

PART He-P 823 HOME HOSPICE CARE PROVIDER

He-P 823.01 Purpose. The purpose of this part is to set forth the licensing requirements for all home hospice care providers (HHCPs), pursuant to RSA 151:2, I(b).

Source. #5646, eff 6-23-93; ss by #7020, INTERIM, eff 6-23-99, EXPIRED: 10-21-99

New. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association, or other legal entity operating a HHCP, except:

- (a) All facilities listed in RSA 151:2, II(a)-(g);
- (b) All entities which are owned or operated by the state of New Hampshire, pursuant to RSA 151:2, II(h);
- (c) Agencies that are certified by the department as other qualified agencies delivering personal care services in accordance with RSA 161-H; and
- (d) All homemaker services that provide only the following services:
 - (1) Housekeeping or housecleaning;
 - (2) Companionship;
 - (3) Shopping; or
 - (4) Preparation of meals that are not therapeutic diets ordered by a licensed practitioner.

Source. #5646, eff 6-23-93; ss by #7020, INTERIM, eff 6-23-99, EXPIRED: 10-21-99

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New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

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He-P 823.03 Definitions.

- (a) “Abuse” means any one of the following:
 - (1) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of a patient;
 - (2) “Physical abuse” means the misuse of physical force which results or could result in physical injury to a patient; and

- (3) “Sexual abuse” means contact or interaction of a sexual nature involving a patient with or without his or her informed consent.
- (b) “Activities of daily living (ADL)” means basic daily routine tasks such as eating, transferring, toileting, bathing, dressing, self-management, and monitoring or supervision of medications.
- (c) “Administer” means “administer” as defined by RSA 318:1, I, namely “an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person for immediate consumption or use.”
- (d) “Administrator” means the licensee, or an individual appointed by the licensee, who is responsible for all aspects of the daily operations of the HHCP.
- (e) “Admission” means accepted by a licensee for the provision of services to a patient.
- (f) “Agent” means an adult to whom authority to make health care decisions is delegated under an activated durable power of attorney for health care executed in accordance with RSA 137-J or a surrogate decision-maker in accordance with RSA 137-J:35.
- (g) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate an HHCP pursuant to RSA 151.
- (h) “Area of non-compliance” means any action, failure to act, or other set of circumstances that causes a licensee to be out of compliance with RSA 151, He-P 823, or other federal or state requirements.
- (i) “Assessment” means an evaluation of the patient to determine the care and services that are needed.
- (j) “Branch office” means a location physically separate from the primary location of the HHCP and that:
- (1) Provides oversight for employees who provide direct care services to patients in their cliental setting; and
 - (2) Is under the administration and supervision of the primary location of the HHCP.
- (k) “Care plan” means a written guide developed by the licensee, or its personnel, in consultation with the patient, guardian, agent, or personal representative, if any, as a result of the assessment process for the provision of care and services.
- (l) “Change of ownership” means a change in the controlling interest of an established HHCP to a successor business entity.
- (m) “Commissioner” means the commissioner of the New Hampshire department of health and human services or his or her designee.
- (n) “Coordinator” means a person from the HHCP who coordinates the care and services necessary to provide optimum health care management for the patient.
- (o) “Core services” means those services provided by the licensee that are included in the basic rate.
- (p) “Critical incident stress management (CISM)” means an adaptive, short-term psychological helping-process that focuses solely on an immediate and identifiable problem. Its purpose is to enable people to return to their daily routine more quickly and with less likelihood of experiencing post-traumatic stress disorder.

- (q) “Days” means calendar days unless otherwise specified in the rule.
- (r) “Demonstrated competency” means the ability of the employee to demonstrate to an evaluator that he or she is able to complete the required task in a way that reflects the minimum standard including, but not limited to, a certificate of completion of course material or a post test to the training provided.
- (s) “Department” means the New Hampshire department of health and human services.
- (t) “Direct care” means hands-on care and services provided to a patient, including but not limited to medical, nursing, psychological, or rehabilitative treatments.
- (u) “Directed plan of correction” means a plan developed and written by the department that specifies the necessary actions the licensee shall take to correct identified areas of non-compliance.
- (v) “Do not resuscitate order (DNR order)” means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs. The term includes “do not attempt resuscitation order (DNAR order)”.
- (w) “Drop site” means a location, which does not meet the definition of a branch office, where materials, equipment, and supplies used in the provision of hospice services may be temporarily stored.
- (x) “Emergency plan” means a document outlining the responsibilities of personnel in an emergency.
- (y) “Exploitation” means the illegal use of a patient’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or person’s property for any purpose not in the proper and lawful execution of a trust, including but not limited to, situations where a person obtains money, property or services from a patient through the use of undue influence, harassment, duress, deception, or fraud.
- (z) “Guardian” means a person appointed in accordance with RSA 464-A to make informed decisions relative to the patient’s health care and other personal needs.
- (aa) “Home hospice care provider (HHCP)” means an agency which provides hospice services to patients and their families in the patient’s residence.
- (ab) “Hospice” means a specialized program of care and supportive services, which provides a combination of medical, social and spiritual services to terminally ill patients and their families.
- (ac) “Incident command system (ICS)” means a standardized on-scene emergency management system specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents.
- (ad) “Infectious waste” means those items specified by Env-Sw 904.
- (ae) “In-service” means an educational program, which is designed to increase the knowledge, skills, and overall effectiveness of personnel.
- (af) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 823 or to respond to allegations, pursuant to RSA 151:6, of non-compliance with RSA 151 and He-P 823.

(ag) "Investigation" means the process used by the department to respond to allegations of non-compliance with RSA 151 and He-P 823.

(ah) "License" means the document issued by the department to an applicant at the start of operation as an HHCP which authorizes operation in accordance with RSA 151 and He-P 823, and includes the name of the licensee, the name of the business, the physical address, the license classification, the effective date, and license number.

(ai) "License certificate" means the document issued by the department to an applicant or licensee that, in addition to the information contained on a license, includes the name of the administrator and the type(s) of services authorized for which the HHCP is licensed.

(aj) "Licensed practitioner" means a:

(1) Medical doctor;

(2) Physician's assistant;

(3) Advanced practice registered nurse (APRN);

(4) Doctor of osteopathy;

(5) Doctor of naturopathic medicine; or

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

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

(al) "Licensing classification" means the specific category of services authorized by a license.

(am) "Medical director" means a New Hampshire licensed practitioner, licensed in accordance with RSA 329, who is responsible for overseeing the quality of medical care and services within the HHCP.

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

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

(ap) "Nursing care" means the provision or oversight of a physical, mental, or emotional condition or diagnosis by a nurse that, if not monitored on a routine basis by a nurse, would or could result in a physical or mental harm to a patient.

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

(ar) "Over-the-counter medications" means non-prescription medications.

(as) “Owner” means any person, corporation, association, or any other legal entity, whether organized for profit or not, holding or claiming ownership of, or title to, a license.

(at) “Patient” means any person admitted to or in any way receiving care, services, or both from a HHCP licensed in accordance with RSA 151 and He-P 823.

(au) “Patient record” means the documentation of all care and services, which includes all documentation required by RSA 151, He-P 823, and any other applicable federal and state requirements.

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

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

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

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

(az) “Physical restraint” means the use of hands-on or other physically applied technique to physically limit the patient’s freedom of movement, which includes but is not limited to forced escorts, holding, prone restraints, or other containment techniques.

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

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

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

(1) A lancing or finger stick device to get the blood sample;

(2) A test strip to apply the blood sample; or

(3) A meter or monitor to calculate and show the results including:

a. Blood glucose meters, also called “glucometers”;

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

c. Cholesterol meter.

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

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

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

(bg) “Professional management responsibility” means that the professional staff of the HHCP provider continues to provide guidance and services to the patient regardless of the location of the patient.

(bh) “Professional staff” means:

- (1) Physicians;
- (2) Physician assistants;
- (3) Advanced practice registered nurses;
- (4) Registered nurses;
- (5) Registered physical therapists;
- (6) Speech therapists;
- (7) Licensed practical nurse;
- (8) Licensed respiratory therapists;
- (9) Occupational therapists;
- (10) Medical social workers;
- (11) Dietitians;
- (12) Spiritual care coordinator;
- (13) Bereavement counselors; and
- (14) Volunteer coordinators.

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

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

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

(bk) “Self-administration of medication without assistance” means the patient takes his or her own medication(s) without the assistance of personnel, including prompting.

(bl) “Self-directed medication administration” means an act whereby a patient, who has a physical limitation that prohibits him or her from self-administration of medication, with or without assistance, directs personnel to physically assist in the medication process which shall not include assisting with injections or filling insulin syringes.

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

(bn) “Volunteer” means an unpaid person, screened and trained by agency, who provides assistance to patients and families with companionship, household chores, shopping, transportation, et cetera, who does not provide direct care. This term does not include visitors or those persons who provide religious services or entertainment.

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He-P 823.04 Initial License Application Requirements.

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

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

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

b. For any HHCP to be newly licensed:

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

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

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

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

a. “Certificate of Authority,” if a corporation;

b. “Certificate of Formation,” if a limited liability corporation; or

c. "Certificate of Trade Name," where applicable;

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

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

(5) Written local approvals as follows:

a. For an existing administrative building, not including a patient's home where care is being provided, the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials or if there is no such official(s), from the board of selectmen or mayor:

1. The health officer verifying that the applicant complies with all applicable local health, drinking water, and wastewater requirements;

2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;

3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and

4. The fire chief verifying that the applicant complies with the state fire code, Saff-C 6000, including the health care chapter of NFPA 101 as adopted by the commissioner of the department of safety, under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control, and local fire ordinances applicable for a business; and

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

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

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

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

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He-P 823.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 823.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 823.04(a), the department shall notify the applicant in writing of the items required before the application can be processed.

(c) Any licensing fee submitted to the department in the form of a check or money order and returned to the state for any reason, shall be processed in accordance with RSA 6:11-a.

(d) Licensing fees shall not be transferable to any other application(s).

(e) Unless a waiver has been granted, the department shall deny a licensing request in accordance with He-P 823.13(b) if it determines that the applicant, licensee, administrator, or medical director:

(1) Has been convicted of any felony in this or any other state;

(2) Has been convicted of a sexual assault, other violent crime, assault, fraud, theft, abuse, neglect, or exploitation in this or any other state;

(3) Has a finding by the department or any administrative agency in this or any other state for assault, fraud, theft, abuse, neglect, or exploitation of any person; or

(4) Otherwise poses a threat to the health, safety, or well-being of patients.

(f) An inspection shall be completed in accordance with He-P 823.09 prior to the issuance of a license.

(g) The applicant shall have on hand and available for inspection at the time of the initial onsite inspection the results of a criminal records check from the New Hampshire department of safety for all current personnel.

(h) Following a clinical inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 823.

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

(j) A written notification of denial, pursuant to He-P 823.13(b)(1), shall be sent to an applicant applying for an initial license if it has been determined by the inspection in (h) above and a maximum of 2 follow-up inspections that the prospective premises are not in full compliance with RSA 151 and He-P 823.

(k) A written notification of denial, pursuant to He-P 823.13(b)(4), shall be sent to an applicant applying for an initial license if the department has received no communication from the applicant within 90 days of sending written notification to the applicant that their application is complete and an inspection needs to be scheduled.

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He-P 823.06 License Expirations and Procedures for Renewals.

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

(b) Each licensee seeking renewal shall:

(1) Complete and submit to the department an application form pursuant to He-P 823.04(a)(1) at least 120 days prior to the expiration of the current license;

(2) The current license number;

(3) A request for renewal of any existing non-permanent waivers previously granted by the department, in accordance with He-P 823.10(f), if applicable. If such a request is not received, the rule(s) for which the waiver was previously requested shall not continue to be waived beyond the expiration of the current license;

(4) A list of any current employees who have a permanent waiver granted in accordance with He-P 823.18(d); and

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

(c) Following an inspection, as described in He-P 823.09, a license shall be renewed if the department determines that the licensee:

(1) Submitted an application containing all the items required by (b) above, prior to the expiration of the current license;

(2) Has submitted a POC that has been accepted by the department and implemented by the licensee if areas of non-compliance were cited at the last licensing inspection or investigation; and

(3) Is found to be in compliance with RSA 151 and He-P 823 at the renewal inspection, or submitted an acceptable plan of correction if areas of non-compliance were cited.

(d) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license, and does not intend to cease operation, shall be required to submit an application for initial license pursuant to He-P 823.04 and shall be subject to a fine in accordance with He-P 823.13(c)(5).

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He-P 823.07 Branch Offices and Drop Sites.

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

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

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

(c) The HHCP shall submit to the department the information required by He-P 823.04(a)(5) for branch offices.

(d) Upon receipt of the information required by (b) and (c) above, the department shall issue a revised license certificate to reflect the addition of the branch offices, provided the additions do not violate RSA 151 or He-P 823.

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

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He-P 823.08 HHCP Requirements for Organizational or Service Changes.

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

- (1) Ownership;
- (2) Physical location of the licensed premises;

- (3) Address; or
 - (4) Name.
- (b) The HHCP shall complete and submit a new application and obtain a new license and license certificate prior to:
- (1) A change in ownership; or
 - (2) A change in licensing classification.
- (c) When there is a change in address without a change in location, the HHCP shall provide the department with a copy of the notification from the local, state, or federal agency that requires the address change.
- (d) When there is a change in address due to a physical location change , the HHCP shall provide the department with:
- (1) A letter which contains the license number, new address, and date of the move; and
 - (2) Local approval form as specified in He-P 823.04(a)(5).
- (e) When there is a change in the name, the HHCP shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.
- (f) An inspection by the department shall be conducted prior to operation for changes in the following:
- (1) Ownership, unless the current licensee is in full compliance then an inspection shall be conducted as soon as practical by department; or
 - (2) A change in licensing classification.
- (g) A new license and license certificate shall be issued for a change in ownership.
- (h) A revised license and license certificate shall be issued for a change in name.
- (i) A license and license certificate shall be issued at the time of initial licensure.
- (j) A revised license certificate shall be issued for any of the following:
- (1) A change in administrator;
 - (2) When a waiver has been granted;
 - (3) When there is a change in services; or
 - (4) When a branch office has been added.
- (k) The HHCP shall inform the department in writing no later than 5 days prior to a change in administrator, or as soon as practicable in the event of a death or other extenuating circumstances requiring an administrator change and provide the department with the following:
- (1) A resume identifying the name and qualifications of the new administrator or medical director;
 - (2) Copies of applicable licenses for the new administrator or medical director;

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

(4) Results of bureau and elderly adult registry Check.

(l) Upon review of the materials submitted in accordance with (k) above, the department shall make a determination as to whether the new administrator or medical director meets the qualifications for the position, as specified in He-P 823.15(g).

(m) If the department determines that the new administrator or medical director does not meet the qualifications for his or her position as specified in (l) above, it shall so notify the licensee in writing, within 14 days, so that a waiver can be sought or the licensee can search for a qualified candidate.

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

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

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

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He-P 823.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 823, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the HHCP; and
- (3) Any records required by RSA 151 and He-P 823.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 823, and other federal or state requirements prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership, except as allowed by He-P 823.08(f)(1);
- (3) A change in the licensing classification; or

(4) The renewal of a license.

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

(d) A statement of findings shall be issued when, as a result of an inspection, the department determines that the HHCP is in violation of any of the provisions of He-P 823, RSA 151, or other federal or state requirements.

(e) If areas of non-compliance were cited in a statement of findings, the licensee shall submit a POC, in accordance with He-P 823.12(c) , within 21 days of the date on the letter that transmits the inspection report.

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New. #12642, eff 10-9-18

He-P 823.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 823 shall submit a written request for a waiver to the commissioner that includes:

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

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

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

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

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

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

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

(3) Does not negatively affect the quality of patient services.

(d) The licensee's subsequent compliance with the alternatives approved in the waiver shall be considered equivalent to complying with the rule from which waiver was sought.

(e) Waivers shall not be transferable.

(f) When a licensee wishes to renew a non-permanent waiver beyond the approved period of time, the licensee shall apply for a new waiver with the renewal application or at least 60 days prior to the expiration of the existing waiver, as appropriate, by submitting the information required by (a) above:

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

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.11 Complaints.

(a) The department shall investigate any complaint that meets the following conditions:

- (1) The alleged violation(s) occurred not more than 6 months prior to the date the department was made aware of the allegation(s);
- (2) The complaint is based upon the complainant's first-hand knowledge regarding the allegation(s) or on information reported directly to the complainant by a person who has first-hand knowledge regarding the allegation(s); and
- (3) There is sufficient specific information for the department to determine that the allegation(s), if proven to be true, would constitute a violation of any of the provisions of RSA 151 or He-P 823.

(b) When practicable the complaint shall be in writing and contain the following information:

- (1) The name and address of the HHCP, or the alleged unlicensed individual or entity;
- (2) The name, address, and telephone number of the complainant; and
- (3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151 or He-P 823.

(c) Investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the complaint as follows:

- (1) Requests for additional information from the complainant or the facility;
- (2) A physical inspection of the licensed premises;
- (3) Review of relevant records; and
- (4) Interviews with individuals who might have information that is relevant to the investigation.

(d) For a licensed HHCP, the department shall:

- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if areas of non-compliance were found as a result of the investigation;
- (2) Notify any other federal, state, or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate;
- (3) Notify the licensee in writing and take no further action if the department determines that the complaint is unfounded, under (a) above, or does not violate any statutes or rules; and

(4) Require the licensee to submit a POC in accordance with He-P 823.12(c) if the inspection results in areas of non-compliance being cited.

(e) The following shall apply for the unlicensed individual or entity:

(1) The department shall provide written notification to the owner or person responsible that includes:

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

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

(3) If the owner of an unlicensed facility does not comply with (2) above, the department shall issue a written warning to immediately comply with RSA 151 and He-P 823; and

(4) Any person or entity who fails to comply after receiving a warning as described in (3) above, shall be subject to an action by the department for injunctive relief under RSA 151:17 and an administrative fine in accordance with He-P 823.13(c)(1).

(f) Complaint investigation files shall be confidential in accordance with RSA 151:13, and shall not be disclosed publicly, but shall be released by the department on written request only:

- (1) To the department of justice when relevant to a specific investigation;
- (2) To law enforcement when relevant to a specific criminal investigation;
- (3) When a court of competent jurisdiction orders the department to release such information; or
- (4) In connection with an administrative or judicial proceeding relative to the licensee.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 823, or other applicable licensing rules, including:

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

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

- (1) Identifies each area of non-compliance; and
- (2) Identifies the specific remedy(s) that has been imposed.

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

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

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

(2) The licensee shall submit a written POC to the department within 21 days of the date on the letter that transmitted the statement of findings, unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:

- a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21-day period but has been unable to do so; and
- b. The department determines that the health, safety, or well-being of a patient will not be jeopardized as a result of granting the extension;

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

- a. Achieves compliance with RSA 151 and He-P 823;
- b. Addresses all areas of non-compliance as cited in the statement of findings;
- c. Prevents a new violation of RSA 151 or He-P 823 as a result of the implementation of the POC; and
- d. Specifies the date upon which the areas of non-compliance will be corrected;

(4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever applies;

(5) If the POC is not acceptable:

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

1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14-day period but has been unable to do so; and
 2. The department determines that the health, safety, or wellbeing of a patient will not be jeopardized as a result of granting the waiver;
- c. The revised POC shall comply with (c)(1) above and be reviewed in accordance with (c)(3) above; and
- d. If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, unless the department has granted an extension, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with He-P 823.13(c)(11);
- (6) The department shall verify the implementation of any POC that has been submitted and accepted by:
- a. Reviewing materials submitted by the licensee;
 - b. Conducting an on-site follow-up inspection; or
 - c. Reviewing compliance during the next inspection;
- (7) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and
- (8) If the POC has not been implemented by the completion date, at the time of the next inspection the licensee shall be:
- a. Notified by the department in accordance with He-P 823.12(b); and
 - b. Issued a directed POC in accordance with (d) below and a fine in accordance with He-P 823.13(c)(12).
- (d) The department shall develop and impose a directed POC that specifies corrective actions for the applicant or licensee to implement when:
- (1) As a result of an inspection, areas of non-compliance were identified that require immediate corrective action to protect the health and safety of the patients or personnel;
 - (2) A revised POC is not submitted within 14 days of the written notification from the department or such other date as applicable if an extension was granted by the department; or
 - (3) A revised POC submitted by the licensee has not been accepted.
- (e) If at the time of the next inspection the directed POC referenced in (d) above has not been implemented by the completion date stated in the directed POC, the department shall:
- (1) Impose a fine;
 - (2) Deny the application for a renewal of a license in accordance with He-P 823.13(b); or
 - (3) Revoke the license in accordance with He-P 823.13(b).

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

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

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

(i) The deadline to submit a POC in accordance with He-P823.12(c) above shall not apply until the notice of the determination in (h) above has been provided to the applicant or licensee.

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

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

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

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

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.13 Enforcement Actions and Hearings.

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

(1) The reasons for the proposed action;

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

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

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

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

(1) An applicant or a licensee violated a provision of RSA 151 or He-P 823 in a manner which poses a risk of harm to a patient's health, safety, or well-being;

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

- (3) An applicant or licensee has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order, or certified check;
 - (4) After being notified of and given an opportunity to supply missing information, or schedule an initial inspection the applicant or licensee fails to submit an application that meets the requirements of He-P 823.04;
 - (5) The applicant, licensee, or any representative or employee of the applicant or licensee:
 - a. Provides false or misleading information to the department;
 - b. Prevents, interferes, or fails to cooperate with any inspection or inspection conducted by the department; or
 - c. Fails to provide requested files or documents to the department;
 - (6) A licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 823.12(c),(d), and (e);
 - (7) A licensee has submitted a POC that has not been accepted by the department in accordance with He-P 823.12(c)(5) and has not submitted a revised POC as required by He-P 823.12(c)(5);
 - (8) The licensee is cited a third time under RSA 151 or He-P 823 for the same violation within the last 5 inspections;
 - (9) A licensee, or its corporate officers, has had a license revoked and submits an application during the 5-year prohibition period specified in (j) below;
 - (10) Unless a waiver has been granted, upon inspection, the applicant or licensee is not in compliance with RSA 151 or He-P 823;
 - (11) Unless a waiver has been granted, the department makes a determination that the applicant, administrator, or licensee has been found guilty of or plead guilty to a felony assault, theft, fraud, abuse, neglect, or exploitation of any person, in this or any other state, or had an investigation for abuse, neglect, or exploitation adjudicated and founded by the department or any administrative agency in this or any other state;
 - (12) The applicant or licensee employs an administrator or medical director who does not meet the qualifications for the position under circumstances in which the department has not granted a waiver; or
 - (13) The applicant has had a license revoked by any division or unit of the department within 5 years prior to the application.
- (c) The department shall impose fines as follows:
- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00 for an applicant or unlicensed provider;
 - (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist operations, in violation of RSA 151:2 and RSA 541-A:30, or continuing to

operate after a failure to renew the license by the expiration date, for an applicant, unlicensed entity, or a licensee the fine shall be \$2000.00;

(3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III and He-P 823.14(g) the fine for an applicant, licensee, or unlicensed entity shall be \$500.00;

(4) For a failure to comply with the directives of a warning issued by the department, in violation of RSA 151:7-a and He-P 823.11(e)(4), the fine for an unlicensed provider or a licensee shall be \$500.00;

(5) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 823.06(e), the fine for a licensee shall be \$100.00;

(6) For a failure to notify the department prior to a change of ownership, in violation of He-P 823.08(a)(1), the fine for a licensee shall be \$500.00;

(7) For a failure to notify the department prior to a change in the physical location, in violation of He-P 823.08(a)(2), the fine for a licensee shall be \$1000.00;

(8) For a failure to notify the department of a change in e-mail address, in violation of He-P 823.08(o), the fine shall be \$100.00;

(9) For a failure to allow access by the department to the HHCP's premises, programs, services, patients, or records, in violation of He-P 823.09(a)(1)-(3), the fine for an applicant, unlicensed individual or licensee shall be \$2000.00;

(10) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, or the date of an extension as granted, in violation of He-P 823.12(c)(2) and (5), the fine for a licensee shall be \$100.00;

(11) For a failure to implement or maintain the corrective action set forth in any POC that has been accepted or issued by the department, in violation of He-P 823.12(c)(8), the fine for a licensee shall be \$1000.00;

(12) For a failure to establish, implement or comply with licensee policies, as required by He-P 823.14(b), (d), and (s), the fine for a licensee shall be \$500.00;

(13) For a failure to provide services or programs required by the licensing classification and specified by He-P 823.14(c), the fine for a licensee shall be \$500.00;

(14) For a failure to transfer a patient whose needs exceeds the services or programs provided by the HHCP, in violation of RSA 151:5-a, the fine for a licensee shall be \$500.00;

(15) For providing false or misleading information or documentation to the department, in violation of He-P 823.14(f), the fine shall be \$1000.00 per offense;

(16) For a failure to meet the needs of the patient, in violation of He-P 823.15(e), the fine for a licensee shall be \$1000.00 per patient;

(17) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 823.14(i)(5)-(6), the fine for a licensee shall be \$500.00;

(18) When an inspection determines that a violation of RSA 151 or He-P 823 for which a fine was previously imposed, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:

- a. If the same area of non-compliance is cited within 2 years of the original area of non-compliance, the fine for a licensee shall be double the original fine, but not to exceed \$1000.00; or
- b. If the same area of non-compliance is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be triple the original fine, but not to exceed \$2000.00;

(19) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 823 shall constitute a separate violation and shall be fined in accordance with He-P 823.13(c); and

(20) If the applicant or licensee is making good faith efforts to comply with (14) or (16) above, as verified by documentation or other means, the department shall not issue a daily fine.

(d) Payment of any imposed fine to the department shall meet the following requirements:

- (1) Payment shall be made in the form of check or money order made payable to the “Treasurer, State of New Hampshire” or cash in the exact amount due; and
- (2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

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

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

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

(h) If an immediate suspension is upheld, the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 823 is achieved.

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

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

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

- (1) The date of the department’s decision to revoke or deny the license, if no appeal is filed; or
- (2) The date a final decision upholding the action of the department is issued, if a request for a hearing is made and a hearing is held.

(l) Notwithstanding (k) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of knowledge, skills, and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 823.

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

(n) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A, or He-P 823.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.14 Duties and Responsibilities of All Licensees.

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

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

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

(2) The policies described in He-P 823; and

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

(c) The licensee shall define, in writing, the scope and type of services to be provided by the HHCP, which shall include at a minimum, the core services listed in He-P 823.15.

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

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

(2) Revising them as needed.

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

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

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

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

(i) The licensee shall:

- (1) Manage and operate the HHCP;
- (2) Meet the needs of the patients during those hours that the patient is in the care of the HHCP;
- (3) Initiate action to maintain the HHCP in full compliance at all times with all relevant health and safety requirements contained in applicable federal, state, and local laws, rules, regulations, and ordinances;
- (4) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the HHCP;
- (5) Appoint an administrator and a medical director;
- (6) Verify the qualifications of all personnel;
- (7) Provide sufficient numbers of qualified personnel who are available to meet the needs of patients during all hours that the HHCP has contracted with patients to provide service;
- (8) Provide personnel with sufficient supplies and equipment to meet the needs of the patients;
- (9) Require all personnel to follow the orders of the licensed practitioner for every patient and encourage the patient to follow the licensed practitioner's orders; and
- (10) Implement any POC that has been accepted or issued by the department.

(j) The licensee shall consider all patients to be competent and capable of making all decisions relative to their own health care unless the patient:

- (1) Has a guardian or conservator appointed by a court of competent jurisdiction; or
- (2) Has a durable power of attorney for health care that has been activated in accordance with RSA 137-J or a surrogate decision-maker in accordance with RSA 137-J:35.

(k) The licensee shall only accept a patient whose needs can be met through the program and services offered under the current license.

(l) If the licensee accepts a patient who is known to have a disease reportable under He-P 301 or an infectious disease, which is any disease caused by the growth of microorganisms in the body which might or might not be contagious, the licensee shall follow the required procedures and personnel training for the care of the patient, as specified by the United States Centers for Disease Control and Prevention "2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" (June 2007 edition), available as noted in Appendix A.

(m) The licensee shall report all positive tuberculosis test results for personnel to the office of disease control in accordance with RSA 141-C:7, He-P 301.02, and He-P 301.03.

(n) The licensee shall post the following documents in a public area:

- (1) The license and current license certificate issued in accordance with RSA 151:2;

(2) All inspection reports for the last 12 months issued in accordance with He-P 823.09(d) and He-P 823.11(d)(4);

(3) A copy of the “Home Care Clients’ Bill of Rights” specified by RSA 151:21-b;

(4) A copy of the licensee’s policies and procedures relative to the implementation of patient rights and responsibilities;

(5) A copy of the licensee’s complaint procedure, including a statement that complaints may be submitted, in writing, to the:

Department of Health and Human Services
Office of Legal and Regulatory Services
Health Facilities Administration,
129 Pleasant Street
Concord, NH 03301 or by calling 1-800-852-3345; and

(6) The licensee’s plan for fire safety, evacuation, and emergencies, identifying the location of, and access to all fire exits.

(o) For reportable incidents, the licensees shall:

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

(2) Fax to 271-4968 or, if a fax machine is not available, convey electronically via webmail at <https://www.dhhs.nh.gov/oos/bhfa/contact.htm> and click on the e-mail link, or regular mail, the following information to the department within 48 hours of a reportable incident:

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

(3) Immediately notify the guardian, agent, or personal representative, if any;

(4) If abuse or neglect is suspected, the licensee shall notify the department with a written report within 5 days describing the actions taken by personnel, the final outcome or

continuation of the reportable incident, and actions taken to prevent a reoccurrence if it was not submitted in the initial report;

(5) Contact the department immediately by telephone, fax, or e-mail to report the information required by (2) above in the case of the death of any patient who dies within 10 days of a reportable incident;

(6) Provide the information required by (4) above in writing within 72 hours of the unexpected death of any patient or the death of any patient who dies within 10 days of a reportable incident if the initial contact was made by telephone or if additional information becomes available subsequent to the time the initial contact was made; and

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

(p) The licensee shall admit and allow any department representative to inspect the HHCP and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 823 as authorized by RSA 151:6 and RSA 151:6-a.

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

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

(s) Any licensee that maintains electronic records shall develop a system with written policies and procedures to protect the privacy of patients and personnel that, at a minimum, include:

(1) Procedures for backing up files to prevent loss of data;

(2) Safeguards for maintaining the confidentiality of information pertaining to patients and personnel; and

(3) Systems to prevent tampering with information pertaining to patients and personnel.

(t) At the time of admission the licensee shall give a patient and their legal guardian agent, or surrogate decision-maker if applicable, a listing of all HHCP's charges and identify what care and services are included in the charge.

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

(v) The licensee shall provide all personnel with education in hospice philosophy and hospice care.

(w) No patient shall receive any direct patient care at the HHCP primary location, branch office, or drop site(s).

(x) The HHCP shall comply with all federal, state, and local health, building, fire, and zoning laws, rules, and ordinances.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.15 Required Services.

- (a) The licensee shall provide the following core hospice care services:
- (1) Nursing services sufficient to meet the nursing needs of the patient, which are:
 - a. Determined by the patient's care plan;
 - b. Available, as needed, 24 hours a day; and
 - c. Supervised by a registered nurse.
 - (2) Home health aide and personal care services that are provided either directly or by contract as the needs of the patient dictate and as determined by the patient's care plan;
 - (3) Assisting patients to acquire pharmaceutical services such as equipment, appliances, medical supplies, and other pharmaceutical services as the needs of the patient dictate and as determined by the patient's care plan;
 - (4) Hospice care social services such as assessment of the social environment and financial issues supervised by a social worker;
 - (5) Hospice volunteer services;
 - (6) Nutritional counseling, physical or occupational therapy, and speech therapy that are provided or arranged for as needed in accordance with patient's care plan;
 - (7) Spiritual services which are offered in accordance with the patient's and family's beliefs and values; and
 - (8) Bereavement services that are available to the family for up to one year following the death of the patient.
- (b) If, on a temporary basis, not to exceed 90 days, the HHCP cannot provide any of the core care and services in (a) above, the HHCP shall have a written agreement with another agency to provide the required services.
- (c) Any contractual agreement to provide care and services shall:
- (1) Identify the care and services to be provided;
 - (2) Specify the qualifications of the personnel that will be providing the care and services;
 - (3) Require that the HHCP must authorize the services; and
 - (4) Stipulate the HHCP retains professional responsibility for all care and services provided.
- (d) The HHCP shall provide or arrange for the provision of short-term in-patient stays in a hospital, nursing home, or hospice house during those times when the patient's pain or symptoms are unable to be managed in the home.

(e) The HHCP shall retain professional management responsibility for all services that are provided including contracted services when a hospice patient is in another licensed facility. These responsibilities shall be defined in a written contractual agreement.

(f) The licensee shall provide staff for the following positions:

- (1) An administrator to oversee the HHCP, except as allowed by 823.15(g)(1) below;
- (2) A full time director of patient services;
- (3) A medical director;
- (4) A volunteer coordinator;
- (5) A social services coordinator; and
- (6) Spiritual and or bereavement coordinator.

(g) Any administrator shall have at least a bachelor's degree in business or a health-related field with a minimum of one year's experience in hospice care or be a registered nurse and:

- (1) Designate, in writing, an alternate administrator who shall assume the responsibilities of the administrator in his or her absence; and
- (2) Be permitted to hold more than one position at the HHCP if:
 - a. The individual meets the qualifications of all positions; and
 - b. The duties and responsibilities of the positions can be accomplished by one individual; and
- (3) Be responsible for maintaining the HHCP in full compliance with all federal, state, and local laws, rules, codes, and ordinances at all times.

(h) Any director of patient services shall:

- (1) Be a New Hampshire-licensed or compact-registered nurse;
- (2) Be a New Hampshire-licensed advanced practice registered nurse; or
- (3) Have a bachelor's degree in a health field related to hospice care.

(i) The director of patient services shall:

- (1) Be responsible for the overall delivery of patient care and services;
- (2) Provide sufficient nursing personnel to meet the need of the patients;
- (3) Supervise the overall delivery of patient care and services; and
- (4) Coordinate the supervision of licensed nurse aides (LNA) at least every 2 weeks by a registered nurse at the patient's home to determine if the LNA is providing care and services in accordance with the patient's care plan. The LNA shall not have to be present during this visit.

(j) The medical director shall be a licensed provider and shall be responsible for:

- (1) The overall medical component of the hospice plan of care;
 - (2) Participating on the interdisciplinary patient care team;
 - (3) Determining, in consultation with the interdisciplinary team, that an individual is appropriate for hospice care services; and
 - (4) Consultative physician visits for hospice and palliative care patients as requested by physicians.
- (k) Volunteer services shall be provided under the direction of a coordinator of volunteer services who:
- (1) Implements a direct service volunteer program;
 - (2) Coordinates the orientation, education, support, and supervision of direct service volunteers; and
 - (3) Coordinates the utilization of direct service volunteers with other hospice staff.
- (l) All volunteers shall be oriented and educated relative to their prescribed function according to the hospice care provider's policies and procedures.
- (m) The licensee shall develop and maintain policies and procedures for its volunteer services that address the following areas:
- (1) Recruitment and retention;
 - (2) Screening;
 - (3) Orientation;
 - (4) Scope of function;
 - (5) Supervision;
 - (6) Ongoing training and support;
 - (7) Records of volunteer activities; and
 - (8) Criminal record checks.
- (n) The social services coordinator shall have:
- (1) At least a master's degree from a graduate school of social work; or
 - (2) A bachelor's degree in a related health or human services field, have at least 2 years experience as a social worker and have established a consultative relationship with a person who qualifies in (1) above.
- (o) The social services coordinator shall:
- (1) Participate in the development of the care plan; and
 - (2) Work in conjunction with the director of patient services to coordinate all social services required by the care plan and ensure their delivery.

(p) The spiritual and or bereavement coordinator shall be a person who has at least a bachelor's degree in an applicable field such as theology of education, psychology, or counseling and who has completed at least 8 additional hours in death and dying, grief, and bereavement.

(q) Persons providing bereavement services shall have education in death and dying, grief, and bereavement.

(r) The spiritual and or bereavement coordinator shall be responsible for providing an organized program of bereavement services for up to 12 months after the death of the patient including:

- (1) Counseling to families after the patient's death;
- (2) Developing a care plan that reflects the needs of the patient's family; and
- (3) Others services necessary to aid in the bereavement process.

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

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

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

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

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

(w) Training shall consist of collection, storage, and transport of the specimens.

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

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.16 Patient Services.

(a) The licensee shall only admit those patients whose needs can be met by the HHCP.

(b) At the time of admission, personnel of the HHCP shall:

- (1) Provide, both orally and in writing, to the patient, or the patient's guardian, agent, or surrogate decision-maker, if applicable the HHCP's:

- a. Policy on patient rights and responsibilities, including a copy of the home care clients' Bill of Rights, pursuant to RSA 151:21-b;
 - b. Complaint procedure;
 - c. List of care and services that are provided directly by the HHCP; and
 - d. List of the care and services that are provided by contract;
 - (2) Obtain written confirmation acknowledging receipt of the items in (1) above from the patient, their guardian, agent, or surrogate decision-maker if applicable;
 - (3) Collect and record the following information:
 - a. Patient's name, home address, home telephone number, and date of birth;
 - b. Name, address and telephone number of an emergency contact and guardian, agent, or surrogate decision-maker if applicable;
 - c. Name of patient's primary care provider and their address and telephone number;
 - d. Copies of all legal directives such as durable power of attorney, legal guardian, or living will; and
 - e. Written and signed consent for the provision of care and services; and
 - (4) Obtain documentation of informed consent and consent for release of information.
- (c) The hospice care provider shall ensure that medical direction is provided either from the patients' attending licensed practitioner or the hospice medical director.
- (d) Patients who are admitted or accepted for services shall:
- (1) Be evaluated and assessed by professional staff within 48 hours of admission; and
 - (2) Have an order for any service for which such order is required by the practice acts of the person providing care.
- (e) Patients who are accepted for services shall have a nursing assessment at the following intervals to determine the level of care and services required by the patient:
- (1) Within 48 hours of admission; and
 - (2) Thereafter as required by the CMS conditions of participation or at least every 90 days at a minimum.
- (f) The assessment required by (e) above shall contain, at a minimum, the following:
- (1) Pertinent diagnoses including mental status;
 - (2) A pain assessment, including symptom control and vital signs;
 - (3) A physical assessment;
 - (4) A cognition and mental status assessment;
 - (5) A behavioral assessment;

- (6) A psychosocial assessment;
 - (7) Medications and treatment needs;
 - (8) Functional limitations;
 - (9) Nutritional requirements;
 - (10) Estimated duration and frequency of care and services;
 - (11) Any equipment required; and
 - (12) Any safety precautions.
- (g) In addition to the information in (e) and (f) above, the initial nursing assessment shall include:
- (1) Reactions of the patient and family members to terminal illness;
 - (2) History of the patient's and family coping strengths and weaknesses;
 - (3) Social and financial concerns; and
 - (4) Spiritual beliefs and desires of the patient.
- (h) The licensee shall establish an interdisciplinary hospice care team composed of at least:
- (1) A licensed practitioner;
 - (2) A registered nurse;
 - (3) A social worker; and
 - (4) A spiritual and or bereavement counselor.
- (i) The interdisciplinary hospice care team shall:
- (1) Establish the care plan;
 - (2) Be the primary care delivery team for a patient and his or her family through the total duration of hospice care; and
 - (3) Be responsible for supervising any patient care and services provided by others.
- (j) The interdisciplinary team shall, in conjunction with the patient and the patient's personal representative, and their family, develop an individualized care plan, which reflects the changing care needs of the patient and family.
- (k) The care plan required by (j) above shall include:
- (1) The date the problem or need was identified;
 - (2) A description of the problem or need;
 - (3) The goal for the patient;
 - (4) The action or approach to be taken by HHCP personnel;

- (5) The responsible person(s) or position; and
- (6) The interventions used to address problems identified in the assessment including:
 - a. Medications ordered;
 - b. Pain control interventions, both pharmacological and non-pharmacological;
 - c. Symptom management treatment; and
 - d. Services required including frequency of visits.
- (l) The care plan required by (j) above shall be:
 - (1) Developed in conjunction with the patient and their guardian, agent, or surrogate decision maker;
 - (2) Completed no later than 5 days after completion of the assessment;
 - (3) Reviewed and revised every 15 days by the interdisciplinary team following the completion of each assessment; and
 - (4) Made available to all personnel that assist the patients.
- (m) The patient, the patient's family and guardian, agent, or surrogate decision maker shall be notified in advance of all interdisciplinary team meetings and be given the opportunity to participate in such meetings.
- (n) The patient and their family shall be encouraged to participate in all components of care, including:
 - (1) Assessment and problem identification;
 - (2) Implementation of the care plan; and
 - (3) Evaluation and revision of the care plan, as needed.
- (o) The care plan shall contain documentation of the patient's or the patient's guardian, agent, or surrogate decision-makers' acceptance or rejection of the initial care plan and all subsequent revisions or updates.
- (p) All staff of the HHCP shall carry out the goals stated in the care plan.
- (q) The licensee shall develop a discharge plan with the input of the patient and the guardian, agent, or surrogate decision-maker if any.
- (r) Copies of the following documents shall accompany the transferred patient:
 - (1) The emergency data sheet;
 - (2) A copy of the care plan; and
 - (3) A summary that includes:
 - a. The date and time the patient was transferred from the HHCP;
 - b. The place to which the patient was transferred or discharged; and

c. The condition of the patient at the time of transfer or discharge.

(s) Transfers may occur without prior notification to the guardian or agent pursuant to an activated POA or the licensed practitioner when the patient is in need of immediate emergency care.

(t) Progress notes shall be written by personnel, as appropriate, at the time of each visit and shall include at a minimum:

- (1) Changes in the patient's physical, functional, and mental abilities;
- (2) Changes in the patient's behaviors such as eating or sleeping patterns;
- (3) The patient's relief of pain, if applicable; and
- (4) Newly identified needs of the patient and their family.

(u) Written notes shall be documented in the patient's record for:

- (1) All care and services provided by personnel and include the following:
 - a. Date and time of the care or service;
 - b. Description of the care or service;
 - c. Progress notes as required by (t) above; and
 - d. Signature and title of the person providing care or services; and

(2) Any reportable incident or occurrence involving the patient when HHCP personnel are in the patient home, which shall include the information required by He-P 823.14(o).

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

- (1) The written confirmation required by He-P 823.16(b)(2);
- (2) The identification data required by He-P 823.16(b)(3);
- (3) Consent and medical release forms, as applicable;
- (4) Pertinent medical information:
- (5) All orders from a licensed practitioner, including the date and signature of the licensed practitioner required by He-P 823.16(c);
- (6) Copy of order activating durable power of attorney, if applicable;
- (7) Copy of DNR order, if applicable;
- (8) All assessments required by He-P 823.16(d) and (e);
- (9) All care plans required by He-P 823.16(j)-(l) including documentation that the patient or patient's guardian, agent, or surrogate decision-maker, if applicable, participated in the development of the care plan;
- (10) All written notes required by He-P 823.16(u);
- (11) All progress notes as required by He-P 823.16(t);

- (12) All daily medication records required by He-P 823.17(d)(9);
 - (13) A discharge plan or transfer summary as required by He-P 823.16(q) and (r)(3);
 - (14) Discharge documentation, which shall include:
 - a. In the case of patient death:
 - 1. Date and place of death; and
 - 2. Bereavement follow-up plan; and
 - b. In the case of discharge other than patient death:
 - 1. Date and time of patient discharge;
 - 2. The physical, mental, and medical condition of patient at discharge;
 - 3. Discharge instruction and referral;
 - 4. Discharge summary; and
 - 5. Signed licensed practitioner's order for discharge, if applicable; and
 - (15) Documentation of any patient refusal of any care or services.
- (w) Patient records shall be available to:
- (1) The patient, their guardian, agent, or surrogate decision-maker;
 - (2) HHCP personnel as required by their job responsibilities and subject to the licensee's policy on confidentiality;
 - (3) Any individual given written authorization by the patient or their guardian ,agent and surrogate decision maker;
 - (4) Any individual authorized by a court of competent jurisdiction; and
 - (5) The department or any individual authorized by law.
- (x) The licensee shall develop and implement a method for the written release of information in the patient record that is consistent with federal and state statute.
- (y) The HHCP shall store the patient record in the primary or branch office except when they are being utilized by the supervisory and direct care staff.
- (z) Records shall be safeguarded against loss, damage, or unauthorized use by being stored in locked containers, cabinets, rooms, or closets except when they are being used by direct care staff.
- (aa) Records shall be retained for a minimum of 4 years after discharge and in the case of minors, until one year after reaching age 18, but no less than 4 years after discharge.
- (ab) The HHCP shall arrange for storage of, and access to, patient records as required by (aa) above in the event that the HHCP ceases operation.
- (ac) If the HHCP is providing any of the following services, they shall be licensed in accordance with the applicable rules:

- (1) Home health care provider agency; or
- (2) Case management provider agency.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.17 Medications.

(a) HHCP personnel who are not authorized by law to administer medications may remind and prompt patients to take their medications at the proper time, place medication container(s), including pill planners, within patient reach, and open the medication container(s) when the patient is present, reading the medication label to the patient and utilizing hand over hand technique if the patient is competent and stable, as per the care plan.

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

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

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

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

- a. Taken only by a licensed health care professional if such action is within the scope of their practice act;
- b. Immediately transcribed and signed by the individual taking the order; and
- c. Counter-signed by the ordering practitioner as soon as possible and with a documented reason if signed more than 30 days after the telephone order being taken;

(7) Require that the medication to be administered by HHCP personnel be:

- a. Prepared immediately prior to administration; and
- b. Prepared, identified, and administered by the same person in compliance with RSA 318 and RSA 326-B;

(8) Require that when personnel are assisting or administering medication, they remain with the patient until the patient has taken all of the medication, excluding infusion therapy;

(9) Maintain documentation for all medications either assisted by or administered by HHCP personnel that includes:

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

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

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

(e) If the HHCP provides "self-administration of medication with assistance" medication services to a patients defined by He-P 823.03(bk), the HHCP shall:

- (1) Maintain, in the home, a list of medications currently being taken by the patient;
- (2) Assist with self-administration of medications in accordance with the written and signed orders of the licensed practitioner;
- (3) Maintain either the original written and signed order, or a copy thereof, in the patient's record that includes:

- a. The patient's name;
- b. The medication name, strength, prescribed dose, and route of administration;
- c. The frequency of administration;
- d. The indications for usage of all PRN medications; and
- e. The date ordered;

(4) Not allow personnel to assist with self-administration of medications if anyone other than a pharmacist has changed prescription medication container labels except as allowed by (e)(7)f. below;

(5) Require that any change or discontinuation of medications shall be pursuant to a written and signed order;

(6) Require that all telephone orders for medications or treatments are:

- a. Taken only by a licensed health care professional if such action is within the scope of their practice act;
- b. Immediately transcribed and signed by the individual taking the order; and
- c. Counter-signed by the ordering practitioner within 30 days or with a documented reason if more than 30 days;

(7) Allow a patient to self-administer medication with assistance by personnel, as directed by the care plan, and which personnel shall be required to:

- a. Remind the patient to take the correct dose of his or her medication at the correct time from the original medication bottle;
- b. Place the medication container within reach of the patient;
- c. Remain with the patient to observe them taking the appropriate number and type of medication as ordered by the licensed practitioner;
- d. Record that they have supervised the patient taking their medication on the patient's daily medication record;
- e. Document in the patient's record any observed or reported side effects, adverse reactions, refusal to take medications, and medications not taken; and
- f. Require that if the licensed practitioner or other professional authorized by law changes the dose of a medication and personnel of the HHCP are unable to obtain a new prescription label:

- 1. The RN shall clearly and distinctly mark the original container, for example, with a colored sticker that does not cover the pharmacy label, in a manner consistent with the HHCP's written procedure, indicating that there has been a change in the medication order;

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

3. The change in dosage, without a change in prescription label as described in (e)(7)f.1. and (e)(7)f.2.above, shall be allowed for a maximum of 90 days from the date of the new medication order, until the medications in the marked container are exhausted or, in the case of PRN medications, until the expiration date on the container, whichever occurs first;

(8) Permit personnel who assist a patient that self-administers medication with assistance to open the medication container and place it within reach of the patient, but not permit that person to physically handle the medication in any manner;

(9) Require that when personnel are assisting that they remain with the patient until the patient has taken all of the medication, excluding infusion therapy;

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

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

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

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

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

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

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

- (1) Infection control and proper hand washing techniques;
- (2) The 5 rights, including:
 - a. The right patient;

- b. The right medication;
 - c. The right dose;
 - d. Administered at the right time; and
 - e. Administered via the right route;
- (3) Documentation requirements;
 - (4) General categories of medications such as antihypertensives or antibiotics;
 - (5) Desired effects and potential side effects versus adverse effects of medications; and
 - (6) Medication precautions and interactions.

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

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

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

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.18 Personnel.

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

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

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

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

(c) Unless a waiver is granted in accordance with He-P 823.10 and (d) below, the licensee shall not offer employment, contract with, or engage a person in (b) above, for any position if the individual:

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

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

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

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

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

(f) The licensee shall:

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

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

(h) All personnel shall:

- (1) Meet the educational and physical qualifications of the position as listed on their job description;
- (2) Be licensed, registered, or certified as required by state statute;
- (3) Receive an orientation prior to contact with a patient that includes:
 - a. The HHCP's policy on patient rights and responsibilities and complaint procedures as required by RSA 151:20;
 - b. The duties and responsibilities of the position they were hired for;
 - c. The HHCP's policies, procedures and guidelines;

- d. The HHCP's infection control program;
 - e. The HHCP's fire, evacuation, and emergency plans which outline the responsibilities of personnel in an emergency; and
 - f. The mandatory reporting requirements such as RSA 161:F: 46-48 and RSA 169-C: 29-31;
- (4) Within the first 3 months of employment, receive an orientation to hospice philosophy relative to the delivery of care and services to hospice patients and their families;
- (5) Complete mandatory annual in-service education, which includes a review of the HCCP's:
- a. Policies and procedures on patient rights and responsibilities;
 - b. Infection control program; and
 - c. Fire and emergency procedures;
- (6) Be at least 18 years of age if working as direct care personnel unless they are:
- a. A licensed nursing assistant working under the supervision of a registered nurse in accordance with Nur 700; or
 - b. Part of an established educational program working under the supervision of a registered nurse;
- (7) Prior to contact with patients or food, submit to the HHCP the results of a physical examination or health screening performed by a licensed nurse or a licensed practitioner and 2-step tuberculosis testing, Mantoux method, or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;
- (8) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first test are negative for TB; and
- (9) Comply with the requirements of the Centers for Disease Control and Prevention "Guidelines for Preventing the Transmission of M. Tuberculosis in Health Care Settings (2005 edition), available as noted in Appendix A, if the person has either a positive TB test, or has had direct contact or potential for occupational exposure to M. tuberculosis through shared air space with persons with infectious tuberculosis.
- (i) In lieu of (h)(8) above, independent agencies contracted by the facility to provide direct care or personal care services may provide the licensee with a signed statement that its employees have complied with (h)(7) and (9) above before working at the HHCP.
- (j) All personnel shall sign a statement at the time the initial offer of employment is made and then annually thereafter stating that they:
- (1) Do not have a felony conviction in this or any other state;
 - (2) Have not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect, or exploitation or pose a threat to the health, safety, or well-being of a patient; and
 - (3) Have not had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect, or exploitation of any person.

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

(l) All personnel shall follow the orders of the licensed practitioner for each patient and encourage patients to follow the practitioner's order.

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

(n) The employee file required by (m) above shall include the following:

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

- a. Identification data, including date of birth; and
- b. The education and work experience of the employee;

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

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

- a. Position title;
- b. Qualifications and experience; and
- c. Duties required by the position;

(4) Record of satisfactory completion of the orientation program required by (h)(4) and (5) above and any required continuing education program;

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

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

(7) Documentation of annual in-service education as required by (h)(5) above;

(8) For unlicensed personnel that have been delegated the task of medication administration, the written evaluation by the delegating registered nurse that was used to determine that the personnel member is competent to administer medications;

(9) A statement that shall be signed at the time the initial offer of employment is made and then annually thereafter by all personnel as required by (j) above;

(10) Documentation of the criminal records check;

(11) The results of the registry checks in (f) above; and

(12) Copy of certification of (h)(7) above.

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

- (1) For volunteers, the information in (n)(1), (2), (4), and (6)-(11) above; and
- (2) For independent contractors, the information in (n)(2), and (4)-(11) above, except that the letter in (g) and (i) above may be substituted for (n)(6), (10), and (11) above, if applicable.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.19 Quality Improvement.

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

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

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

(d) The quality improvement committee shall:

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

(e) If the HHCP utilizes nurse delegation for the task of medication administration to an individual not licensed to administer medications, a quarterly written report containing the following information shall be completed and submitted to the quality improvement committee for review:

- (1) The patient census;
- (2) The number of unlicensed personnel administering medications via nurse delegation;
- (3) Categories of medications administered;
- (4) Route of administration; and

- (5) Any incidents or medication errors and actions taken.
- (f) The quality improvement committee shall meet at least quarterly.
- (g) The quality improvement committee shall generate dated, written minutes after each meeting.
- (h) Documentation of all quality improvement activities shall be maintained on-site at the primary location for at least 2 years.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

He-P 823.20 Infection Control.

- (a) The HHCP shall develop and implement an infection control program that educates and provides procedures for the prevention, control and investigation of infectious and communicable diseases.
- (b) The infection control program shall include written procedures for:
 - (1) Proper hand-washing techniques;
 - (2) The utilization of universal precautions;
 - (3) The management of patients with infectious or contagious diseases or illnesses;
 - (4) The handling, storage, transportation and disposal of those items identified as infectious waste in Env-Sw 904; and
 - (5) Reporting of infectious and communicable diseases as required by He-P 301.
- (c) The HHCP shall appoint an individual who will oversee the development and implementation of the infection control program.
- (d) The infection control education program shall address at a minimum the:
 - (1) Causes of infection;
 - (2) Effects of infections;
 - (3) Transmission of infections; and
 - (4) Prevention and containment of infections.
- (e) Personnel infected with a disease or illness transmissible through food, fomites, or droplets, shall not prepare food or provide direct care in any capacity until they are no longer contagious.
- (f) Pursuant to RSA 141-C:1, personnel with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the person is on tuberculosis treatment and has been determined to be non-infectious by a licensed practitioner.
- (g) Personnel with an open wound who prepares food or provides direct care in any capacity shall cover such wound at all times by an impermeable, durable, tight fitting bandage.

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

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

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-29-17, EXPIRES: 10-26-17

New. #12642, eff 10-9-18

He-P 823.21 Physical Environment and Emergency Preparedness.

- (a) The licensee shall comply with all federal, state and local laws, rules, codes and ordinances for:
- (1) Building;
 - (2) Health, including waste disposal and water;
 - (3) Fire; and
 - (4) Zoning;
- (b) The HHCP shall keep all entrances and exits to the licensed premises accessible at all times during hours of operation.
- (c) The HHCP shall be clean, maintained in a safe manner and good repair, and kept free of hazards.
- (d) Each HHCP shall develop a written emergency plan that covers any situation that could prevent the HHCP from providing patient services and which:
- (1) Includes site-specific plans for the protection of all persons on-site in their licensed premises in the event of fire, natural disaster, severe weather, and human-caused emergency to include, but not be limited to, a bomb threat;
 - (2) Is approved by the local emergency management director and/or fire department, as appropriate;
 - (3) Is available to all personnel;
 - (4) Is based on realistic conceptual events;
 - (5) Is modeled on the Incident Command System (ICS) in coordination with local emergency response agencies;
 - (6) Provides that all personnel designated or involved in the emergency preparedness plan of the facility shall be supplied with a means of identification, such as vests, baseball caps, or hard hats, which shall be worn at all times in a visible location during the emergency;
 - (7) Includes the HHCP's response to both short-term and long-term interruptions in the availability of utility service in the disaster or emergency, including establishing contingency plans for continuity of essential building systems or evacuation to include the following, as applicable:

- a. Electricity;
- b. Water;
- c. Ventilation;
- d. Fire protection systems;
- e. Fuel sources; and
- f. Communications systems;

(8) Includes a plan for alerting and managing personnel in a disaster, and accessing Critical Incident Stress Management (CISM), if necessary;

(9) Includes a policy detailing the responsibilities of personnel for responding to an emergency while on duty in the home of a patient;

(10) Includes an educational, competency-based program for personnel, to provide an overview of the components of the emergency management program and concepts of the ICS and the personnel's specific duties and responsibilities; and

(11) If the HHCP is located within 10 miles of a nuclear power plant and is part of the New Hampshire Radiological Emergency Response Plan (RERP), includes the required elements of the RERP.

(e) Each licensee shall annually review and revise, as needed, its emergency plan.

Source. #9292, eff 10-9-08, EXPIRED: 10-9-16

New. #12168, INTERIM, eff 4-28-17, EXPIRED: 10-26-17

New. #12642, eff 10-9-18

Appendix A: Incorporation by Reference Information

Rule	Title	Obtain at:
He-P 823.14(1)	United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007 edition)	Available free of charge from the CDC website at www.cdc.gov .
He-P 823.18(i)(9)	Centers for Disease Control and Prevention “Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings,” 2005 edition	Available free of charge from the CDC website at www.cdc.gov .

Appendix B

Rule	Specific State or Federal Statutes the Rule Implements
He-P 823.01 – He-P 823.03	RSA 151:9,I(a),(b)
He-P 823.04 – He-P 823.07	He-P 823.04 – He-P 823.07
He-P 823.08	RSA 151:9,I(a)
He-P 823.09	RSA 151:9,I(e)
He-P 823.10	RSA 151:9,I(a)
He-P 823.11	RSA 151:9,I(e)
He-P 823.12	RSA 151:9,I(f),(g),(l),(m)
He-P 823.13	RSA 151:9,I(f),(h),(l)
He-P 823.14 – He-P 823.21	RSA 151:9,I(a)