

Readopt with amendment He-E 720, effective 9-27-12 (Document #10191), to read as follows:

PART He-E 720 BUREAU OF ELDERLY AND ADULT SERVICES STATE REGISTRY

Statutory Authority: RSA 161-F:49

He-E 720.01 Purpose. The purpose of these rules is to describe:

- (a) The process for obtaining a confirmation of whether or not there is a match from the bureau of elderly and adult services (BEAS) state registry;
- (b) The confidentiality and expungement of information contained on the BEAS state registry; and
- (c) For an employer of a program which is licensed, certified, or funded by the department to provide services to individuals, the process and criteria for granting a waiver to employ a person whose name has been confirmed as a match on the BEAS state registry.

He-E 720.02 Scope. These rules shall apply to any person or agency seeking a confirmation of whether or not there is a match on the BEAS state registry or seeking a waiver relative to a match on the BEAS state registry pursuant to RSA 161-F:49, VII, and VIII, including:

- (a) All employers of programs which are licensed, certified, or funded by the department to provide services to individuals;
- (b) Any person considering employing a private citizen to provide personal care services;
- (c) Any person considering designating another to serve as his or her agent under a power of attorney or any type of durable power of attorney; and
- (d) Any individual, agency, or program which employs staff who provide direct services to individuals.

He-E 720.03 Definitions.

- (a) "Abuse" as defined by RSA 161-F:43, II, means any one of the following:
 - (a) "Emotional abuse" means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of a vulnerable adult;
 - (b) "Physical abuse" means the use of physical force which results or could result in physical injury to a vulnerable adult; or
 - (c) "Sexual abuse" means contact or interaction of a sexual nature involving a vulnerable adult without his or her informed consent".
- (b) "Applicant" means a prospective employee, contractor, consultant, or volunteer who, through an employer if hired, might be in contact with individuals.
- (c) "Bureau of elderly and adult services state registry (state registry)" means a database containing information on founded reports of abuse, neglect, or exploitation of vulnerable adults by a paid or volunteer

caregiver, guardian, or agent acting under the authority of any power of attorney or any durable power of attorney pursuant to RSA 161-F:49.

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

(e) “Employer” means a person or agency that is licensed, certified, or funded by the department to provide services to individuals.

(f) “Exploitation” means “exploitation” as defined in RSA 161-F:43, IV namely, “the illegal use of a vulnerable adult’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud.”

(g) “Expunged” means the removal of information contained on the BEAS state registry that relates to matching a specific perpetrator’s name to a founded report of abuse, neglect, or exploitation.

(h) “Founded report of abuse, neglect, or exploitation” means the determination that one or more of the allegations of abuse, neglect, or exploitation of a vulnerable adult met one or more of the definitions contained in RSA 161-F:43, II (a), (b), (c), III, IV, or VI pursuant to a protective investigation completed in accordance with He-E 700.

(i) “Individual” means a person 18 years of age or older, found eligible for or receiving services pursuant to RSA 171-A, RSA 135-C:13 & 14, RSA 161-E & I or programs licensed under RSA 151:2, I(b), (e), or (f) or who is a vulnerable adult.

(j) “Match” means BEAS has identified the name submitted on the consent form in He-E 720.04(a) as a perpetrator in a founded report of abuse, neglect, or exploitation listed on the BEAS state registry.

(k) “Neglect” means “neglect” as defined in RSA 161-F:43, III, namely, “an act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of a vulnerable adult.”

(l) “Perpetrator” means the individual who, following a protective investigation completed in accordance with RSA 161-F:42-57 and He-E 700, is found to have abused, neglected, or exploited a vulnerable adult.

(m) “Prospective agent” means a person being considered to act under the authority of a power of attorney or any durable power of attorney.

(n) “Vulnerable” means vulnerable as defined in RSA 161-F:43 VII, namely, “the physical, mental, or emotional ability of a person is such that he or she is unable to manage personal, home, or financial affairs in his or her own best interest, or he or she is unable to act or unable to delegate responsibility to a responsible caretaker or caregiver.”

(o) “Vulnerable adult” means a person aged 18 or older who is vulnerable as defined in RSA 161-F:43, VII.

He-E 720.04 BEAS State Registry.

(a) In accordance with these rules, upon request, BEAS shall provide confirmation of whether or not there is a match on the BEAS state registry to the following agencies and persons:

- (1) Employers;
- (2) Private citizens who:
 - a. Seek to employ or contract with another private citizen to provide personal care services as defined in RSA 161-I; or
 - b. Wish to designate a prospective agent;
- (3) Persons checking to see if their own names are included on the BEAS state registry;
- (4) Courts in accordance with RSA 464-A:4,V(c); and
- (5) Any individual, agency, or program providing services to individuals.

(b) The agencies and persons identified in (a)(1)-(3) and (5) above shall complete and submit a consent form entitled “BEAS State Registry Consent Form,” Form 3655 (March 2023) to request the confirmation of whether or not there is a match.

(c) The signature of the applicant, prospective agent, or person completing Form 3655 shall signify authorization for the release of the information in (f) below to the agency or person who is identified on the form.

(d) Confirmation of a match shall be confidential, and notification shall be released in accordance with (f) below with a completed consent form as described in (b) and (c) above.

(e) The information contained on the BEAS state registry shall be retained for a period of 7 years, except upon receipt of an order from the probate division of the circuit court that grants a perpetrator’s request to have the information on the BEAS state registry expunged.

(f) Notification to the agencies or persons identified in (a) above who request BEAS state registry information shall include:

- (1) Confirmation of whether or not there is a match; and
- (2) If there is a match, information on how to request a waiver for employment.

(g) Third party agencies or persons, such as an employment agency, and agencies not providing services to individuals shall be prohibited from accessing the information contained on the BEAS state registry.

He-E 720.05 Waiver for Employment.

(a) When the applicant applying for employment with a program that is licensed, certified, or funded by the department to provide services to individuals has been confirmed as a match, the employer shall not hire the applicant unless a waiver to hire such a person is requested and obtained from the department.

(b) Upon receipt of a confirmed match, the employer in (a) above may, with the consent of the applicant, request from BEAS a copy of the protective investigation summary, including the supporting documents, to determine whether or not to request a waiver.

(c) Requests for information contained in an investigation file shall:

(1) Be limited to the protective investigation summary and supporting documents; and

(2) All documents shall be redacted as appropriate for the purposes of maintaining confidentiality.

(d) The employer in (a) above shall submit to the commissioner a written request for a waiver, to include:

(1) The perpetrator's written acknowledgement of the circumstances that resulted in the founded determination;

(2) Written documentation pertaining to any remedial action the perpetrator has taken subsequent to the founded determination, including but not limited to:

a. A letter of recommendation from a medical professional attesting to the action taken by the perpetrator to address the actions or behaviors which led to the founded determination;

b. Documentation of participation in formalized training related to issues that resulted in the founded determination; and

c. Any other remedial actions taken, such as counseling; and

(3) A written description of the employer's plan to supervise the perpetrator so that the individuals in the employer's care shall be safe, to include, at a minimum, the following:

a. A statement attesting that the employer has read the department's investigation report and is fully informed about the circumstances that led to the perpetrator's name being placed on the BEAS state registry;

b. A description of the duties and responsibilities that the perpetrator will be hired to do, so that the department can evaluate the potential for risk to the individuals in the employer's care based upon whether or not there is a likelihood of reoccurrence of the type of behavior that resulted in the perpetrator's name being placed on the BEAS state registry;

c. A description of an orientation and training plan for the perpetrator regarding the employer's policies and procedures on the treatment of individuals in the employer's care, as well as a schedule of subsequent review of such policies and procedures;

d. A description of how the employer shall directly or indirectly supervise the perpetrator; and

e. A description of any other conditions of continued employment.

(e) The commissioner shall approve the waiver request if:

- (1) All of the information in (d) above is provided;
- (2) The information required by (d) above demonstrates that the employer is fully informed of the circumstances that resulted in the perpetrator’s name being placed on the BEAS state registry; and
- (3) After reviewing the employer’s plan in (d)(3) above in relation to the documentation in (d)(1) and (2) above, and the underlying circumstances of the finding against the perpetrator which resulted in the perpetrator’s name being placed on the BEAS state registry, the commissioner determines that the perpetrator does not pose a risk to the safety of the individuals in the employer’s care.

(f) The commissioner shall deny the waiver request if:

- (1) Any of the information required in (d) above is not provided;
- (2) The information required by (d) above does not demonstrate that the employer is fully informed of the circumstances that resulted in the perpetrator’s name being placed on the BEAS state registry; or
- (3) The information provided does not affirmatively demonstrate that the perpetrator does not pose a risk to the safety of individuals in the employer’s care.

(g) If the waiver is approved, the employer shall retain the approved waiver and all of the documents required by (d) above in the employee’s personnel file.

(h) Any waiver granted by the commissioner in accordance with these rules shall not be transferable to any other employer, employee, or position.

He-E 720.06 Confidentiality and Release of Information. Requests from a perpetrator listed on the BEAS state registry for information contained in the paper file shall be limited to the protective investigation summary and the supporting attachments listed therein.

APPENDIX

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
He-E 720.01 – He-E 720.06	RSA 161-F:42-57