a firm mattress that is:
      - a. Clean;
      - b. In good repair;
      - c. Free from rips or holes in the fabric covering that would allow residents access to the interior components of the mattress;
      - d. Cleaned and sprayed with a disinfecting spray before being used for a new resident; and

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- e. Replaced or sanitized promptly if soiled by urine, feces, blood or vomit; and
- (2) Adequate bedding to insure his or her comfort that is cleaned and maintained as follows:
- a. Sheets and pillow cases shall be cleaned at least once each week and more frequently if soiled; and
  - b. Blankets, comforters, bedspreads and mattress covers shall be cleaned at least once each month and more frequently if soiled.
- (n) Programs shall provide separate sleeping and bathroom facilities for staff and family members of staff who reside in the program.
- (o) Program staff shall maintain the outside play areas free of hazards.
- (p) During activities conducted in the water, including wading, swimming and boating, the following shall apply:
- (1) All activities shall be supervised in accordance with the following:
- a. Program staff shall provide close supervision to residents at all times, to include a ratio of one staff to no more than 4 residents when no lifeguard is present;
  - b. At least one staff person who is currently certified in CPR and first aid shall be present with the residents at all times;
  - c. At least one staff person who has completed training in water safety shall be present with the residents at all times;
  - d. A rescue buoy, ring buoy, or water rescue throw bag shall be brought to or present at all swimming and boating activities where there is no lifeguard present; and
  - e. Notwithstanding a. through d. above, a program may allow a resident to be at a water activity independently, if the program director provides a written and dated authorization, after assessing the following:
    - 1. A resident's swimming ability, such as whether he or she has completed a Red Cross or other recognized swimming program;
    - 2. A resident's ability to be independent;
    - 3. Under what circumstances the resident may be at a water activity independently; and
    - 4. Whether or not a lifeguard must be on duty or a parent or other adult must be present at the water activity; and
- (2) All pools used as part of the residential child care operation shall be maintained in accordance with the printed instructions of the manufacturer or installer regarding cleaning, filtration and chemical treatment, and the following:
- a. Swimming pools shall be secured in a manner that is childproof and lockable; and
  - b. Pool gates, fences or other barriers as required in a. above shall be locked at all times, except when the residents are involved in an allowable water activity in the pool.

(q) Program staff shall comply with the following food service requirements:

- (1) All foods that will be served to residents shall be:
  - a. Free from spoilage, filth or other contamination;
  - b. Stored in a clean dry location;
  - c. Protected from sources of contamination;
  - d. Stored in containers at least 6 inches above the floor;
  - e. Stored separate from non-food items that could contaminate food or be mistaken for food;
  - f. Stored in the original containers or in labeled containers designed for food storage; and
  - g. Stored, handled and prepared in a manner that protects against cross contamination between uncooked meat, poultry or fish and other food items;
- (2) Canned goods that are dented, bulging or rusted shall not be served to residents;
- (3) All perishable foods which are to be served to residents shall be stored at temperatures of 41 degrees Fahrenheit or below in a refrigerator and at 0 degrees Fahrenheit or below in a freezer;
- (4) Refrigerators and freezers used to store foods that will be served to residents shall be clean;
- (5) Refrigerators and freezers used to store foods that will be served to residents shall be equipped with non-mercury, food-grade thermometers; and
- (6) Food contact surfaces shall be easily cleanable, smooth, free of cracks, breaks, and open seams or similar difficult to clean imperfections and kept clean.

(r) Toys or other items which are routinely mouthed by residents shall be cleaned and sanitized after each use by a resident, and at the end of each day.

(s) Residents who have developmental delays and are likely to put objects in their mouths, shall be closely supervised when they have access to the items noted in (t)(1)c. and (11) below.

(t) Program staff shall comply with the following child age related environmental health and safety requirements:

- (1) Residents younger than 6 years of age shall not have access to the following:
  - a. Cords or strings long enough to encircle a resident's neck, including but not limited to pull toys, telephone cords and window blind cords;
  - b. Balusters which are spaced more than 3 1/2 inches apart on handrails and guardrails on play structures, lofts, stairs, steps, decks, porches, balconies or other barriers;
  - c. Sharp knives and sharp objects or objects with sharp edges, except that, at the discretion of program staff and under close supervision, program staff may allow use of scissors or knives for specific cooking projects, craft projects or meal times;

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- d. Unstable or easily tipped heavy furnishings or other heavy items which, if not secured to the wall or floor or both, could easily fall on residents and would be likely to cause injury; and
  - e. Toy boxes and any other chest type storage facilities that have a lid that does not have a safety lid support;
- (2) Play areas accessible to residents younger than 6 years of age shall be enclosed by a fence when the department determines that the play area is unsafe because it is located on a roof, or adjacent to any of the following:
- a. A street or road; or
  - b. Any dangerous areas, any swimming pool, or any body of water;
- (3) All fencing required under (2) above shall:
- a. Be designed to restrain residents from climbing out of, over, under or through the fence;
  - b. Have a child proof self-latching device on any gates; and
  - c. Be maintained in good repair, free of damage or wear that could expose residents to hazards;
- (4) When accessible to residents younger than 6 years of age, ground area under and extending at least 39 inches beyond the external limits of outdoor play equipment which would allow a resident to fall from a height of more than 29 inches shall be constructed and maintained at all times with an energy absorptive surface, including but not limited to sand, bark mulch, pea stone, soft wood chips or rubber mats manufactured for use as gym mats;
- (5) The energy absorptive material required in (4) above shall be:
- a. Maintained at a depth of at least 8 inches; and
  - b. Checked and raked regularly to remove any foreign matter, correct compaction and increase absorption;
- (6) Adult toilets and hand washing sinks used by residents younger than 6 years of age shall be equipped with footstools or platforms;
- (7) Foot stools or platforms required in (6) above shall:
- a. Have a non-porous finish that is easily cleanable; and
  - b. Be designed to prevent tipping;
- (8) The fall zone under and around all indoor swings, slides and climbing equipment from which a child could fall from a height of more than 29 inches shall be covered with mats designed for gymnastics, if they are accessible to or will be used by residents younger than 6 years of age;
- (9) Children younger than 3 years of age shall not have access to stairs or steps that are not equipped with safety gates;
- (10) Baby walkers with wheels shall be prohibited in all programs;

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(11) Residents younger than 4 years of age shall not have access to toys, toy parts and other materials which pose a choking risk or are small enough to be swallowed, such as coins and balloons;

(12) There shall be an individual crib or playpen for each resident 12 months of age and younger; and

(13) Cribs and playpens required under (12) above shall:

- a. Not be stacked;
- b. Be free of cracked or peeling paint, splinters, and rough edges;
- c. Have no more than 2 3/8 inches between slats;
- d. Have no missing, loose, broken, or improperly installed parts, screws, brackets, baseboards or other loose hardware or damaged parts on the crib or mattress supports;
- e. Not have corner posts that extend more than one sixteenth of an inch above the end panels;
- f. Not have cutouts in the headboard or footboard;
- g. Not have holes or tears in the mesh walls or in the material that connects the walls to the bottom of the crib or play pen; and
- h. Have mattresses which:
  1. Are in good repair, free of rips or tears; and
  2. Fit the crib or playpen so that space between the mattress and the crib or playpen does not create a suffocation hazard.

He-C 4001.18 Water Supply, Septic Systems, Bathroom Facilities.

(a) The licensee shall supply a safe supply of water under pressure which is available for drinking and household use in accordance with the following:

(1) Hot water under pressure, which measures at least 100 degrees Fahrenheit, shall be available at all sinks, showers and bathtubs located in living space that is used by residents during operating hours;

(2) Hot water at taps that are accessible to residents shall be regulated to maintain a temperature at the tap of not higher than 120 degrees Fahrenheit;

(3) In accordance with Env-Dw 700, a program which cares for more than 24 residents, and which has its own independent water supply that is considered to be a non-transient non-community water system, subject to regulation by the department of environmental services, shall have on file, available for review by the health officer and the department, a written document which lists the United States environmental protection agency identification number of the system, assigned by the New Hampshire department of environmental services;

(4) Programs which have their own independent water supply and are caring for 24 or fewer residents shall maintain on file, available for review, evidence that their water supply has been tested in accordance with the following:

a. In accordance with Env-Dw 700, water testing shall be performed by the department of environmental services laboratory or by an independent water testing lab certified by the department of environmental services to perform such tests;

b. Water testing for bacteria and nitrates shall be repeated at least annually and written results of those tests maintained on file at the program, available for review by the health officer and the department;

c. For new applicants, documentation that not more than 90 days prior to the date the application is received by the department the water has been tested for bacteria, nitrates, nitrites and lead and determined to be at acceptable levels in accordance with the following:

1. Env-Dw 709 for bacteria;

2. Env-Dw 711 for nitrates, and nitrites and

3. Env-DW 714 for lead; and

d. For renewal of license, documentation that on an annual basis, water has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Dws 709 for bacteria and Env-Dws 711 for nitrates; and

(5) Any program that has its own water supply and whose water has been tested and has failed to meet the acceptable levels identified in this section, or as required by the department of environmental services shall:

a. Immediately contact the department to report that finding, and provide the department with a plan for how it will ensure that residents will not be at risk from exposure to the unsafe water; and



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b. Unless an extension is authorized, within 10 days of the date the program learns that they have a failed water test, submit to the department a written plan which details what action will be taken to correct the unsafe condition of the water and a date by which that action will be complete.

(b) Programs shall ensure that there are functional sewage disposal facilities designed to accommodate the license capacity of the program, in accordance with the following:

- (1) There shall be no visible sewage on the grounds;
- (2) There shall be flush toilets in working order connected to a sewage disposal system; and
- (3) Any program whose septic system is showing signs of failure, shall:
  - a. Immediately make arrangements with a contractor licensed to evaluate and repair or replace septic systems to:
    1. Make temporary repairs to the septic system to correct the problem so that the program may continue to operate; or
    2. Make permanent repairs to the septic system or replace the septic system;
  - b. Immediately contact the local health officer to inform him or her of the problem;
  - c. Immediately contact the department to verbally report the problem, and give the department a plan for how it will immediately provide that:
    1. All required bathroom units function properly; and
    2. Residents will not be exposed to any risks from the failed septic system;
  - d. Within 10 days of the date that program staff first notice signs indicating that the septic system is in failure, submit to the department a written plan, which includes:
    1. What action has been taken to correct the failed septic system;
    2. The date by which that action will be completed; and
    3. An explanation of how the program will ensure that the requirements in (b) (3) c. 1. and 2. above will continue to be met until repair or replacements are completed; and
  - e. Request an extension to d. above which the department shall grant if additional time is necessary to develop a written plan and the safety and well-being of the residents is maintained.

(c) Programs shall ensure that in each building in which residents reside, for every 4 residents there shall be one bathroom unit that is accessible to residents and equipped with:

- (1) An operable door; and
- (2) A properly functioning sink, toilet and shower or tub.

(d) Programs shall maintain bathroom facilities in accordance with the following:

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- (1) At least once each day and whenever visibly soiled, sinks, toilets, commodes, foot stools, potty chairs and adapters shall be cleaned to remove visible dirt and sanitized;
- (2) Toilet paper, individual cloth or paper towels and individual bar or liquid soap shall be available and accessible to residents and staff;
- (3) Bathrooms shall have a means of outside ventilation; and
- (4) Bathroom floors and other surfaces shall be cleaned at least weekly, and more often when obviously soiled.

(e) In addition to the requirements for toilets set forth in (c) above, programs that serve residents younger than 3 years of age shall:

- (1) Provide additional child size toilets, adult toilets with adapters, or potty chairs to meet the needs of such residents;
- (2) Place potty chairs within easy access to a toilet and sink to allow program staff to proceed to the toilet to empty the potty chair and proceed to the hand washing sink after toileting without having to open doors or gates, or have physical contact with other residents;
- (3) Not place potty chairs or commodes in food preparation areas or food service areas; and
- (4) Empty and sanitize each potty-chair and commode receptacle after each use.

(f) Programs serving diapered residents and residents who are not toilet trained shall have a designated diaper changing area that:

- (1) Is not located in kitchens, food preparation or food service areas or on surfaces where food is prepared or served;
- (2) Is located adjacent to or in close proximity to a hand washing sink to allow access for hand washing without having to open doors or have physical contact with other residents;
- (3) Has a non-porous, washable surface, which shall be sanitized after each diaper change and used exclusively for diaper changing;
- (4) Contains a foot-activated receptacle for disposal of soiled disposable diapers and cleansing articles; and
- (5) Is equipped with a sink used for adult and resident hand washing before or after diaper changing or toileting.

He-C 4001.19 Requirements for Program Staff.

- (a) Program staff shall:
  - (1) Relate with residents in a professional, respectful manner; and
  - (2) Have the ability to identify the needs and problems of the children and possess skill in planning and implementing services of the program.
- (b) The program director or designee shall, for each staff person who is responsible for the care, supervision or treatment of residents, have on file available for review by the department, documentation of job qualifications such as:
  - (1) All required education, such as a diploma, transcripts, certificates or degrees; and
  - (2) All required training and experience, as set forth on an application form or resume.
- (c) For the purposes of this section, the field of human services shall include residential care, education, social work, mental health, law enforcement, psychology, sociology, pastoral counseling, theology, juvenile justice, medical services, corrections, substance abuse, social services or recreation or a related field.
- (d) The department shall accept the following education and training for program staff:
  - (1) Credit courses in human services, offered by a regionally accredited college or university, toward meeting pre-service and in-service training requirements;
  - (2) Non-credit courses in human services, which are offered by a regionally accredited college or university, toward meeting pre service and in-service training requirements at a ratio of 12 contact hours equal one credit; and
  - (3) Conference sessions, workshops, non-credit correspondence courses or other non-credit distance learning courses related to human services, that are open to individuals working in the residential child care field or to the public or both, and are presented by an instructor who has at least a bachelor's degree in human services or the subject area in which he or she is teaching, at a ratio of 12 contact hours equals one credit.
- (e) The program director shall meet at least one of the following pre-service training and education options:
  - (1) A master's degree in the field of human services, business administration or public administration, awarded by a regionally accredited college or university, plus 2 years of experiences as a professional in human services, which included administrative responsibilities; or
  - (2) A bachelor's degree with a minimum of 12 credits in the field of human services, business administration or public administration, awarded by a regionally accredited college or university, plus 3 years of experience as a professional in human services, which included administrative responsibilities.
- (f) Direct care staff shall be at least 21 years of age, have a high school diploma, high school equivalency certificate, or general equivalency diploma, and meet one of the following pre-service training and education requirements:

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- (1) An associate's or higher degree with a minimum of 12 credits in the field of human services, or other field related to residential care, awarded by a regionally accredited college or university;
  - (2) The equivalent of 2 years of full time experience working with children, either as a paid employee or volunteer;
  - (3) Any combination of college credits in human services and experience with children that total 2 years, as follows:
    - a. Two years of full time college equals 60 credits;
    - b. Two years of full time employment equals 3000 hours; and
    - c. One credit equals 50 hours of experience; or
  - (4) Documentation of 7 years of parenting experience.
- (g) When an applicant for a direct care staff member does not meet one of the provisions in (f) above:
- (1) An agreement shall be on file, signed and dated by the individual and the program director or designee, which includes a written plan for:
    - a. Attaining 12 credits in human services within 2 years from the date that the individual begins working as a direct care staff, with documentation on file of the completion of 3 credits every 6 months, beginning on the date of hire;
    - b. How the program will supervise the individual while they are working on acquiring the required 12 credits; and
    - c. Maintaining current documentation of earned credits on file in the individual's personnel file; and
  - (2) No more than 30% of staff shall be hired under the provisions of (g)(1)a. above.
- (h) A child care assistant, intern, or volunteer shall:
- (1) Be at least 18 years of age;
  - (2) Work at all times under the supervision of an on duty staff person who meets at least the minimum qualifications for the position of direct care staff;
  - (3) Not be responsible for the care or supervision of residents including treatment, discipline, physical intervention, counseling, or administration of medication; and
  - (4) Not be included in the staff to child ratio.
- (i) Supervision as referenced in (h) above shall require that a staff person who meets at least the minimum qualifications of direct care staff shall at all times have:
- (1) Knowledge of and accountability for the activity and whereabouts of the child care interns, child care assistants, or volunteers and the residents with whom he or she is working; or
  - (2) The ability to either see or hear the child care intern, child care assistant, or volunteer and the residents with whom he or she is working.

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(j) The exception to (i) above shall be that the program director or designee may at his or her discretion, authorize a specific child care assistant, intern or volunteer to be responsible for one or more residents during time limited, specific activities, either indoors or outdoors, including off premises.

He-C 4001.20 Staffing.

(a) Program staff shall provide care and supervision at all times to ensure that residents are safe and that their needs are met, according to their developmental level, age, and emotional or behavioral needs.

(b) In all programs there shall be a program director that assumes responsibility for the daily operation of the program.

(c) Programs shall at a minimum maintain the following staff to resident ratios and retain documentation of it for a 6-month period:

(1) Independent living homes shall maintain a minimum staff to resident ratio of one staff person to 8 residents during awake hours and one staff person to 12 residents during sleeping hours; and

(2) All other programs shall maintain a minimum staff to resident ratio of one staff person to 6 residents during awake hours and one staff person to 12 residents during sleeping hours.

(d) Notwithstanding the required minimum staff to resident ratios specified in (c) above, when a staff person takes one or more residents off the premises for a routine trip, such as a medical or dental appointment, recreation or social activity, the program may have one fewer staff person with the residents who will remain on the premises of the program, provided that:

(1) The program director or designee has authorized the reduced staff to resident ratio, based upon his or her determination that the staff remaining on the premises of the program can meet the individual needs of each resident; and

(2) In no case shall the staff to resident ratio go below one to 12.

(e) Notwithstanding the staff to resident ratios set forth in (c) and (d) above, when a resident's treatment plan requires that a resident needs a staff to resident ratio that is more stringent than the required staff to resident ratios, the program shall comply with the resident's treatment plan.

He-C 4001.21 Programming Requirements for Residents.

(a) Program staff shall, with input from the person or program placing the resident, have referral information on each resident, including:

- (1) The reason for the placement;
- (2) The anticipated length of stay;
- (3) The contact information for the parent or guardian; and
- (4) The contact information for the person or program placing the resident.

(b) Except for residents in short term placement, a written treatment plan shall be in place for each resident no later than 30 days from the date of admission.

(c) The written treatment plan required in (b) above shall identify:

- (1) The resident's physical, social, behavioral, medical, and educational needs; and
- (2) How the program will meet those needs.

(d) Program staff shall review and modify the written treatment plan required in (b) above as the resident's needs change.

(e) Once the written treatment plan required in (b) above is developed, program staff shall familiarize themselves with the identified needs of each resident, and implement the plan.

(f) The program director or designee shall:

- (1) Not rely upon residents to maintain the facility; and
- (2) Only allow residents to perform work inside or outside the program which is:
  - a. Compliant with child labor laws and regulations; and
  - b. Consistent with the resident's age and abilities.

(g) Program staff shall:

- (1) Plan daily activities that promote healthy development and provide for social relationships, creative activities, hobbies, and participation in neighborhood, school, and other community groups appropriate to the age, developmental level, and needs of each resident;
- (2) Provide that work assignments for the resident do not interfere with the regular school programs, study periods, recreation or sleep;
- (3) Provide each resident with clothing that is individually fitted and appropriate to the season;
- (4) Instruct each resident regarding good health practices, including proper habits in eating, bathing and personal hygiene;
- (5) Provide each resident with a clean towel and washcloth weekly, or more often if towels or washcloths become soiled or odorous; and

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- (6) Provide each resident with necessary individual toilet articles and supplies for personal grooming and hygiene suitable to their age and needs.
- (h) Each child shall have education and training, including:
  - (1) Regular school attendance as required by law; and
  - (2) The opportunity to complete high school or the opportunity for vocational guidance.
- (i) Academic programs within the facility shall meet the requirements of the New Hampshire department of education.
- (j) Each child shall be given the opportunity to practice his or her religious beliefs.



He-C 4001.22 Discipline.

(a) Program staff shall:

- (1) Establish and make residents aware of rules or limits for acceptable behavior which are consistently applied, realistic, designed to promote cooperation and respect and are appropriate and understandable to the development level of the resident; and
- (2) Make residents aware of the consequences of not complying with the established limits or rules for acceptable behavior.

(b) Program staff shall not:

- (1) Abuse or neglect residents;
- (2) Use corporal punishment;
- (3) Attempt to control any resident's behavior by actions which are humiliating, threatening, shaming, frightening or otherwise damaging to residents;
- (4) Withhold food from residents;
- (5) Shame, humiliate or discipline any resident for toileting accidents;
- (6) Prevent a resident from using bathroom facilities, except as necessary to protect a resident's safety, as documented in the resident's case plan or treatment plan;
- (7) As a means of discipline or punishment:
  - a. Require or deny residents sleep or rest;
  - b. Require residents younger than 6 years of age to go to their crib, bed or playpen;
  - c. Withhold a resident's shoes or clothing, except as necessary to protect the resident's health or safety or to prevent the resident from running away;
  - d. Require a resident to perform physical exercise or perform tasks, which are humiliating, unusual or physically exhausting; or
  - e. Use group punishment for misbehaviors of individuals except when documented as part of the treatment plan;
- (8) Use sensory deprivation;
- (9) Use mechanical restraints, and specifically any equipment, material or device that is applied to a resident for the purpose of restricting his or her movement or activity; or
- (10) Allow residents to discipline other residents.

(c) Each use of time out shall:

- (1) Not be in a locked room;
- (2) Be appropriate to the resident's developmental level and circumstances; and
- (3) Be limited to the minimum amount of time necessary to:

- a. Allow the resident to regain self-control;
- b. Be effective as a consequence; or
- c. Protect the safety of the resident in time out or other residents.

(d) The applicant, licensee, program director and program staff shall take prompt action to protect residents from abuse, neglect, corporal punishment, or other mistreatment by any individual.

(e) Program staff shall use restraint in accordance with RSA 126-U.

(f) Program staff shall use seclusion in accordance with RSA 126-U.

(g) The staff person in charge shall evaluate each use of seclusion at least every 60 minutes to determine if further use of this intervention is necessary.

(h) Each use of seclusion or restraint shall be documented on an incident report in accordance with He-C 4001.23, He-C 4001.14(s)(5), and RSA 126-U:7.

(i) The program director, treatment coordinator or designee shall review the documentation regarding each use of seclusion no later than one working day after its use, and sign and date the documentation.

(j) Before any program staff participates in a physical intervention or the use of seclusion he or she shall have completed a curriculum in physical intervention techniques that is designed to protect the child from risk of harm to self, others, property or the public.

(k) Physical intervention methods used shall be consistent with the curriculum required in (j) above and be reviewed annually with program staff to maintain competency.

(l) Physical intervention shall be used only:

(1) After less restrictive behavior management techniques have been tried and found to be ineffective in helping the resident gain control; and

(2) When necessary to:

- a. Ensure the physical safety and security of the out of control resident, or other residents;
- b. Prevent harm to program staff or other persons; or
- c. Prevent serious damage to property.

(m) To reduce the risk of injury to a resident as a result of physical intervention, program staff shall use the minimum amount of force necessary to control the resident.

(n) During any physical intervention process, program staff shall evaluate the resident throughout the process, to ensure that the resident is not being injured, and to determine whether continued physical intervention is necessary.

(o) If a physical intervention continues for longer than 60 minutes, program staff shall contact the program director or designee, so that he or she can evaluate the need for continued physical intervention and the need for services from law enforcement, or a licensed health care practitioner.

He-C 4001.23 Incident Reports.

(a) Program staff shall complete a legible, written incident report whenever there is an incident, as defined in He-C 4001.01 (u).

(b) Incident reports shall include, at a minimum, a detailed description of the incident including:

- (1) The date;
- (2) The beginning and ending time of the incident;
- (3) What led to the incident;
- (4) Where the incident occurred;
- (5) What occurred;
- (6) Identification of all parties involved;
- (7) How the incident was resolved including the type of intervention used, if any; and
- (8) For uses of seclusion, restraint, or other intentional physical contact with a child which is in response to a resident's aggression, misconduct, or disruptive behavior, in addition to (1)-(7) above, the following:
  - a. Authorization by the staff in charge; and
  - b. Documentation as required by He-C 4001.14(s)(5) and either RSA 126-U:7 or RSA 126-U:10.

(c) Incident reports shall be maintained as part of the involved resident's records and be made available on the premises of the program for review by the department.

(d) Program staff shall provide the resident's parents with information regarding incident reports on the next business day, which shall include all of the information included on the incident report.

(e) If the parent(s) do not have a telephone or cannot be reached, program staff shall document their efforts to notify the parent(s) and send a written copy of the incident report to the parent(s).

(f) For uses of seclusion, restraint, or other intentional physical contact with a child which is response to a child's aggression, misconduct, or disruptive behavior, program staff shall notify the resident's parents or guardians in accordance with RSA 126-U:7 including verbal and written documentation.

He-C 4001.24 Nutrition.

(a) Programs shall offer residents 3 meals and 2 snacks each day that meet US Department of Agriculture dietary allowances.

(b) Residents shall not be denied meals or snacks for any reason except according to a physician's order.

(c) No resident shall be secluded at mealtime unless he or she poses a risk of harm to himself, herself, or others.

(d) Residents shall not be coerced to eat against their will, except by written order of the resident's licensed health care practitioner.

(e) Programs shall meet the nutritional needs of each resident on medically prescribed special diet.

He-C 4001.25 Transportation and Trips.

(a) Program staff shall bring on all field trips, a copy of the authorization for medical treatment required under He-C 4001.12 (a), for each resident participating in the field trip.

(b) Residents who are transported by the program and during any program sponsored activity shall be transported in vehicles that are:

- (1) Driven by individuals who are at least 21 years of age and hold a valid driver's license;
- (2) Inspected in accordance with Saf-C 3200;
- (3) Maintained in a safe operating condition;
- (4) Registered in accordance with Saf-C 500;
- (5) Insured for personal liability, and medical payments; and
- (6) Free of obstructions on the floors and seats.

(c) Program staff shall be prohibited from using cell phones while operating a vehicle to transport residents.

(d) Program staff shall not permit any resident to remain in any vehicle unattended by program staff unless the resident is at a level of supervision that allows the resident to be unaccompanied by program staff for specific activities, and if driving, the resident has a valid driver's license.

(e) Keys to vehicles, including vehicles belonging to program staff, shall not be accessible to residents, except for a resident who is driving a vehicle pursuant (d) above.

(f) The number of individuals who are transported by the program, or transported in any vehicle during any program-sponsored activity, shall be limited to the number of persons the vehicle is designed to carry.

(g) Residents younger than 5 years of age who are transported by the program or transported in any vehicle during any program sponsored activity shall not be transported in any vehicle exempted from seat belt requirements under RSA 265:107-a, II.

(h) In all programs individual, age appropriate child restraints or seat belts shall be provided for and used by each resident in accordance with RSA 265:107-a.

He-C 4001.26 Independent Living Homes.

(a) Independent living homes shall comply with He-C 4001.01 through He-C 4001.25, and this section, except as provided in (b) below.

(b) Independent living homes shall be exempt from:

(1) He-C 4001.21(f)(1), regarding responsibility for the operation and maintenance of the facility;

(2) He-C 4001.17(d), specifically regarding resident's access to cleaning products;

(3) He-C 4001.21(g)(3), regarding clothing requirements; and

(4) He-C 4001.14(c)(1), regarding program staff certified in cardiopulmonary resuscitation (CPR) and first aid being present in each building when residents are present, provided that certified staff are on the premises.

(c) Program staff shall be on the premises when one or more residents are on the premises.

(d) Independent living homes shall not be required to have staff in the residence when residents are not on the premises of the program.

(e) Program staff shall provide an effective communication system between the residents of an independent living home and staff to ensure that program staff are available to address the needs of the residents at all times.

(f) Kitchen facilities shall be available and accessible for use by all residents and program staff.

He-C 4001.27 Short Term Placements.

- (a) The requirements in this section shall apply only to residents who are in short term placement.
- (b) Programs that admit residents for short term placements shall comply with He-C 4001.01 through 4001.25, and this section.
- (c) Within 5 calendar days of the date the resident is admitted to the program, the program shall obtain or document efforts to obtain the following for each resident:
  - (1) Written authorization for emergency medical treatment, signed by the resident's parents, as required under He-C 4001.12 (a);
  - (2) Any history of childhood diseases;
  - (3) Any current medications prescribed for the resident;
  - (4) The date of the resident's last visit to a licensed health care practitioner;
  - (5) The date and reason for any previous hospitalizations and surgeries;
  - (6) Current medical problems;
  - (7) Any allergies to food or medications;
  - (8) Any special dietary needs or restrictions; and
  - (9) Any functional limitations.
- (d) Within 3 weeks of the date the resident is admitted to the program, a record of physical examination completed in accordance with He-C 4001.12 (c) and (d) shall be completed or scheduled to be completed and available for review by the department.

He-C 4001.28 Homeless Youth Program.

(a) The requirements in this section shall apply only to programs which serve residents who are in homeless youth placement.

(b) Programs receiving homeless youth in accordance with RSA 170-E:25, II(d), shall do so for the purpose of providing shelter, basic needs, and services, which shall include an individual assessment, referral, housing, and case management to facilitate safety, permanency, well being, and independent living.

(c) The program shall submit to the department with the license application a written policy consistent with the mandated reporting statute RSA 169-C:29 through RSA 169-C:39, with a particular focus on neglect and abandonment.

(d) The homeless youth program shall provide training to all staff on the mandated reporting statute RSA 169-C:29 through RSA 169-C:39 and on the policy in (c) above.

(e) Homeless youth programs shall comply with RSA 170-E:27-a, except that the notification in RSA 170-E:27-a, I(c), shall be to the department's division for children, youth and families.

(f) Homeless youth programs shall document attempts to contact a parent or legal guardian of a resident 16 or 17 years of age in accordance with RSA 170-E:27-a.

(g) Agencies licensed as homeless youth programs which have a license for one or more additional types of residential child care programs shall submit to the department with the license application a policy consistent with RSA 169-C:16, II, and RSA 169-D:9-c, I, to address supervision, commingling, and safety for multiple populations.

(h) Homeless youth programs shall develop written protocols with local police department(s) regarding notification to the local police department for residents who are 16 or 17 years of age. In cases where local police departments refuse to participate in the development of such protocols, the homeless youth program shall document the efforts taken to engage them.

(i) Homeless youth programs shall comply with He-C 4001.01 through 4001.25, and this section with the exception of:

- (1) He-C 4001.12 (b)–(i); and
- (2) He-C 4001.21(b)–(e).

(j) Homeless youth programs shall maintain written documentation for each resident including the following information:

- (1) Name, sex and age of the resident;
- (2) Name, address and telephone number of an adult next of kin or guardian, if available;
- (3) Date of admission;
- (4) Referral source, if any;
- (5) Medical or health information, if available;
- (6) Any diseases or injuries diagnosed while in care; and
- (7) Educational status.



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(k) Homeless youth programs shall obtain urgent medical or dental care for each resident, as needed.

(l) If parental authorization for medical treatment, in accordance with He-C 4001.12(a), is not obtainable for residents who are 16 or 17 years of age, the homeless youth program shall document efforts to obtain such authorization.

(m) If urgent medical or dental treatment is not available due to lack of parental authorization, the program shall contact the division for children youth and families for assistance.

(n) Homeless youth programs shall provide residents with information about educational rights in accordance with the McKinney Vinto Act (42 USC 11431 et. seq.).

(o) Homeless youth programs shall make appropriate referrals for the resident based on the health, education, housing, and permanency needs of each resident including available community-based services and resources.

(p) Homeless youth programs shall develop a transition and discharge plan for each resident that addresses the resident's needs at the time of discharge.

## REPORTABLE COMMUNICABLE DISEASES

Following is a list of communicable diseases which are required to be reported pursuant to He-P 301.01-301.12, adopted 6/6/08. *All those diseases labeled with an asterisk (\*) should be reported within 24 hours. All others should be reported within 72 hours. Communicable Disease Control request prompt reporting of suspect and confirmed cases as well as any suspect outbreaks of illness.*

Communicable Disease Control can also provide you with advice on whether or not to exclude ill individuals from the program.

Please note the illnesses underlined below can be spread by routine physical contact, therefore, you may want to notify parents when anyone in the program contracts any of the underlined illnesses.

REPORT TO: COMMUNICABLE DISEASE CONTROL AND SURVEILLANCE SECTIONS: 1-800-852-3345/6  
Ext. 4496 or 271-4496.

- |   |  |
|---|--|
| ◆ Acquired Immune Deficiency Syndrome (AIDS)  | ◆ Listeriosis  |
| ◆ Anthrax*  | ◆ Lyme disease   |
| ◆ Babesiosis *  | ◆ Malaria  |
| ◆ Botulism*   | ◆ <u>Measles*</u>  |
| ◆ Brucellosis*  | ◆ <u>Mumps*</u>  |
| ◆ <u>Campylobacteriosis</u>   | ◆ <u>Neisseria meningitidis, invasive disease*</u>   |
| ◆ CD4 Lymphocyte counts   | ◆ <u>Pertussis*</u>  |
| ◆ Chlamydial Infection, including chlamydial pelvic inflammatory disease, pneumonia, conjunctivitis, cervicitis, and urethritis | ◆ Plague*  |
| ◆ Cholera*  | ◆ Pneumocystis pneumonia   |
| ◆ Coccidioidomycosis  | ◆ Pneumococcal disease invasive, (Streptococcus pneumoniae) *                              |
| ◆ Creutzfeld-Jakob Disease*   | ◆ Poliomyelitis*   |
| ◆ <u>Cryptosporidiosis</u>  | ◆ Psittacosis*   |
| ◆ Cyclospora Infection  | ◆ <u>Rabies in humans or animals*</u>  |
| ◆ <u>Diphtheria*</u>  | ◆ Rocky mountain spotted fever   |
| ◆ Ehrlichiosis  | ◆ <u>Rubella*, including congenital rubella syndrome</u>                                   |
| ◆ Encephalitis, arboviral only*(EEE, WNV)   | ◆ <u>Salmonellosis</u>   |
| ◆ <u>Escherichia coli 0157 Infection and other shiga toxin producing E-coli</u>   | ◆ <u>Shigellosis</u>   |
| ◆ Food Poisoning*   | ◆ Syphilis, including congenital syphilis syndrome   |
| ◆ <u>Giardiasis</u>   | ◆ Tetanus  |
| ◆ Gonorrhea, including gonococcal ophthalmia neonatorum, pelvic inflammatory disease (PID), and disseminated gonococcal disease | ◆ <u>Toxic shock syndrome(TSS) (streptococcal or staphylococcal)</u>                       |
| ◆ <u>Haemophilus influenzae, invasive disease*</u>  | ◆ Trichinosis  |
| ◆ Hantavirus pulmonary syndrome*  | ◆ <u>Tuberculosis disease*</u>   |
| ◆ Hemolytic uremic syndrome   | ◆ <u>Tuberculosis infection, latent</u>  |
| ◆ <u>Hepatitis, Viral: A*, B., E, G</u>   | ◆ <u>Tularemia*</u>  |
| ◆ Hepatitis, viral,: positive B surface antigen in a pregnant woman   | ◆ <u>Typhoid fever*</u>  |
| ◆ Human Immunodeficiency Virus  | ◆ Typhus   |
| ◆ <u>Invasive group A/B Streptococcus Disease</u>   | ◆ <u>Varicella*</u>  |
| ◆ Legionellosis   | ◆ Vancomycin Resistant Enterococci (VRE)   |
| ◆ Leprosy, Hanson's Disease   | ◆ Vancomycin Resistant Staphylococcus aureus*(VRSA)  |
|   | ◆ Vibrio Infection*  |
|   | ◆ Yersiniosis  |
|   | ◆ Unusual occurrence or cluster of illness which may pose a threat to the public's health* |

## ***Chapter 170-E. Residential Care and Child-Placing Agency Licensing***

**170-E:24 Purpose.** – The purpose of this subdivision is to provide for the licensing of residential care and child-placing agencies.

**Source.** 1990, 257:8, eff. Jan. 1, 1991.

**§ 170-E:25 Definitions.** – In this subdivision:

I. "Child" means any person under 21 years of age.

II. "Child care agency" means any person, corporation, partnership, voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, apart from the parents, in any facility as defined in this subdivision and maintained for the care of children. The types of child care agencies are defined as follows:

(a)(1) "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.

(b) "Group home" means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.

(c) "Specialized care" means a child care agency which regularly provides general care for children who are diagnosed as mentally ill, intellectually disabled, or physically disabled and who are determined to be in need of special mental treatment or nursing care, or both.

(d) "Homeless youth program" means a program, including any housing facilities utilized by such program, which receives any child for the purpose of providing services to facilitate independent living including all of the following program components: individual assessment, referral, housing, and case management. Such services may be provided directly by the agency or through one or more contracts for services.

III. "Child care institution" means a residential child care agency where more than 12 children are received and maintained for 24-hour care for the purpose of providing them with care or training, or both. The term "child care institution" shall not include:

(a) Any state operated institution for child care or juvenile detention established by law.

(b) Any institution, home, place or facility operating under a license pursuant to RSA 151:2.

(c) Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public elementary schools or high schools, or both, and which operates on a regular academic school year basis, and which is approved by the department of education.

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(d) Any bona fide summer camp.

IV. "Child-placing agency" means any firm, corporation or association which:

(a) Receives any child for the purpose of providing services related to arranging for the placement of children in a foster family home, group home, or child care institution; or

(b) Receives any child for the purpose of providing services related to arranging for the placement of children in adoption.

V. "Commissioner" means the commissioner of the department of health and human services.

VI. "Corrective action plan" means a written proposal setting forth the procedures by which a child care agency, child care institution, or child-placing agency will come into compliance with the standards set by rule adopted by the commissioner under RSA 541-A and subject to the approval of the department. The proposal shall include the time needed to assure compliance and the steps proposed by the agency to reach compliance.

VII. "Department" means the department of health and human services.

VIII. "Experiential/wilderness facility" means a child care institution which regularly provides specialized care and training in daily living for more than 12 children but fewer than 57 children, and meets the standards established by the commissioner by rule under RSA 170-E:34, I(a).

IX. "Guardian" means the guardian of the person of a minor, as defined in RSA 463.

X. "Independent living home" means a child care agency which regularly provides specialized services in adult living preparation in an experiential residential setting for persons 16 years of age or older who have a legal relationship with the department of health and human services and who can benefit from independent living training.

XI. "License" means a complete license issued to an operator of a child care agency, child care institution or child-placing agency, authorizing the licensee to operate in accordance with the term and conditions of the license, this subdivision, and the rules of the department.

XII. "Permit" means an issuance to an operator of a child care agency or child-placing agency which shall not be renewable except for good cause shown and which may be granted for a period not exceeding 6 months to agencies whose services the department finds are needed, but which are temporarily unable to conform to the qualification for a license.

XIII. "Regularly" or "on a regular basis" means supervision and care up to and including 7 days a week service, whether continuous or not, for all types of child care subject to the provisions of this subdivision.

XIV. "Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, uncle, aunt, niece, nephew, first cousin or second cousin.

XV. "Respite care" means substitute care provided by a person or agency which is licensed as a child care or child-placing agency.

### **§ 170-E:26 Exemptions; Child Endangerment Prohibited. –**

I. The definitions in RSA 170-E:25, II and III shall not apply to the following:

(a) Families housing exchange students or up to 4 children in summer exchange programs.

(b) Nonresident families visiting the state for purposes of a vacation who have in their care foster children from their home state and have written approval of the out-of-state agency which supervises the foster children.

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II. Families exempted from licensing pursuant to this section shall be subject to the provisions of RSA 170-E:27, II.

### **§ 170-E:27 License Required; Prohibition Against Child Endangerment. –**

I. No person may establish, maintain, operate or conduct any agency for child care or for child-placing without a license or permit issued by the department under this subdivision.

II. No person, whether licensed as a child care agency or institution or child-placing agency, or exempted from licensing pursuant to RSA 170-E:26, I, shall care for a child in a manner which endangers the health, safety or welfare of the child. For purposes of this paragraph, endangerment shall mean the negligent violation of a duty of care or protection owed to such child or negligently inducing such child to engage in conduct which endangers his health or safety. Licensees in violation of this paragraph shall be subject to the provisions of RSA 170-E:35. Persons exempted from licensing who are in violation of this paragraph shall be enjoined by a court of competent jurisdiction in accordance with the provisions of RSA 170-E:46 from caring for such child and may be enjoined, as the court may determine, from caring for other children. The court in its order for injunctive relief shall provide for removal and placement of the child who is the subject of the order with an organization licensed pursuant to this subdivision.

**§ 170-E:27-a Homeless Youth Programs; Special Provisions. –** Any child care agency which receives children for the purpose of providing a homeless youth program, as defined in RSA 170-E:25, II(d), shall be subject to the following provisions:

I. When a child 16 or 17 years of age contacts a homeless youth program requesting emergency shelter or homeless services, the program shall:

(a) Assess the child's essential needs, physical and mental health condition, and the circumstances that led the child to seek services.

(b) Upon completion of the assessment, but in no case later than 72 hours from the child's initial request for services, attempt to notify the child's parent or legal guardian that such child is present at the agency's facility. If compelling circumstances become evident during assessment which justify not notifying the parent or legal guardian, the program shall instead notify the department according to RSA 169-C:29. In this paragraph, the term "compelling circumstances" means circumstances which indicate that notifying the parent or legal guardian would subject the child to risk of abuse or neglect as defined in RSA 169-C:3.

(c) Notify the department no later than 30 days after the child's initial request for services if the program is unable to make contact with either of the child's parents or the legal guardian after reasonable attempts to do so.

II. Nothing in this section shall alter the legal relationship between parent or legal guardian and child, and in the absence of a court order directing otherwise, the program shall release the child to the custody of his or her parent or legal guardian upon request by the parent or guardian.

III. If the child is discharged from the program or voluntarily terminates participation in the program, the program shall immediately notify the parents or legal guardian; or the department if the parent or legal guardian has never consented to the child's placement in the program.

IV. A parent or legal guardian who consents in writing to the child's participation in a licensed homeless youth program shall not be deemed neglectful under RSA 169-C:3, XIX.

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V. The agency may charge the child a reasonable fee for the services provided the child is working and/or has other regular income and such fee is within his or her ability to pay.

### **§ 170-E:28 Applications; Compliance With State and Local Codes Required. –**

I. Any entity which intends to receive children, or arranges for child care or child placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care agency or institution or a child-placing agency shall be made to the department in the manner and on forms prescribed by rules adopted by the commissioner under RSA 541-A. Such forms shall provide for the birth names, birth dates and addresses of all persons having responsibility for care or placement of children or regular contact with children at the institution or agency. The agency or institution shall obtain approvals in accordance with state and local requirements pertaining to health, safety and zoning as applicable; and, if the department is satisfied that the person, institution, agency, or program conforms to standards prescribed for the type of child care or child placement for which application is made, the department shall issue a license in proper form designating on that license the type of child care or child placement, the name and address of the person or institution, the duration of the license and, except for child-placing agencies, the age range, the gender, and the number of children to be served.

II. Either the state fire marshal or the local fire department shall review compliance of the foster family home with applicable state fire safety laws and local ordinances. In conducting the review, the state fire marshal or local fire department shall apply the appropriate single family or multi-unit dwelling provisions of the applicable code.

### **§ 170-E:29 State Registry and Criminal Records Check for Foster Family Homes, Institutions, and Child-Placing Agencies. –**

I. Foster family homes, institutions, and child-placing agencies shall, within 30 days of adding new staff members responsible for care of or in regular contact with children, submit the names, birth dates, and addresses of such staff members to the department.

II. Except in the case of an initial application for a foster family home, the department shall, for every name submitted on the application and for each new staff member, or at each renewal, review the names, birth names, birth dates, and current and previous addresses of such persons against the state registry of founded abuse and neglect reports. The department shall submit the names, birth names, birth dates, and addresses to the state police files to obtain information about criminal convictions.

II-a. In the case of an initial application for a foster family home, the department shall conduct a background check of the prospective foster parents and any other adult living in the home. The background check shall consist of a fingerprint-based criminal record check of national crime information databases for the prospective foster parents and a central registry check for the prospective foster parents and any other adult living in the home.

(a) For the criminal record check required under this paragraph, the department shall submit the prospective foster parents' fingerprints to the department of safety, division of state police, for forwarding to the Federal Bureau of Investigation. Upon completion of the criminal record check, the division of state police shall forward the results to the department.

(b) The central registry check shall include a check of the department's central registry of founded reports of child abuse and neglect under RSA 169-C:35 and shall include a check of the child abuse and neglect registries in any other state in which the prospective

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foster parents or other adult living in the home has resided in the preceding 5 years. Information obtained from another state pursuant to this subparagraph shall be used only for the purposes of conducting the background checks.

III. If any individual whose name has been submitted for a check under this section has been convicted of a violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall deny the license, pending the development and implementation of a corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny the license or permit, revoke a license, or suspend a license pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his behalf to show that he does not pose a threat to the safety of children.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

### **§ 170-E:29-a State Registry and Criminal Records Check for Child Care Institutions and Child Care Agencies. –**

I. Child care institutions and child care agencies, with the exception of foster family homes, that are required to be licensed according to the provisions of this chapter shall, prior to making a final offer of employment to a person who will be responsible for the care of, or who will have regular contact with children, and upon adding a new household member, a current household member who turns 17 years of age, or other persons who will have regular contact with children, submit to the department, the names, birth names, birth dates, and addresses of such persons and other information required by the department as prescribed by rules adopted by the commissioner under RSA 541-A. The persons described in this paragraph shall submit directly to the department of safety a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any, to the department. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. The department of safety shall complete the criminal history records check and forward such record, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) The department shall, for every name submitted on an application and for each person for whom information is required to be submitted pursuant to paragraph I, review the names, birth names, birth dates, and current and previous addresses of such persons against the state registry of founded abuse and neglect reports.

(b) The department of safety shall submit the criminal history records release form to the

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New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(c) The costs of criminal history record checks shall be borne by the licensee; provided, that the licensee may require an applicant to pay the actual costs of the criminal history check of the employee.

III. Notwithstanding paragraph I, a licensee may make a final offer of employment and allow a person to begin working in the program while the results of the state and national criminal background check is pending provided that, prior to beginning employment, the applicant completes a sworn statement signed by a notary public or justice of the peace stating that he or she:

(a) Does not have any felony conviction in this or any other state.

(b) Has not been convicted of a sexual assault, assault including simple assault, any other violent crime, abuse, neglect, or any other crime that shows that they may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult.

(c) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect or exploitation of children.

IV. The results of the federal criminal background check shall be valid for 3 years. Prior to the expiration of that 3-year period, a person required to undergo a criminal background check pursuant to this section shall submit a new set of fingerprints and undergo a subsequent federal criminal background check. If a person who is or has been employed or volunteered at a child care institution or child care agency is offered employment or volunteers at another child care institution or child care agency or a child day care agency, the person shall, before entering employment or volunteering with the new agency, undergo a New Hampshire state criminal records check through the department of safety and shall complete a sworn statement as set forth in paragraph III.

V. If any person whose name has been submitted for a check under this section has been convicted of a violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the person is the applicant or owner, revoke or deny the license.

(b) If the person is a board member, household member, or child care institution or child care agency personnel, or any other person having regular contact with the enrolled children:

(1) Inform the child care institution or child care agency that the person poses a threat to children and give the program an opportunity to take immediate corrective action to remove the person from the program, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the person will not be on the premises of the child care institution or child care agency and shall have no contact with children enrolled in the child care institution or child care agency; and/or

(2) Suspend, deny, or revoke the license or permit if the child care institution or child care agency refuses to take corrective action as indicated in subparagraph (b)(1), or subsequently fails to comply with the corrective action plan approved by the department.

VI. If any person whose name has been submitted for this check has been convicted of a



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felony offense or violent crime deemed directly or indirectly harmful to children in child residential care, crimes against minors or adults, except crimes as provided in paragraph V, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license, permit, or registration pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the person poses a present threat to the safety of children. The investigation shall include an opportunity for the person to present evidence on his or her behalf to show that the person does not pose a threat to the safety of children.

VII. At the time the licensee is next due to renew the license, the licensee shall submit a notarized criminal conviction record release authorization form and a set of fingerprints to the department of safety for any existing employee or household member who is 17 years of age or older and who has not undergone a national criminal background check as of the effective date of this section. Upon receiving the results of the state and national criminal records check, if the licensee learns that a current employee has been convicted of any felony, a sexual assault, any other violent crime, assault including simple assault, abuse, neglect or any other crime that shows that they may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult, or has a founded allegation of abuse, neglect or exploitation against children, the licensee shall either terminate the employee or suspend the employee and promptly request a waiver from the department allowing the employee to resume working in the program. Upon receiving the results of the state and national criminal records check, if the licensee learns that a current household member has been convicted of any felony, a sexual assault, any other violent crime, assault including simple assault, abuse, neglect or any other crime that shows that the person may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult, or has a founded allegation of abuse, neglect or exploitation against children, the licensee shall take immediate corrective action to remove the person from the child care institution or child care agency, and, in conjunction with the department, develop a corrective action plan, approved by the department, which shall ensure that the person will not be on the premises of the child care institution or child care agency and shall have no contact with children residing in the child care institution or agency. If the licensee fails to take such corrective action, the department shall suspend the license until such time as the licensee does implement the corrective action, or it shall revoke the license.

VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

### **§ 170-E:30 Child Care Institution; Child-Placing Agency; Information Required. –**

In addition to the steps required in RSA 170-E:29, the department, upon receiving an application and authorization filed by a child care institution or child-placing agency in proper order, shall, in cooperation with the operator, examine the facility or agency, and investigate the program and person or persons responsible for the care of children. When the facility or agency is administered through an executive board, board of trustees, board of directors, or other governing body, the names, addresses, and any connection of individuals on such bodies with the facility or agency shall be included. The institution or child-placing agency shall obtain and provide receipts of approval of state and local requirements pertaining to health, safety and zoning, as applicable. If the department is satisfied that the institution or child-placing agency conforms to the standards prescribed

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for the type of facility or agency to be operated, a license shall be issued. The commissioner or his designee may inspect the facility or agency at any time.

### **§ 170-E:31 Issuance. –**

I. Licenses shall be issued in such form and manner as prescribed by rules adopted by the commissioner under RSA 541-A and, for foster family homes and specialized care, shall be valid for 2 years from the date issued, unless revoked by the department, or voluntarily surrendered by the licensee, or subject to conditions attached to the license which provide for a shorter license period than 2 years.

II. The department may provide dual licensure to a facility or child-placing agency. Such licensure shall be granted only upon application and shall be contingent upon a determination, by the appropriate licensing units consulting with each other, that the standards of both programs have been met without compromising any licensing requirements. If the licensing units are unable to agree, the final decision shall be made by the commissioner.

III. Licensure for child care institutions and child-placing agencies shall be valid as follows:

(a) Group homes and child care institutions: 3 years from the effective date of the license.

(b) Child-placing agencies: 4 years from the effective date of the license.

IV. The department shall make monitoring visits a minimum of once yearly each licensing period. At least one such visit during the licensing period shall not be announced in advance; however, such unannounced visit is optional for foster family homes. Clear and comprehensive records shall be maintained by the department on each licensed facility showing the dates and findings of each such visit. Such records shall be made available to the facility. If the facility is found not to be in compliance either with the statute or the rules adopted by the commissioner, a corrective action plan shall be submitted to the department. Failure to submit an acceptable plan shall result in license suspension or revocation.

V. The department may issue a 6-month permit to a newly established facility for child care, or to an established facility which has changed its physical location, to allow that facility reasonable time to become eligible for full licensure. The 6-month permit may be issued immediately upon completion of the necessary licensing inspections. If the language on such permit allows it, the facility may begin operation immediately without waiting for the state office to complete the processing of the application.

### **§ 170-E:32 License Renewal. –**

I. A licensed child care agency, child care institution, or child-placing agency shall file for renewal of its license 3 months prior to the expiration date of the license on forms prescribed by rules adopted by the commissioner under RSA 541-A.

II. The department, a duly licensed child-placing agency, or a person designated by the department as its agent, shall reexamine every child care facility for renewal of its license, including examination of the premises, program, and such records of the facility as the department considers necessary to determine that minimum standards for licensing continue to be met. If the department is satisfied that the person, institution, or child-placing agency continues to maintain the minimum standards established by rule for that category of child care or child-placing, it shall renew the license to operate.

### **§ 170-E:33 Record of Licenses. –**

I. The department shall keep in a central depository records of licenses issued under this subdivision and all monitoring reports that have been made relative to licensees. When a

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license is issued to a person or institution, the department shall give notice to the health officer and the fire department of the city or town in which the licensee is located stating the granting of such license and its terms. A like notice shall be given of any suspension or revocation of such license.

II. The license itself shall be considered public information and available for review by members of the public; information submitted in the application process, however, shall be private, confidential and not available for review.

### **§ 170-E:34 Rulemaking; Consultation. –**

I. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) Minimum standards for licensing which apply to the various types of facilities for child care and child placement. The department shall seek the advice and assistance of persons representative of the various types of child care and child-placing agencies in establishing such standards. The standards prescribed shall include:

(1) The operation and conduct of the person, institution, or child-placing agency and the responsibility it assumes for child care or child placement, or both.

(2) The character, qualifications, mental and physical ability and competence of the applicant as well as all persons directly responsible for the care and welfare of children served, or of persons who will be providing necessary care for children and maintaining prescribed standards, or of persons who will do both.

(3) The number of individuals or staff required to insure adequate supervision and care of the children provided the particular type of care.

(4) The appropriateness, safety, environmental health and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes, to provide for the physical comfort, health and care of children received.

(5) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the health and the physical and mental development of children served.

(6) Provisions to safeguard the legal rights of children served.

(7) Maintenance of records pertaining to the admission, progress, health and discharge of children.

(7-a) Provisions for the permanent retention of records pertaining to the placement of children for adoption, including maintenance of such records in the event that a licensed agency ceases to operate as a licensed child-placing agency.

(8) Filing of reports with the department, including format, frequency and content of such reports.

(9) Discipline of children.

(10) Protection and fostering of the particular religious faith of the children served, where applicable.

(11) Provisions to provide for a report of any new staff, paid or unpaid, or resident of the facility which shall include the name, birth name, date of birth and previous addresses of the person, or other information as required by rules of the department.

(12) Duties and responsibilities of the board of directors or other governing body of the facility or child-placing agency with respect to compliance with this subdivision and the standards relating to this subdivision as established by the department.

(13) Retention of records and, in the event the facility or child-placing agency is no longer functioning, transfer of records.

(b) Minimum standards for facilities for specialized care, where there are children

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diagnosed as mentally ill, intellectually disabled, or physically disabled, who are determined to be in need of special mental treatment or nursing care, or both, when the facility is not subject to licensure under RSA 151. The department shall seek the advice and recommendation of the department of education, as appropriate, regarding the residential treatment, education, and nursing care provided by the facility.

(c) The confidentiality of information gathered pursuant to RSA 170-E:28, 170-E:29, 170-E:33 and RSA 170-E:42.

(d) The procedures for the appeals processes provided by RSA 170-E:36, II and IV.

(e) Policy and procedures concerning the investigation of licensees and all disciplinary proceedings, including corrective action plans, against licensees.

(f) Compensation to foster family homes for the costs of caring for each child placed in their home.

(g) The release of information to persons receiving the child which pertains to the life and safety of the child either about to be placed or already in placement, and which may pertain to the life and safety of the persons who are receiving or who have received the child for placement, including any physical and mental health issues, history of abuse or neglect, behaviors that may be expected, and recommended ways of handling the child's problems. For purposes of this subparagraph, placement shall mean out-of-home placements, including placements for adoption.

(h) Establishing, maintaining, and directing a system of child care resource and referral pursuant to RSA 170-E:5-a.

II. The department, in applying the standards adopted by rule under paragraph I, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a licensee.

**§ 170-E:35 License or Permit Suspension, Revocation, or Denial.** – The department may suspend, revoke, deny, or refuse to renew any license, or revoke or refuse to issue a full license to any permit holder, whether or not the person, institution or agency is approved by a child-placing agency, if the licensee or permit holder:

I. Neglects or abuses children in his care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the supervision of children in his care;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license or permit issued;

V. Furnishes or makes any misleading or any false statement or report to the department or to the child-placing agency;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any reasonable time for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by rules adopted by the commissioner under RSA 541-A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility;

X. Refuses to display its license or permit or to make it readily available to view, if requested;

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XI. Fails to exhibit, meet or maintain financial or other resources, or both, adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, education and other essentials in the proper care, rearing, training and placement of children, so long as such lack of financial resources is not due primarily to delays in state payments for care;

XII. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it;

XIII. Continues to employ a person without taking corrective action, after receipt of written notification from the department that the person poses a risk to children, such notification including the basis for the department's determination that the risk exists; or

XIV. Fails to comply with the corrective action plan jointly developed between the department and the person, institution or agency.

XV. Demonstrates a repeated failure to cooperate with the department, other service providers, or the parents of a child who is placed with the child care agency, as necessary to implement the child's case plan or the department's treatment decisions.

### **§ 170-E:36 Notice and Hearing. –**

I. Should the department determine to suspend, revoke or deny, or refuse to renew a license or permit, it shall send to the applicant, licensee or permittee, by registered mail, a notice which sets forth the particular reasons for the determination. The suspension, revocation, or denial shall become final 10 days after receipt of such notice unless the applicant, licensee or permittee requests a hearing under paragraph II of this section.

II. Any applicant, licensee or permittee aggrieved by a decision of the department to suspend, revoke, deny, or refuse to renew a license or permit may appeal to the commissioner through an administrative hearings process. For purposes of carrying out the provisions of this section, the commissioner may, in accordance with the rules adopted by the department of personnel pursuant to RSA 541-A, appoint a hearings officer or officers, as necessary, to preside over such hearings. A hearings officer may affirm, deny or modify the decision of the department. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to procedures for the appeals process provided under this paragraph.

III. When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child care facility or child-placing agency violates any minimum standard prescribed by law or rule, or otherwise jeopardizes the health, safety, morals, well-being or welfare of children served by the facility or child-placing agency, the department shall include in its notice an order of closure directing that the operation of the facility or child-placing agency terminate immediately. In this event, the facility or child-placing agency shall not operate during the pendency of any proceeding for the review of the decision of the department, except under court order.

IV. Rehearings and appeals from a decision of the hearings officer shall be in accordance with rules adopted under RSA 541-A.

V. On or before December 31, 2010, and each year thereafter, the department shall submit a report to the chair of the house standing committee on children and family law relative to the number of license or permit suspensions, revocations, denials, and appeals for that year.

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**§ 170-E:37 Appeal.** – Any person aggrieved by any decision rendered after a rehearing held or an appeal brought under RSA 170-E:36, IV may appeal the decision to the superior court.

**§ 170-E:38 Operation Without a License.** – Whenever the department is advised, or has reason to believe, that any entity is operating a child care facility or child-placing agency without a license or permit, it may make an investigation to ascertain the facts. If it finds that the child care facility or child-placing agency is operating or has operated without a license or permit, the department may report the results of its investigation to the attorney general or to the appropriate county attorney for prosecution.

**§ 170-E:39 Advertising.** – A child care agency, child care institution, or child-placing agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting or offering care for a child for care or placement unless the person has obtained the requisite license or permit.

**§ 170-E:40 Investigation.** –

I. If the department has reason to believe that state or federal funds solicited and received by a corporation for conduct of a child care facility or child-placing agency are not being used for the purpose for which the funds were awarded, or are being fraudulently used by the corporation or its members, or purportedly are being used for a facility or child-placing agency which is actually defunct, or are being used for a facility or child-placing agency which no longer carries a valid license or permit, the department shall report these facts to the attorney general and request an investigation of the corporation to determine if the corporation should be dissolved or whether other action should be taken against the corporation or its members.

II. The department shall conduct an investigation of any complaint of violations of any licensing or operating standards against permitted or licensed child care or child-placing agencies. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

III. Records compiled during an investigation shall be confidential and shall not be made public by the department.

**§ 170-E:41 Oaths; Subpoenas.** –

I. The department shall have the power to administer oaths in any disciplinary proceedings.

II. Upon request of the commissioner, the attorney general shall be authorized, for good cause shown, to subpoena witnesses and to compel, by subpoena duces tecum, the production of papers and records in any disciplinary proceedings under this subdivision.

**§ 170-E:42 Records.** – Every child care facility and child-placing agency shall keep and maintain such records as the department prescribes pertaining to the admission, progress, health, and discharge or placement, or both, of children under the care of the facility or child-placing agency, and shall report relative to such matters to the department

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whenever called for, upon forms prescribed by rule. All records regarding children and all facts learned about children and their relatives shall be kept confidential by the child care facility, the child-placing agency, and the department.

**§ 170-E:43 Notice of Death.** – If any child under the control of any licensed child care agency or institution dies, the licensee shall give notice of such event to the department within 24 hours thereafter stating the date and cause of death, to the extent known, duration of the most recent illness, and the names and addresses of the attending physician and undertaker.

### **§ 170-E:44 Reports to the Department of Health and Human Services.** –

I. Any child care facility or child-placing agency receiving a child for care or supervision from a foreign state or country shall report that child to the department of health and human services in the same manner as it is required for reporting other children pursuant to RSA 170-A:1.

II. A person other than a licensed child care institution or child-placing agency shall not receive a child from a foreign state or country without prior notice to and approval of the department of health and human services. Any placement of children shall conform to RSA 170-A and RSA 170-B:28.

III. The department of health and human services may require a guarantee that a child accepted for care or supervision from a foreign state or country will not become a public charge upon this state.

IV. The department of health and human services may enter into agreements with public or voluntary social agencies headquartered in states adjacent to this state regarding the placement of children in licensed foster family homes within the boundaries of this state if the agencies meet the standards and criteria required for license as a child-placing agency in this state. The agreements may allow foreign agencies to place and supervise children for whom they have responsibility with this state without regard to paragraph I. These agreements shall, however, include a requirement that the agencies cooperate fully with the department in its inquiry or investigation into the activities and standards of those agencies, and provide that the department of health and human services may, at any time upon 15 days' written notice to an agency by registered mail, void the agreement and require the observance of paragraph I.

V. The department of health and human services shall perform its duties under this section with the approval of the commissioner.

### **§ 170-E:45 Penalty.** –

I. Any person shall be guilty of a misdemeanor who:

(a) Conducts, operates or acts as a child care facility or child-placing agency without a license or permit to do so in violation of RSA 170-E:27, I;

(b) Makes materially false statements in order to obtain or retain a license or permit;

(c) Fails to keep the records and make the reports required under this subdivision;

(d) Is required to obtain a license or permit under this subdivision and who advertises or causes to be published an advertisement for a service which is not authorized by any license or permit held;

(e) Violates any other provision of this subdivision or any rule adopted under RSA 541-A by the commissioner for the enforcement of this subdivision;

(f) Fails to comply with the requirements for notifying parents, legal guardians, or the department under RSA 170-E:27-a, I.

## Appendix B

II. Foster family homes which have not been licensed but which have been asked to receive children by the department or another child-placing agency on an emergency basis shall not be subject to the penalty provided in subparagraph I(a). The exemption provided in this paragraph is valid for a period of 30 days from the date of placement of the child in the home.

III. Each day a violation continues to exist shall constitute a separate offense.

**§ 170-E:46 Injunctive Relief.** – Any person may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this subdivision or of the rules adopted under RSA 170-E:34; and the court shall adjudge relief, by way of injunction, which may be mandatory or otherwise as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this subdivision and the rules adopted under it. In a prosecution under this subdivision, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship.

**§ 170-E:47 License Remains in Effect.** – Any license issued under this subdivision remains valid until its expiration date, unless revoked by the department, or until the date established by conditions placed on the license.

**§ 170-E:48 Retaliation Prohibited.** – A child care agency or child-placing agency license holder shall not retaliate, through discharge, harassment, or other discrimination, against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it. Such retaliation shall constitute grounds for license revocation.

**§ 170-E:49 Confidentiality and Investigations.** – The department may request and shall receive cooperation from other state agencies in connection with investigations and licensure. Because certain information kept by other state agencies and requested by the department may be confidential, the department shall strictly observe the confidentiality requirements of the agency from which it receives information.



This index is offered as a tool to help you find topics in these rules. It is not intended to be all-inclusive.

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