

PART He-P 813 ADULT FAMILY CARE RESIDENCE

Statutory Authority: RSA 151:2, IV; and RSA 151:9:VIII

He-P 813.01 Purpose. The purpose of these rules is to establish the minimum standards and procedures for the certification of an adult family care residence.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.02 Scope. These rules shall apply to any individual, agency, partnership, association, or other legal entity offering adult family care services to one or 2 residents in a home-like environment and receiving reimbursement from the New Hampshire Medicaid choices for independence (CFI) waiver program for those services.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.03 Definitions.

- (a) “Abuse” means “abuse” as defined in RSA 161-F:43, II.
- (b) “Activities of daily living (ADL)” means basic daily routine tasks common to the average individual, such as personal hygiene, transfers and walking.
- (c) “Admission” means the act of a resident’s initial physical move into an AFCR.
- (d) “Adult family care (AFC)” means a housing option for eligible participants under the CFI waiver program, which includes a combination of personal care, homemaking, and other services that are provided to a participant who is a resident in a certified residence of an unrelated individual or the CFI waiver participant’s relative in accordance with a person-centered plan.
- (e) “Adult family care provider” means an individual 21 years or older who has been certified by the department in conjunction with the oversight agency to provide care and assistance in his or her home residence to 1 or 2 individuals.
- (f) “Adult family care residence (AFCR)” means the dwelling in which AFC is provided for one or 2 residents.
- (g) “Applicant” means an individual, agency, partnership, corporation, federal, state, county or local government entity, association, or other legal entity seeking a certificate to operate an AFCR pursuant to RSA 151:2, IV.
- (h) “Assessment” means an evaluation of the resident to determine what care and services are needed.
- (i) “Case manager” means a person providing services in accordance with He-E 805, who has the primary responsibility for assessing the participant’s needs, developing a comprehensive care plan, and coordinating and monitoring the services described in the comprehensive care plan.
- (j) “Certification” means the written approval by the manager of the office of program support for the operation of an AFCR in accordance with He-P 813.

(k) "Certificate holder" means the person or agency whose name is on the AFCR certification issued.

(l) "Choices for Independence (CFI) waiver program" means a system of long-term services and supports (LTSS) provided under Section 1915(c) of the Social Security Act to participants who meet the eligibility requirements in He-E 801.03 and He-E 801.04. This term is also known as home and community-based care for the elderly and chronically ill (HCBC-ECI) and as home and community-based services- choices for independence (HCBS-CFI).

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

(n) "Deficiency" means any action, failure to act or other set of circumstances that cause a certificate holder or oversight agency to be out of compliance with RSA 151 or He-P 813.

(o) "Department" means the New Hampshire department of health and human services.

(p) "Emergency plan" means a document outlining the responsibilities of certificate holders and the oversight agency in an emergency.

(q) "Exploitation" means "exploitation" as defined in RSA 161-F:43, IV.

(r) "Fire safety assessment" means a documented evaluation completed by a certificate holder based on a drill, completed in accordance with He-P 813.20.

(s) "Household member" means the adult family care provider and all adult household members age 17 or older that reside at the AFCR.

(t) "In-service" means an educational program, which is designed to increase the knowledge, skills, and overall effectiveness of caregivers.

(u) "Investigation" means the process used by the department to respond to allegations of non-compliance with RSA 151 and He-P 813.

(v) "Licensed practitioner" means any of the following disciplines acting within their relevant scope of practice:

(1) Medical doctor;

(2) Physician's assistant;

(3) Advanced registered nurse practitioner (APRN);

(4) Doctor of osteopathy;

(5) Doctor of naturopathic medicine; or

(6) Any other practitioner with diagnostic and prescriptive powers licensed by the appropriate state licensing board.

(w) "Medication" means a substance available with or without a prescription, which is used as a curative or remedial substance.

(x) "Neglect" means "neglect" as defined in RSA 161-F:43, III.

(y) “Orders” means prescriptions, instructions for treatments, special diets or therapies, signed by a licensed practitioner, or other individual authorized by law.

(z) “Oversight agency” means an agency, entity or organization enrolled as a New Hampshire Medicaid provider that is designated by the department to provide oversight functions of AFCRs.

(aa) “Over-the-counter medications” means non-prescription medications for use by a resident at the certified premises.

(ab) “Person-centered” means that the CFI waiver participant receiving services or his or her authorized representative are the center of the system of care, and participant’s needs and preferences drive the care and services provided.

(ac) “Plan of correction (POC)” means a plan developed and written by the adult family care provider or oversight agency, which specifies the actions that will be taken to correct deficiencies identified by the department.

(ad) “Procedure” means a written, standardized method of performing duties and providing services.

(ae) “Representative” means an individual granted authority by law to represent another individual, including a legal representative as defined in RSA 161-F:11, VII, and a resident’s personal representative as defined in RSA 151:19, V.

(af) “Resident” means any person who has been determined eligible for nursing home level of care under the CFI waiver program in accordance with He-E 801, and who is admitted to an AFCR certified in accordance with RSA 151 and He-P 813.

(ag) “Resident record” means a secure file, located in the AFCR, that contains the resident’s person-centered plan, service agreement, emergency data sheet, medication record and progress notes.

(ah) “Self administered with supervision” means an act whereby the resident is prompted by an adult family care provider to take his or her own medication(s) without requiring physical assistance from others.

(ai) “Self administration of medication” means an act whereby the resident is able to take his or her own medication(s) without the verbal or physical assistance of another person.

(aj) “Self directed” means an act whereby a resident, who has a physical limitation that prohibits him or her from self-administering, directs the adult family care provider to physically assist in the medication process.

(ak) “Service” means a specific activity performed by the adult family care provider or oversight agency, either directly or indirectly, to benefit or assist a resident.

Source. #8595, eff 4-1-06; #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.04 Adult Family Care Provider Qualifications, Duties and Responsibilities.

(a) An adult family care provider shall:

- (1) Be at least 21 years of age;
- (2) Possess a high school or general equivalency diploma;

- (3) Possess and maintain a NH driver's license;
- (4) Possess the results of a physical examination or health screening completed no more than 12 months prior to filing the initial application;
- (5) Possess the results of a 2-step tuberculosis (TB) test, Mantoux method, completed no more than 12 months prior to filing the initial application;
- (6) Be equipped to provide care to an elderly and/or disabled adult in accordance with a respective resident's person-centered plan;
- (7) Have a written agreement with an oversight agency; and
- (8) Prior to accepting a resident within an AFCR, participate in 6 hours of orientation, offered by or through the oversight agency, which includes, at a minimum, the following:
 - a. The aging process and associated changes;
 - b. The philosophy and provision of person-centered services and supports;
 - c. The role of the oversight agency and case management services;
 - d. The resident's rights in accordance with RSA 151:21;
 - e. AFCR complaint procedures;
 - f. The services provided by the AFCR in accordance with these rules;
 - g. Based on the adult family care provider's resident(s), information on the specific diseases and conditions, including:
 1. All medical conditions, medical history, routine and emergency protocols, and any special nutrition, dietary, hydration, elimination, and ambulation needs;
 2. Any communication needs;
 3. Any behavioral supports required of residents served;
 4. Any assistance that residents need to evacuate the AFCR in case of an emergency;
 5. The procedures for food safety regarding preparation, serving, and storing of food; and
 6. The mandatory reporting requirements in accordance with RSA 161-F:46-50.

(b) Annually, the adult family care provider shall participate in a minimum of 6 hours of continuing education or training, as conducted by or coordinated by the oversight agency, which presents the information contained in (a)(8) above.

(c) Adult family care providers shall follow the orders of the licensed practitioner or other licensed professional with prescriptive authority for each resident and encourage residents to follow the practitioner's orders.

(d) The adult family care provider shall provide care in accordance with the resident's person-centered plan, fire safety plan and personal safety plan.

(e) The adult family care provider shall provide services in accordance with He-P 813.16.

(f) During a planned absence or in the event of an emergency, the adult family care provider in collaboration with the oversight agency and case manager shall arrange for a substitute adult family care provider to provide care for the residents in accordance with the resident's person-centered plan and these rules.

(g) The adult family care provider shall provide access to the home for licensed professionals for the delivery of other services to the resident if the resident requires additional specific services not provided by the adult family care provider as outlined in the resident's person-centered plan.

(h) The adult family care provider shall provide or arrange for the resident with access to community activities, including:

- (1) Religious services;
- (2) Social and cultural events;
- (3) Educational activities;
- (4) Recreational activities; and
- (5) Opportunities for the resident to visit with his or her family and friends.

(i) The adult family care provider shall provide or arrange for sufficient supplies, including but not limited to toiletries, clean linens, and towels, to ensure that the needs of the resident are met.

(j) An adult family care provider file shall be available at the AFCR for review by the department and contain the following:

- (1) A completed application by the adult family care provider to provide adult family care services;
- (2) Proof that the applicant meets the minimum age requirements;
- (3) A statement signed by the adult family care provider that he or she has received a copy of and received training by or through the oversight agency, in the implementation of the policy and procedures setting forth the resident's rights and responsibilities as required by RSA 151:20;
- (4) A copy of the results of the criminal records, motor vehicle, and bureau of elderly and adult services (BEAS) Adult Registry checks for all adults living or working in the AFCR;
- (5) Documentation of satisfactory completion of the required orientation program;
- (6) Documentation regarding the content, length, and dates of all subsequent annual training or educational programs attended;
- (7) A copy of a current driver's license; and
- (8) Documentation that the required physical examinations, health screenings, TB test results, and radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.05 Oversight Agency Responsibility. Oversight agencies through a signed written agreement between the oversight agency's executive director and the adult family care provider shall:

- (a) Comply with these rules, which include:
 - (1) Providing the services described in these rules;
 - (2) Requesting a waiver for an adult family care provider or AFCR in accordance with He-P 813.25; and
 - (3) Reporting based on the department's quality assurance measures developed in accordance with RSA 126-A:4, IV;
- (b) Monitor the AFCRs compliance with these rules which includes:
 - (1) Identifying possible deficiencies pursuant to these rules to assist adult family care providers with necessary corrective action and to maintain compliance;
 - (2) Conducting periodic announced or unannounced quality assurance visits, at least annually;
 - (3) Complete criminal, motor vehicle, and BEAS registry checks for all adult household members prior to submission of the initial application; and
 - (4) Notify the department within 7 days of a resident moving into an AFCR; and
- (c) Provide the following supports:
 - (1) Coordinate with adult family care providers to provide coverage for absences, both planned and in the event of an emergency;
 - (2) Provide education and training as described in He-P 813.18(aa)-(ac), and as follows:
 - a. Initial orientation training;
 - b. Continuing education and training; and
 - c. Medication supervision training in accordance with He-P 813.18;
 - (3) Facilitate the transfer of residents due to revocations of certification, voluntary closure of AFCR, or immediate suspension of operation;
 - (4) Develop a person-centered plan with the adult family care provider;
 - (5) Approve personal safety plans prior to a resident being left unsupervised;
 - (6) Conduct quarterly evaluations of physical and cognitive functioning of residents;
 - (7) Quarterly discuss the progress notes of each resident with the adult family care provider; and
 - (8) Assist with orders for medications from a licensed practitioner as needed.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.06 Resident Eligibility. The AFCR shall only admit residents who:

- (a) Meet financial and clinical eligibility requirements for the CFI waiver program;
- (b) Have needs for supports and services that are able to be met directly by the AFCR or through arrangement with other providers;
- (c) Are able to evacuate the residence in compliance with Saf-C 6008.04 as adopted by the commissioner of the department of safety under RSA 153 and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control; and
- (d) Do not place the health or safety of any other resident or household member in jeopardy.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.07 Administrative Requirements.

- (a) An AFCR shall:
 - (1) Be located in areas where other family housing is located;
 - (2) Not display any sign that labels the individuals or functions of the residence; and
 - (3) Have no more than 2 persons receiving paid services in the residence without regard to payment.
- (b) The adult family care provider shall hold the certificate to operate the residence in conjunction with an enrolled medicaid adult family care provider agency that is authorized by the department as an oversight agency to administer adult family care.
- (c) The adult family care provider shall provide a list of the names of all persons living in the residence to the oversight agency, changes to the list shall be reported to the oversight agency within 30 days of the change.
- (d) The adult family care provider shall have personal injury liability insurance for the residence. Certificates of insurance shall be on file at the premises.
- (e) All AFCR household members and staff that transport a resident, shall have a valid driver's license and current automobile liability insurance, which shall be in at least the following amounts and coverage:
 - (1) \$100,000 coverage for any single person injured; and
 - (2) \$300,000 coverage for personal injuries per accident.
- (f) No adult family care provider or other person living or working in an adult family care residence shall serve as the legal guardian or legally liable representative of an individual living in the residence.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

He-P 813.08 Certification Process.

(a) The certification process shall only apply to those homes where the resident is living with an adult family care provider who is not a family member.

(b) An applicant shall apply to be certified via an application form obtained from the department's health facilities administration entitled "Request for Certification of Adult Family Care Residence" (November 2019).

(c) An applicant shall request certification for any of the following reasons:

(1) Certification of a new AFCR; or

(2) For an existing AFCR:

a. A change in the oversight agency;

b. A change in physical location; or

c. A request for an increase from one to 2 certified beds or a decrease from 2 to one certified bed.

(d) The applicant shall provide the following with the application:

(1) Directions to the home;

(2) Copies of all approved waivers, pending waiver requests, or both;

(3) Verification from the department or local fire official that the applicant complies with all applicable state and local fire ordinances for a single or 2 family dwelling, including verification that the AFCR:

a. Has smoke detectors that are:

1. Placed on every level of the AFCR;

2. Placed in every bedroom;

3. Interconnected and hardwired or a wireless system approved by the New Hampshire state fire marshal's office; and

4. Powered by the AFCR's electrical service;

b. Has at least one ABC type fire extinguisher on every level of the AFCR;

c. Is free from fire hazards; and

d. Has at least one functioning carbon monoxide detector on every inhabited level of the home and in the basement;

(4) An approval from the local fire official signed and dated with the following information:

a. Date indicates that approval was obtained more than 90 days prior to the submission of the application;

- b. Verifies the street address of the proposed or existing AFCR;
- c. Verifies that the home complies with all state and local fire codes;
- d. Includes the date of the life safety inspection; and
- e. States the specific the number of beds for safe occupancy by AFC residents living in the proposed of existing AFCR; and

(5) For AFCRs not served by a public water system, an analysis report completed within the previous 12 months by a certified laboratory that verifies the water supplied to or used in the prospective home is suitable for human consumption and in compliance with Env-Dw702.02 and Env-Dw 704.02.

(e) The applicant shall provide to the department a written agreement, signed by the oversight agency's executive director, or his or her designee, that indicates that the oversight agency agrees to monitor the residence.

(f) The applicant and all household members living within the home shall authorize the oversight agency, pursuant to He-P 813.05, to complete a registry check in the BEAS adult registry to verify that the applicant and other adult household members do not have a non-criminal finding of abuse, neglect, or exploitation of an incapacitated adult.

(g) Information disclosed regarding adjudication of juvenile delinquency, as required by (c)(10)b. above, shall be confidential and shall not be released except in a proceeding involving the question of certification or revocation of a license, or pursuant to court order.

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

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

(i) The department shall process applications in accordance with RSA 541-A:29.

(j) An application for an initial certification shall be deemed to be complete when the department determines that all items required in (b), and (d)-(g) above have been received.

(k) If an application does not contain all of the items required by (b), and (d)-(g) above the department shall notify the applicant in writing of the items required before the application can be processed.

(l) All certifications issued in accordance with RSA 151 shall be non-transferable by person or location.

(m) A temporary certification shall be granted for 90 days, or until the certification has been approved or denied, from the date that the department receives all information required on the application form incorporated by reference in He-P 813.08(b).

(n) Within 90 days of the receipt of the application, the department's health facilities administration shall complete an inspection for the purposes of determining whether the AFCR is in compliance with these rules.

(o) At the time of inspection, the department shall be provided with the results of criminal record checks, motor vehicle records, and BEAS adult registry checks for the applicant, adult family care provider, and all household members age 17 years or older as completed by the oversight agency, pursuant to He-P 813.05.

(p) If the applicant, adult family care provider, or any household member age 17 years or older has been convicted on a felony or misdemeanor, or has a substantiated complaint by a state agency, he or she shall provide to the department a written disclosure containing a list of any:

- (1) Misdemeanor or felony convictions, in this or any other state;
- (2) Adjudications of juvenile delinquency;
- (3) Permanent restraining or protective orders;
- (4) Evidence of any conduct that could endanger the well-being of the individual receiving care;
- (5) Findings by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation;
- (6) Current investigations by any law enforcement agency;
- (7) Current investigations by the department for abuse, neglect or exploitation; or
- (8) An explanation of the circumstances surrounding disclosure of matters described in a. through g. above.

(q) After the inspection, if the department deems the AFCR not in compliance with these rules, the AFCR shall submit a plan of correction in accordance with He-P 813.09.

(r) After the inspection, if the department deems the AFCR in compliance with these rules, the department shall issue a certification to the AFCR.

Source. #8595, eff 4-1-06; amd by #9899-A, eff 3-29-11, (paras (b)-(p)); amd by #9899-B, eff 3-29-11 (para (a)); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.09 Inspections and Plans of Correction.

(a) The department shall conduct inspections to determine compliance with all applicable rules prior to:

- (1) Issuing an initial certification; and
- (2) Renewal of a certificate except as allowed by He-P 813.10.

(b) Following an inspection and determination pursuant to (a) above, the department shall issue a written inspection report that includes:

- (1) The name and address of the physical location of the AFCR;
- (2) The name of the responsible oversight agency;
- (3) The date of the inspection;

- (4) The name of the person(s) conducting the inspection; and
- (5) A listing of all rules with which the AFCR failed to comply.

(c) If deficiencies were cited in the inspection report, within 21 days of the date of issuance of the report, the AFCR shall submit a written plan of correction or submit information as to why the deficiency(ies) did not exist.

(d) The department shall evaluate any submitted information on its merits and render a written decision on whether a written plan of correction is necessary.

(e) The plan of correction submitted in accordance with (c) above shall describe:

- (1) How the AFCR corrected or intends to correct the deficiency(ies);
- (2) How the AFCR intends to prevent reoccurrence of each deficiency; and
- (3) The date by which each deficiency shall be corrected.

(f) The department shall issue a certificate if it determines that the plan of correction:

- (1) Addresses the deficiency in a manner which achieves full compliance with rules cited in the inspection report;
- (2) Addresses all deficiencies cited in the inspection report;
- (3) Does not create a new violation of statute or rule as a result of its implementation; and
- (4) States a completion date.

(g) The department shall reject a plan of correction that fails to comply with (e) and (f) above.

(h) If the proposed plan of correction is rejected, the department shall notify the AFCR in writing of the reason(s) for rejection.

(i) Within 21 days of the date of the written notice under (h) above, the AFCR shall submit a revised plan of correction that:

- (1) Includes proposed alternatives that address the reason(s) for rejection; and
- (2) Is reviewed in accordance with (e) and (f) above.

(j) If the revised plan of correction is rejected, the department shall deny the certification request.

(k) The department shall verify that a plan of correction, as submitted and accepted, has been implemented by:

- (1) Reviewing materials submitted by the AFCR;
- (2) Conducting a follow-up inspection; or
- (3) Reviewing compliance during the next certification inspection required by He-P 813.

(l) AFCR's shall receive announced or unannounced quality assurance visits.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.10 Renewal of Certifications.

- (a) Each adult family care provider shall complete and submit an application form entitled “Request For Certification of Adult Family Care Residence” (November 2019).
- (b) Applications for renewal of certification shall be received by the department at least 60 days prior to the expiration of the current certification.
- (c) The adult family care provider shall submit with the renewal application:
 - (1) The information required by He-P 813.08(d)-(g);
 - (2) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 813.25, if applicable; and
 - (3) A statement identifying any variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03 - Saf-C 6005.04 as adopted by the commissioner of the department of safety under RSA 153 and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control;
 - (4) If renovations were completed since the last certification was granted, a new signed approval from the local fire official, which includes a statement that:
 - a. Required building permits pursuant to local building codes were obtained; or
 - b. Indicates whether or not the adult family care provider altered any means of egress.
- (d) An application for certification renewal shall be approved if:
 - (1) The application contains all the information required by (a) and (c) above;
 - (2) The application is received prior to the expiration of the current certificate; and
 - (3) The AFCR is found to be in compliance with He-P 813 as a result of an inspection performed pursuant to He-P 813.09.
- (e) An AFCR shall be granted certification for a period of one year, from the date of expiration, if:
 - (1) At its previous annual inspection, an AFCR had no deficiencies cited; and
 - (2) The adult family care provider submitted 60 days prior to the expiration of the current certificate the following in lieu of an onsite inspection:
 - a. A completed and signed application for certification;
 - b. Documentation, signed by the oversight agency’s executive director, or his or her designee, that the adult family care provider agency has monitored and will continue to monitor the residence and that the residence remains in full compliance with all applicable rules; and
 - c. Copies of quality assurance reviews in accordance with He-E 801.
- (f) If at the time of the annual inspection is due, the AFCR does not have any residents, the adult family care provider may:

- (1) Submit a letter notifying health facilities administration of its intent to close; or
- (2) Submit a written request to the health facilities administration for certification renewal without an annual inspection which contains the following information:
 - a. The name and location of the residence;
 - b. The certificate number; and
 - c. The expiration date of the certificate.
- (g) A certification issued pursuant to (e) and (f) above shall be granted only once in any 2-year period.
- (h) If a certification has been approved in accordance with (f) above, the certificate shall indicate “renewed without inspection.”
- (i) An oversight agency shall notify health facilities administration, in writing within 7 days of an individual moving into a residence certified in (e) and (f) above.
- (j) An on-site inspection shall be conducted within 90 days of receipt any notification in (i) above.
- (k) Any adult family care provider who does not submit a complete application for renewal prior to the expiration of an existing certification shall be required to apply for a new certification in accordance with He-P 813.08.
- (l) If the adult family care provider chooses to cease operation of the AFCR, the adult family care provider shall submit written notification to the oversight agency and the department at least 45 days in advance of closure.

Source. #8595, eff 4-1-06; amd by #9899-A, eff 3-29-11, (paras (b)-(l)); amd by #9899-B, eff 3-29-11, (para (a)); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.11 Denial of Certification.

- (a) The department shall deny an application for certification if:
 - (1) The applicant, certificate holder, or any person living in the AFCR has:
 - a. Been found guilty of abuse, neglect, or exploitation of any person, or assault, fraud or a felony against a person in this or any other state by a court of law; or
 - b. Had a complaint investigation for abuse, neglect, or exploitation substantiated by the department or an administrative agency of any other state and has not received a waiver in accordance with He-P 813;
 - (2) Any adult family care provider or person living in the AFCR has a felony conviction;
 - (3) Any individual living in the AFCR has a misdemeanor conviction;
 - (4) An applicant or family member has an illness or behavior that, as evidenced by the documentation obtained and the observations made by the department, would endanger the

well-being of the individuals or impair the ability of the AFCR to comply with department rules;

(5) The applicant or any representative of the applicant:

- a. Knowingly provides false or misleading information to the department;
- b. Prevents or interferes with any inspection or investigation by the department; and
- c. Fails to provide required documents to the department;

(6) An inspection of an applicant for a new certificate finds the applicant to be out of compliance with RSA 151 or He-P 813 or other applicable certification rules;

(7) At an inspection the applicant or certificate holder is not in compliance with RSA 151 or He-P 813 or other applicable certification rules;

(8) The applicant has demonstrated a history or pattern of multiple, or repeat violations of RSA 151 or its implementing administrative rules that pose or have posed a health or safety risk to individuals receiving care in the AFCR;

(9) The applicant has submitted a plan of correction that has been rejected by the department in accordance with He-P 813; or

(10) The applicant failed to fully implement and continue to comply with a plan of correction that has been accepted by the department in accordance with He-P 813.

(b) If the department determines that the AFCR meets any of the criteria for denial listed in He-P 813 the department shall deny the certification of the residence.

(c) Certification shall be denied upon the written notice by the department to the AFCR stating the specific rule(s) with which the residence does not comply.

(d) Any applicant aggrieved by the denial of an application may request an adjudicative proceeding in accordance with He-P 813.

(e) An AFCR shall not admit additional residents if a notice of denial of certificate has been issued.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.12 Certification.

(a) Certification shall be valid on the date of issuance and expire the following year on the last day of the same month it was issued.

(b) To be eligible for reimbursement by the department, a non-relative adult family care residence shall be certified in accordance with He-P 813.

(c) All certificates shall be non-transferable from one adult family care provider or oversight agency to another or from one physical location to another.

(d) A certificate issued to an applicant shall indicate:

- (1) The effective date of the certificate;
 - (2) The expiration date of the certificate;
 - (3) The certificate number;
 - (4) The type of certificate, which shall be listed as:
 - a. Temporary; or
 - b. Annual, which shall encompass both initial and renewal certifications;
 - (5) The maximum number of certified beds allowed;
 - (6) The name of the oversight agency; and
 - (7) Information regarding any waivers issued in accordance with He-P 813.
- (e) Temporary certificates shall be valid for 90 days from the date of issuance.
- (f) Renewal certificates shall be issued for one year from the expiration date of the previous certificate.
- (g) Upon written request, the department shall issue a revised certificate when the local, state or federal government modifies the street address of an AFCR without any change in the physical location of the AFCR.
- (h) The request submitted in accordance with (g) above shall contain the following:
 - (1) The name and address of the adult family care residence as it appears on the current certificate;
 - (2) The name and address of the adult family care residence as it will appear on the new certificate; and
 - (3) A copy of the notification of the required change in street address.
- (i) When a certificate is revised in accordance with (g) above, the certificate number and expiration date shall not change.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.13 Revocation of Certification.

- (a) The department shall issue a notice of intent to revoke an AFCR's certification if the certificate holder or any household member:
- (1) Fails to comply with the provisions of He-P 813 above; and
 - (2) Meets the criteria for denial in He-P 813.11, or for the following:
 - a. An inspection finds the certificate holder to be out of compliance with RSA 151 or any of the applicable certification rules;

- b. The certificate holder has demonstrated a history of multiple, or repeat violations of RSA 151, He-P 813, or other applicable rules that pose or have posed a health or safety risk to residents;
- c. The certificate holder has submitted a plan of correction that has been rejected by the department in accordance with He-P 813;
- d. The certificate holder has failed to fully implement or continue to comply with a plan of correction that has been accepted by the department in accordance with He-P 813; or
- e. Prior denial or revocation of certification or denial of application for certification has taken place.

(b) The notice of intent to revoke the certification of the APCR shall state the specific rule(s) with which the residence does not comply.

(c) Any certificate holder aggrieved by the revocation of the APCR's certificate may request an adjudicative proceeding in accordance with He-P 813.24 and the revocation shall not become final until the period for requesting an adjudicative proceeding has expired or, if the certificate holder requests an adjudicative proceeding, until such time as the administrative appeals unit issues a decision upholding the department's action.

(d) An APCR shall not accept additional individuals if a notice of intent to revoke the certification of the APCR has been issued.

(e) If certificate has been revoked, the certificate holder, in conjunction with the oversight agency, shall transfer all individuals to another appropriately certified APCR within 10 days of certificate revocation becoming final in accordance with He-P 813.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.14 Immediate Suspension of Certification. Notwithstanding the provision of He-P 813, if the department orders suspension of a certificate in accordance with RSA 541-A:30, III, and the APCR shall immediately cease operating.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.15 Resident Admission and Person-Centered Plan Development.

(a) Prior to admission, adult family care provider shall provide the resident and, if applicable, his or her authorized representative with a written copy of the resident admissions contract pursuant to RSA 161- J:4, which includes the following information:

- (1) The basic daily, weekly, and monthly rate paid to the adult family care provider;
- (2) A list of the services required by He-P 813 that are covered by the basic rate;
- (3) The time period covered by the admissions contract;
- (4) The APCR's house rules;

- (5) The grounds for immediate termination of the agreement, pursuant to RSA 151:26, II(b);
 - (6) The AFCR's responsibility for resident discharge planning;
 - (7) Information regarding services not provided by the AFCR, to include:
 - a. Contact and other information regarding nursing and other health care services;
 - b. The AFCR's responsibility for arranging services;
 - c. The rate and payment for services;
 - (8) The AFCR's policies and procedures regarding:
 - a. Providing transportation;
 - b. Arranging for the provision of third party services, such as cable television;
 - c. Third party services contracted directly by the resident and provided on the AFCR premises;
 - d. Storage and loss of the resident's personal property;
 - e. Filing complaints; and
 - f. When a residents temporarily leaves the AFCR, the policy for holding a bed open, in compliance with RSA 151:25;
 - (9) The AFCR's medication management services;
 - (10) A copy of the current version of the patients' bill of rights under RSA 151: 21 and the AFCR's policies and procedures for implementation of the patient's bill of rights pursuant to RSA 151:20, II;
 - (11) A copy of the resident's right to appeal an involuntary transfer or discharge under RSA 151:26, II(5), and the AFCR 's policy and procedure for assisting with the appeals process; and
 - (12) The AFCR's policy and procedure for handling reports of abuse, neglect, or exploitation.
- (b) The adult family care provider and the oversight agency shall develop a person-centered plan, reviewed every 6 months, and revised based on the resident's needs.
- (c) The person-centered plan shall include the following:
- (1) A description of the resident's needs;
 - (2) The date the need was identified;
 - (3) The goals or objectives of the plan;
 - (4) The actions or approaches to be taken;
 - (5) A statement about whether or not the resident may safely be left alone in the home or community and, if so, the time frame and duration that he or she may be left alone;
 - (6) The name of the individual responsible for carrying out the plan; and

- (7) The date(s) of re-evaluation, review, or resolution for any identified issues.
- (d) The person-centered plan shall be a written guide:
- (1) Developed by the case manager, the resident and/or his or her representative, the adult family care provider and the oversight agency that outlines the resident's needs and process for the provision of services which shall address the resident's:
 - a. Ability to manage his or her ADL's;
 - b. Physical health, including impairments of mobility, sight, hearing and speech;
 - c. Intellectual functioning and mental health;
 - d. Need for supervision;
 - e. Need for medication assistance;
 - f. Need for family and community involvement; and
 - g. Need for community and social health services; and
 - (2) Reviewed and updated whenever there is a change in the resident's condition and at the time of annual eligibility redetermination.
- (e) Monthly progress notes for every resident shall be recorded by the adult family care provider including, at a minimum:
- (1) A brief description of the care, including assistance with ADLs, that has been provided;
 - (2) Observations regarding changes in the resident's physical, functional and cognitive abilities;
 - (3) Observations regarding changes in behavior, such as eating habits, sleeping patterns, and relationships; and
 - (4) The current status of the individual's goals noted in the current person-centered plan.
- (f) The adult family care provider, case manager and oversight agency shall meet or confer quarterly to review the progress notes required in (e) above.
- (g) At the time of admission the adult family care provider, with the assistance of the oversight agency, if necessary, shall obtain orders from a licensed practitioner for medications if applicable.
- (h) Each resident shall have a health examination not more than 6 months prior to admission and at least one health examination every 12 months.
- (i) If a resident refuses care or services, the adult family care provider shall notify the case manager and oversight agency.
- (j) The adult family care provider shall maintain an emergency data sheet in the resident's record and promptly give a copy to emergency medical personnel in the event of an emergency transfer to another medical facility, which includes:
- (1) The resident's full name and the name the resident prefers to be called by, if different;

- (2) The name, address and telephone number of the resident's next of kin or representative;
- (3) The resident's diagnoses;
- (4) The resident's allergies, if any;
- (5) The resident's functional limitations, if any;
- (6) The resident's date of birth;
- (7) The resident's advanced directives; and
- (8) Any other pertinent information not specified in (1)-(7) above.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.16 AFCR Services and Supports.

(a) The adult family care provider shall maintain the health and safety of all household members to minimize the possibility of accident or injury when providing the following services and supports:

- (1) Food services, as described in He-P 813.17;
- (2) Medication services, as described in He-P 813.18;
- (3) Housekeeping, laundry, and maintenance services, as described in He-P 813.19;
- (4) Sanitation services; pursuant to He-P 813.04(i);
- (5) Activities designed to engage the resident to sustain and provider physical, intellectual, and social and spiritual well- being including those described in He-P 813.04(h);
- (6) Assistance in arranging appointments, including:
 - a. Reminding the resident of appointments; and
 - b. Providing transportation to and from appointments; and
- (7) Supervision of residents with cognitive deficits that might pose a risk to themselves or others if the resident is not supervised.

(b) For adult family care providers that provide transportation, the adult family care provider shall maintain current registration and inspection on all vehicles used for the transportation of a resident.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.17 Food Services.

(a) The adult family care provider shall:

- (1) Meet the nutritional needs of each resident, including special dietary needs associated with any health or medical conditions or religious requirements as specified in the person-centered plan or medical orders;
 - (2) Offer at least 3 meals in each 24-hour period, with no more than 14 hours between the evening meal and breakfast, excepting snacks that are offered at bedtime, unless contraindicated by the resident's person-centered plan or medical orders;
 - (3) Make snacks available between meals and at bedtime if not contraindicated by the resident's person-centered plan; and
 - (4) If a resident has a pattern of refusing to follow a prescribed diet:
 - a. Document the reason for the refusal in the resident's record; and
 - b. Notify the resident's licensed practitioner, case manager and oversight agency.
- (b) For the purposes of emergency preparedness, each APCR shall have a supply of food and water sufficient for all household members and residents, including:
- (1) Refrigerated, perishable foods for a 3-day period;
 - (2) Non-perishable foods for a 7-day period; and
 - (3) Drinking water for a 3-day period.
- (c) The adult family care provider shall maintain:
- (1) All food and drinks safe for human consumption and free of spoilage, filth or other contamination including the immediate disposal of outdated food, or canned goods that have damage to their hermetic seals; and
 - (2) All food preparation and food service areas safe, clean and in sanitary condition including:
 - a. Ensuring all work surfaces, dishes, utensils and glassware shall be in good repair and cleaned after each use; and
 - b. When preparing and serving food, adult family care providers shall wash their hands and exposed portions of their arms with liquid soap and running water before preparing or serving food.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11 (from He-P 813.18); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.18 Medication Services.

- (a) All medications shall be administered in accordance with the orders of the resident's prescribing licensed practitioner or other licensed professional with prescriptive authority.
- (b) Medications and treatments ordered by the licensed practitioner or other licensed professional with prescriptive authority shall be available to give to the resident within 24 hours of being ordered.
- (c) The adult family care provider shall have a system in place to:

- (1) Obtain any medication ordered for immediate use by the resident;
- (2) Re-order medications for use by the resident; and
- (3) Receive new medication orders.

(d) For each prescription medication being taken by a resident, the adult family care provider shall have a copy of the signed order in the resident's record.

(e) All medication orders shall not be older than one year.

(f) Adult family care providers shall not make changes to the label of any residents' prescription container.

(g) Any licensed practitioner's order for a change or discontinuation of medications taken by the resident in the AFCR shall be noted by the home adult family care provider, who shall:

- (1) Notify the oversight agency and case manager of the change or discontinuation; and
- (2) Follow up with the licensed practitioner or other individual authorized by law to ensure the receipt of written documentation of same.

(h) The change in dosage, without a pharmacist changing the prescription label as described in (h) above, shall be allowed for a maximum of 30 days from the date of the new medication order, or 90 days for mail order medications.

(i) At the time of admission and on an annual basis, the adult family care provider shall obtain from a licensed practitioner written approval for the specific over-the-counter medications requested by, or on behalf of, the resident.

(j) Adult family care providers shall store all over-the-counter medications in a secure area to restrict access by other residents, household members and children residing in the home.

(k) All over-the-counter medication containers shall be:

- (1) Marked by the adult family care provider with the name of the resident using the medication; and
- (2) Taken in accordance with the directions on the medication container or as ordered by a licensed practitioner.

(l) The medication storage area for medications not stored in the resident's room shall be:

- (1) Locked and accessible only to the adult family care provider;
- (2) Clean, organized and lit in a fashion to ensure correct identification of each resident's medication(s); and
- (3) Equipped to maintain medication at the proper temperature.

(m) Except as allowed by RSA 318:42, all medication at the AFCR shall be kept in the original containers as dispensed by the pharmacy and properly closed after each use.

(n) Topical liquids, ointments, patches, creams, or powder forms of products shall be stored in such a manner that cross contamination with oral, optic, ophthalmic and parenteral products shall not occur.

(o) When a resident is going to be absent from the AFRC at the time medication is scheduled to be taken, the medication container shall be given to the resident or to the person responsible for the resident's care during the absence.

(p) Upon discharge or transfer, a resident shall be provided with his or her current medication(s).

(q) A written order from a licensed practitioner shall be required annually for any resident who is authorized to carry and self-administer without supervision emergency medications such as nitroglycerine, inhalers or EpiPens.

(r) Residents shall receive their medications in the following manner:

(1) Self-administer medication as allowed by (w) below;

(2) Self-administer with supervision as allowed by (x) below; or

(3) Administered by an individual that a nurse has delegated the task of medication administration to.

(s) For residents who self-administer medication, the adult family care provider shall:

(1) Obtain on a bi-annual basis a written order from a licensed practitioner authorizing him or her to self-administer medications without supervision;

(2) Ensure that the resident receives quarterly evaluations by the oversight agency to ensure that he or she maintains the physical and cognitive ability to self-administer;

(3) Assist the resident in storing the medications in their room by locking them up to safeguard against unauthorized access and to maintain them at proper temperatures; and

(4) Maintain a key to access the locked medication storage area in the resident's room with a copy of the key being given to the home adult family care provider.

(t) If a resident self-administers medication with supervision, adult family care providers shall be permitted to:

(1) Remind the resident to take the correct dose of his or her medication at the correct time;

(2) Place the medication container within reach of the resident;

(3) Remain with the resident to observe him or her taking the appropriate dose and type of medication as ordered by the licensed practitioner;

(4) Record on a resident's daily medication record that he or she has supervised the resident taking his or her medication; and

(5) Document in the resident's record any observed or reported side effects, adverse reactions, and refusal to take medications or medications not taken.

(u) If a resident self-administers medication with supervision, home adult family care providers shall not physically handle the medication in any manner.

(v) The licensed practitioner shall allow the resident to self-direct medications if the resident has a physical limitation and wishes to self-direct.

(w) If a resident self-directs the administration of medication, the adult family care provider may, upon the request of the resident, physically assist the resident with his or her medication, including opening the medication container, handing the resident the medication, and closing the container.

(x) If individuals authorized by law administer medications, the medication shall be:

- (1) Prepared immediately prior to administration; and
- (2) Prepared, identified, and administered by the same person pursuant to RSA 318 and RSA 326-B.

(y) When administering medication, the adult family care provider or other individual authorized by law shall remain with the resident until the resident has taken all of the medication.

(z) If a nurse delegates the task of medication administration to an individual not licensed to administer medications, the nurse shall comply with RSA 326-B concerning nurse delegation.

(aa) Except for those residents who self-administer prescription and over the counter medications, adult family care providers shall maintain a written record for each medication taken by the resident at the AFCR, containing the following:

- (1) The name and strength of the medication;
- (2) The dose taken by the resident;
- (3) The date and the time the medication was taken;
- (4) The signatures, identifiable initials and job titles of the home adult family care providers or adult family care providers who supervise, assist with, or administer the medications;
- (5) The reason for any medication refused or omitted;
- (6) For medication taken as needed, the reason the resident required the medication and the effect of the medication; and
- (7) Any allergies or allergic reactions to medications.

(ab) Adult family care providers shall administer as needed medications in accordance with a PRN protocol that shall contain specific written parameters for medication administration and shall be written and approved by a licensed nurse or prescribing practitioner.

(ac) When a controlled drug is prescribed for a resident, the adult family care provider shall maintain an inventory that includes documentation of a daily count.

(ad) The licensed nurse from the oversight agency shall provide, at a minimum, an initial 4-hour medication supervision education program to adult family care providers who assist residents with self-administration with supervision, self-directed administration, or who administer medication, via nurse delegation which shall cover the administration of both prescription and non-prescription medication.

(ae) On an annual basis, adult family care providers who administer medication via nurse delegation shall complete a minimum of 2 hours of training to review the medication supervision education program referenced in (ad) above.

(af) The medication supervision education program and annual in-service training required by (ad) and (ae) above shall include:

- (1) A review of the medications that the resident is currently taking;
- (2) Infection control and proper hand washing techniques;
- (3) The 6 rights which are:
 - a. The right resident;
 - b. The right medication;
 - c. The right dose;
 - d. Administered at the right time;
 - e. Administered via the right route; and
 - f. The right documentation.
- (4) Documentation requirements;
- (5) General categories of medications, such as anti-hypertensives and antibiotics;
- (6) Desired effects and potential side effects of medications; and
- (7) Medication precautions and interactions.

(ag) The adult family care provider shall develop and implement a system for immediately notifying the resident's prescribing, licensed practitioner and the oversight agency RN within 24 hours of the occurrence of any:

- (1) Observed adverse reactions to medication; or
- (2) Medication errors such as incorrect medications or omissions.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11 (from He-P 803.17); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.19 Physical Environment.

- (a) Living space and outdoor space shall be arranged and maintained as to provide for the health and safety of all household members.
- (b) The adult family care provider shall protect the resident's right to privacy.
- (c) An AFCR shall:
 - (1) Be maintained in good repair and free of hazard to all household members;
 - (2) Be free from environmental nuisances, including loud noise and foul odors;
 - (3) Replace all smoke detector batteries twice per year;
 - (4) Ensure that all doors, hallways, and stairs are clear and unobstructed;

- (5) Ensure that all flammable or combustible materials are stored at least 3 feet from electric heaters, wood, coal, kerosene or pellet stoves, furnaces, boilers, or water heaters;
 - (6) Ensure that oil furnaces are serviced annually, and that all of furnaces are serviced annually or as recommended or required by the service provider or manufacturer; and
 - (7) Ensure that, if oxygen is stored in the residence, that all doors entering the home are labeled accordingly. Any oxygen in the AFCR shall be firmly secured to the wall or secured in a stand or rack.
- (d) Each resident bedroom shall:
- (1) Contain no more than 2 beds;
 - (2) Have its own separate entry to permit the resident to reach his or her bedroom without passing through the room of another resident;
 - (3) Not be used as an access way to a common area or another bedroom or for any other purposes;
 - (4) Be separated from halls, corridors and other rooms by floor to ceiling walls; and
 - (5) Have at least one operable window with a tightly fitting screen to the outside.
- (e) A resident having impaired mobility as determined by his or her licensed practitioner or person-centered plan shall:
- (1) Have a bedroom located on the same level as the bathroom facilities; and
 - (2) Not be assigned a bedroom above or below the ground level of the AFCR;
- (f) The certified home adult family care provider shall provide the following for the resident's use:
- (1) A bed appropriate to the needs of the resident, including a mattress, pillow, linens, and blankets;
 - (2) Clean linens for personal care;
 - (3) Furniture including, a bureau, mirror, and lamp;
 - (4) Easily accessible closet or storage space for clothing and personal belongings;
 - (5) Window blinds or curtains that provide privacy; and
 - (6) A lockable container for the storage of medications.
- (g) The adult family care provider shall permit the use of a resident's personal possessions, provided they do not pose a risk to the resident or others.
- (h) The adult family care provider shall provide at least one living room or a multi-purpose room and a designated dining area.
- (i) The resident shall be able to access adult family care providers whenever they assistance is needed.

(j) Ample and adequate lighting shall be available throughout the AFCR to enable residents to navigate safely throughout the AFCR and to participate in activities such as reading, writing, crafts, or using a computer.

(k) At least one operating telephone shall be accessible to the residents at all times for incoming and outgoing calls.

(l) An AFCR shall have:

(1) At least one indoor bathroom, which includes a sink, toilet, and a bathtub or shower for every 6 persons in the household including the resident and all adults living in the AFCR;

(2) A functioning septic or other sewage disposal system; and

(3) A supply of hot and cold running potable water shall be available for human consumption and food preparation at all times, as follows:

a. If drinking water is supplied by a non-public water system, the water shall be tested and found to be in accordance with Env-Dw 702.02 and Env-Dw 704.02 initially and every 6 years thereafter; and

b. If the water is not approved for drinking, an alternative method for providing safe drinking water shall be implemented.

(m) The provider shall maintain the furniture, floors, ceilings, walls, and fixtures shall be clean and in good repair.

(n) The adult family care provider shall maintain:

(1) Linens, clothing and other laundry shall be clean and sanitary;

(2) A supply of clean linens shall be provided as needed to each resident; and

(3) Bathing and toileting facilities for all residents, clean and disinfected as often as necessary to prevent illness or contamination.

(o) The adult family care provider shall distinctly label and legibly mark poisonous compounds, such as cleaning products and solutions and insecticides, to identify the contents and store in a place separate from food, medications and resident supplies.

(p) The adult family care provider shall not use toxic materials in a way that contaminates food, equipment or utensils, or in any way other than in full compliance with the manufacturer's labeling.

(q) Except where residents have control of the thermostat in their own rooms, equipment providing heat to each the AFCR shall:

(1) Be capable of maintaining temperatures of:

a. At least 65 degrees Fahrenheit at night; and

b. At least 70 degrees Fahrenheit during the day if the resident(s) are present; and

(2) Be maintained in good repair.

(r) When new plumbing is installed, it shall be sized, installed, and maintained in accordance with the state plumbing code as adopted under RSA 329-A:15.

(s) The AFCR shall provide ventilation in all enclosed living areas by means of a mechanical ventilation system or one or more screened windows that can be opened.

(t) All bathroom, bedroom and closet door latches shall be designed for easy opening from the inside and easy opening of the locked door from the outside in the event of an emergency.

(u) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.

(v) Any firearms or ammunition kept at the AFCR shall be stored in a locked cabinet when not in use.

(w) Prior to beginning construction or renovations, or modifications to an AFCR, the certificate holder shall notify the health facilities administration of the plans.

(x) A adult family care provider or applicant undergoing construction, renovations, or modifications to an AFCR shall comply with:

(1) The state fire code Saf-C 6000 as adopted by the commissioner of the department of safety under RSA 153 and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control;

(2) The state building code as adopted under RSA 155-A:2; and

(3) Local building, zoning and ordinance codes.

(y) At all times, including during any construction at the AFCR, the adult family care provider shall maintain the environment free of hazardous conditions, including but not limited to:

(1) Electrical hazards;

(2) Plumbing hazards;

(3) Exposed insulation;

(4) Tripping hazards, such as throw rugs, cords and construction debris;

(5) Chemical fumes; and

(6) Sawdust or sheetrock dust.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11 (from He-P 813.20); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.20 Safety and Emergency Protocol.

(a) If the resident is provided unsupervised time, the adult family care provider shall complete a personal safety assessment to identify a resident's knowledge of and ability to respond to each of the following:

(1) Fire;

(2) Medical emergency;

- (3) Unsafe conditions in the home and community;
- (4) Abuse and exploitation;
- (5) Being lost in one's community;
- (6) Severe weather and other natural disasters; and
- (7) Building maintenance problems, such as power outages.

(b) If the personal safety assessment determines that the resident needs assistance to respond appropriately to situations outlined in (a) above, a personal safety plan shall be developed and implemented by the resident, the adult family care provider or caregiver.

(c) A personal safety plan shall:

- (1) Identify the supports necessary for a resident to respond to each of the contingencies listed in (a) above;
- (2) Indicate who will provide the needed supports;
- (3) Describe how the supports will be activated in an emergency;
- (4) Indicate approval of the resident, guardian, or representative, the adult family care provider and the oversight agency prior to the resident being left alone; and
- (5) Be reviewed every 6 months and revised whenever there is a change in the resident's ability to respond to the contingencies listed in the plan or the resident moves to a new AFCR.

(d) An emergency and fire safety plan shall be developed and implemented to provide for the safety of residents, adult family care providers and household members.

(e) The plan in (d) above shall:

- (1) Address any situation that requires evacuation of the AFCR;
- (2) Identify the location of all evacuation routes and exits; and
- (3) Provide for and assures the safe evacuation of all persons from the premises.

(f) Each adult family care provider shall comply with all laws and rules designed to protect life and safety in the event of a fire or other emergency.

(g) Prior to providing services, the adult family care provider and oversight agency shall develop a written emergency and fire safety plan that contains the following information:

- (1) The name and address of the AFCR;
- (2) The responsible oversight agency;
- (3) The name of the resident(s) living in the AFCR;
- (4) Whether 24-hour supervision is provided;
- (5) In the event of an emergency, the name and phone number of agency back-up;
- (6) The AFCR's evacuation plan;

(7) The signature of the adult family care provider; and

(8) A fire safety assessment for each resident in accordance with (k) below.

(h) Each adult family care provider shall annually review and revise, as needed, its emergency and fire safety plan.

(i) Evacuation drills shall be held at varied times of day, and include all residents and all individuals in the home at the time of the drill.

(j) Fire drills shall be conducted at least once per month for the first 4 months after the admission of a new resident, and then every other month thereafter.

(k) At least 2 of the fire drills conducted annually shall be conducted during the night, the first of which shall occur within the first 4 months after the admission of a new resident. Night time fire drills shall be conducted between the hours of 10 p.m. and 6 a.m. EST.

(l) When a new resident moves into the APCR, the APCR shall:

(1) Conduct monthly drills until all residents have evacuated the premises in 3 minutes or less for 4 consecutive monthly drills; and

(2) Thereafter conduct drills every other month.

(m) The adult family care provider shall maintain a report of each fire drill conducted, which includes:

(1) The names of the residents, household members, and other individuals involved;

(2) The time, day, month, and year the drill was conducted;

(3) The exits utilized;

(4) The total time required to evacuate the APCR; and

(5) Any problems encountered and corrective actions taken to rectify problems.

(n) A fire safety assessment to review a resident's ability to evacuate the building with or without assistance within 3 minutes shall be completed by the adult family care provider within 5 days of the resident's move into an APCR.

(o) The fire safety assessment shall:

(1) Be based on an actual evacuation drill conducted at the residence; and

(2) Include the following individual risk factors:

a. Response to alarm;

b. Response to instruction;

c. Vision and hearing;

d. Impaired consciousness;

e. Mobility;

- f. Resistance to evacuation;
- g. The resident's ability to independently exit and complete the evacuation from the house;
- h. Whether the resident is capable of choosing a backup strategy; and
- i. Whether the resident would be able to stay at a designated meeting point.

(p) The fire safety assessment shall indicate the date completed and signature of the person documenting the resident's risk factors.

(q) For each resident unable to evacuate within 3 minutes, a fire safety plan shall be developed and approved by the resident or representative, case manager, adult family care provider and the oversight agency that identifies:

- (1) The cause(s) for such inability;
- (2) The specific assistance needed by the resident from the adult family care provider; and
- (3) Specific actions that the resident shall take to reduce the evacuation time to 3 minutes or less.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11 (from He-P 813.21); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.21 Resident Records.

(a) The adult family care provider shall maintain on site a legible, current, and accurate record for each resident based on services provided at the AFCR.

(b) At a minimum, resident records shall contain the following:

- (1) A copy of the admissions contract and all documents required by He-P 813.15;
- (2) Identification data, which shall include:
 - a. Vital information including the resident's name, date of birth, and marital status;
 - b. If a resident is present only for respite care as described in He-P 813.24, the resident's home address and phone number;
 - c. The resident's religious preference, if known;
 - d. The name, address, and telephone number of an emergency contact person;
- (3) The names and telephone numbers of the resident's licensed practitioners;
- (4) The names, employers, business addresses, and telephone numbers of individuals contracted by the resident to provide services at the AFCR;
- (5) Copies of all executed legal directives, such as durable power of attorney and living will;

- (6) A record of the health examination(s) conducted by a licensed practitioner, which includes the information required by He-P 813.18(p) unless the licensed practitioner or resident documents refusal;
- (7) Written, dated and signed orders for the following:
 - a. All medications;
 - b. Treatments; and
 - c. Special diets;
- (8) All assessments and plans;
- (9) Documentation that the resident or representative has participated in the development of the person-centered plan;
- (10) All admission and progress notes;
- (11) If services are provided at the APCR by individuals not employed by the APCR, documentation, which shall include:
 - a. The name of the agency providing the services;
 - b. The date services were provided; and
 - c. The name of the person providing the services;
- (12) Documentation of any alteration in the resident's daily functioning such as:
 - a. Signs and symptoms of illness; and
 - b. Any action that was taken, including practitioner notification;
- (13) Documentation of specialized care;
- (14) Documentation of unusual incidents;
- (15) The resident's or representative's consent for release of information;
- (16) Transfer or discharge planning and referrals;
- (17) Notification to the resident or representative of involuntary room change, transfer or discharge;
- (18) The medication record, including:
 - a. The medication name, strength, dose, frequency and route of administration;
 - b. The date and time the medication was taken;
 - c. Effects of over the counter medications;
 - d. Documentation of medication errors or resident refusal to take the medication; and
 - e. Notice to the resident's licensed practitioner of any undesirable effects;
- (19) Emergency data sheet, which contains the information required by He-P 813;

- (20) Documentation of any resident refusal of care or services; and
 - (21) Documentation of nurse delegation as required by He-P 813.18(y), if applicable.
- (c) Resident records shall be available to:
- (1) The resident;
 - (2) The AFCR and oversight agency staff as required by their job responsibilities;
 - (3) Any individual(s) given written authorization by the resident or representative; and
 - (4) The department and its agents.

(d) The adult family care provider shall arrange for retention of and access to resident records for 6 years from the date the resident leaves the AFCR or for 4 years from the date the AFCR ceases operation.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11 (from He-P 813.22); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.22 Voluntary Closure of AFCR. When an AFCR no longer intends to operate, an oversight agency shall notify the department in writing of the following:

- (a) The name of the AFCR;
- (b) The certificate number of the AFCR;
- (c) The address of the AFCR;
- (d) The date the AFCR closed or will close; and
- (e) The location that the resident(s) have moved to, including the name of the home and certificate number of the home, if available.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.23 Complaints and Investigations.

- (a) The department shall accept and investigate complaints that allege:
- (1) A violation of RSA 151 or He-P 813;
 - (2) That an individual or entity is operating as an AFCR without being certified; or
 - (3) That an individual or entity is advertising or otherwise representing the AFCR as having or performing services for which it is not certified to provide, pursuant to RSA 151.
- (b) When practicable, the complaint shall be in writing containing the following information:
- (1) The name and address of the alleged uncertified AFCR;

(2) The name, address and telephone number of the complainant; and

(3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151 or He-P 813.

(c) The department shall not investigate a complaint unless the commissioner determines that, if the allegations are proven to be true, would constitute a violation of the provisions of RSA 151 or He-P 813.

(d) For a certified AFCR, the department shall:

(1) Provide written notification of the results of the investigation to the adult family care provider along with an inspection report if deficiencies were found as a result of the investigation; and

(2) Notify any other state or local agencies of suspected violations of their statutes or rules based on the results of the investigation.

(e) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall take no further action.

(f) If the investigation results in deficiencies being cited, the adult family care provider shall be required to submit a plan of correction in accordance with He-P 813.09.

(g) The department shall provide written notification to the adult family care provider or the oversight agency that includes:

(1) The date of investigation;

(2) The reasons for the investigation; and

(3) Whether or not the investigation revealed that the services being provided require certification under RSA 151.

(h) In accordance with RSA 151 the adult family care provider or the oversight agency shall be allowed 7 days from the date of the notice required by (g) above to respond to any findings cited by the department.

(i) The department shall accept the response in (f) and (h) above if it includes:

(1) For certified programs, a POC to achieve compliance with RSA 151 and He-P 813 within 30 days; or

(2) For uncertified programs, a complete application for certification.

(j) If the owner of an uncertified home does not provide a response as described in (h) above, the department shall:

(1) Issue a written warning to immediately comply with RSA 151 and He-P 813; and

(2) Provide information stating that the resident has the right to appeal the warning in accordance with RSA 151:7-a, III.

(k) Any person or entity who fails to comply after receiving a warning as described in (j) above shall be subject to an action by the department for injunctive relief under RSA 151:17.

(l) Except for any deficiency reports issued or POC's received, the name of the complainant and the information contained in the investigation file shall be kept confidential as required by RSA 151:13, but shall be released by the department on written request only:

- (1) To the department of justice when relevant to a specific investigation;
- (2) To a law enforcement agency(ies) when relevant to a specific criminal investigation;
- (3) To appropriate professional licensing boards, as authorized by RSA 151:13, if the information contained in the complaint file appears contrary to professional practices;
- (4) During any adjudicative proceeding that concerns:
 - a. The issuance of a warning in accordance with RSA 151:7-a;
 - b. The imposition of an administrative fine in accordance with RSA 151:16-a; or
 - c. The suspension, denial or revocation of a license under RSA 151:8 and RSA 151:9, I(f);
- (5) After the department suspends, denies or revokes a license under RSA 151:7, II; or
- (6) When a court of competent jurisdiction orders the department to release such information.

Source. #8595, eff 4-1-06; ss by #9899-A, eff 3-29-11 (from He-P 813.11); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.24 Appeals.

(a) An applicant for certification, adult family care provider, AFCR, or oversight agency may request a hearing regarding a denial or revocation of certification;

(b) Within 10 days of the date of the notification of denial or revocation of certification, a request for appeal shall be submitted in writing to the department's administrative appeals unit at:

Administrative Appeals Unit
Department of Health and Human Services
109 Pleasant Street- Main Building
Concord NH 03301

(c) Appeals shall be conducted in accordance with He-C 200.

Source. #9899-A, eff 3-29-11; ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19

He-P 813.25 Waivers.

(a) An oversight agency may request a waiver of specific procedures outlined in this rule, in writing, from the department.

(b) A request for waiver shall include:

- (1) A specific reference to the section of the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of alternative provisions or procedures being proposed;
- (4) If the residence is certified, the date of certification;
- (5) If it applies to a specific resident, the signature of the resident(s) or legal guardian(s) indicating knowledge of the request; and
- (6) Signature of the oversight agency's executive director or designee approving that a waiver be requested.

(c) A request for waiver shall be submitted to:

Health Facilities Administration
Department of Health and Human Services
129 Pleasant Street- Brown Building
Concord NH 03301

(d) No provision or procedure prescribed by statute shall be waived.

(e) A request for waiver shall be granted after the commissioner or his or her designee within 30 days if the alternative proposed by the AFCR meets the objective or intent of the rule and:

- (1) Does not negatively impact the health or safety of the resident(s); or
- (2) Is administrative in nature, and does not affect the quality of resident care.

(f) The determination on the request for waiver shall be made within 30 days of the receipt of the request.

(g) Upon receipt of approval of a waiver request, the oversight agency's or AFCR's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which the waiver was sought.

(h) With the exception of waivers granted pursuant to (i) below, and unless otherwise specified, waivers granted by the department shall have no expiration date.

(i) Those waivers which relate to the following shall be effective for the current certification period only:

- (1) Fire safety; or
- (2) Other issues relative to resident health, safety, or welfare that require periodic reassessment.

(j) All waivers shall end with the closure of an AFCR.

(k) An AFCR applicant, adult family care provider or oversight agency may request a renewal of a waiver from the department. Such request shall be made at least 90 days prior to the expiration of a current waiver.

Source. #9899-A, eff 3-29-11 (from He-P 813.10); ss by #12740, INTERIM, eff 3-20-19, EXPIRED: 9-16-19

New. #12934, eff 12-6-19