

APPENDIX II-K
COVER SHEET FOR EMERGENCY RULE

Document Number _____ Rule Number He-C 6446.14(h)(1)

<p>1. Agency Name & Address: Dept. of Health and Human Services Division for Children, Youth and Families Thayer Building, 1st Floor 129 Pleasant Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 170-E:34</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment <u>X</u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readopt with Amendment _____</p>
<p>5. Date of Filing: <u>November 21, 2022</u></p>	

6. Short Title: **Foster Family Care- License and Permit Requirements**

7. Contact person for copies and questions:

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****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the numbers on this sheet (a separate sheet is not required for every item):

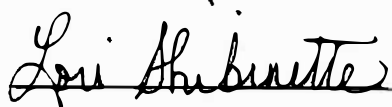
- 8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.
- 9. A summary of the effect if the rule were not adopted.
- 10. A description of those affected.

***PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET** and all attachments along with 2 copies of the emergency rule to the Office of Legislative Services, Administrative Rules.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* hereby certify that the attached is an accurate statement explaining why an emergency rule is necessary.

Date: 11/21/2022

Signature: 

Name: Lori A. Shibinette

Title: Commissioner

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

8. An explanation of the nature of (a) the imminent peril to public health or safety, demonstrating that the emergency rule is necessary to prevent the imminent peril, or (b) the substantial fiscal harm to the state or its citizens which could otherwise occur if the rule were not adopted as an emergency rule.

He-C 6446 describes the requirements individuals must meet when applying for an initial or renewal of a foster family care license in New Hampshire pursuant to RSA 170-E:34 administered by the Division of Children, Youth, and Families (DCYF). Foster family care is provided to children requiring out-of-home placement. The rule sets forth the requirements for issuance of a foster family care license or permit, including categories of foster family care, the application process for initial and renewal licenses, requirements to maintain licensure, cause for revocation or denial of a license, the appeals process, and required actions to meet the needs of a child in care.

He-C 6446.14 on license and permit requirements outlines the information that shall be included on the foster family care license or permit and the various requirements that shall be met when a foster family care license or permit is issued.

The Department of Health and Human Services (Department) recently issued guidance to child-placing agencies licensing foster parents, advising that no applicant for foster family care licensure shall be required to have their household members vaccinated for the prevention of COVID-19. The Department's immunization requirements in He-C 6446.14(h) use the precise requirements in the national model foster family home licensing standards promulgated by the United States Department of Health and Human Services under 42 USC 671 (a)(36) for compliance with Title IV-E of the Social Security Act. Since the adoption of He-C 6446 in June 2020, the Advisory Committee on Immunization Practices (ACIP) has added the vaccination to prevent COVID-19 to their recommended immunizations. Due to the highly controversial nature of this vaccination, the Department has identified the need to ensure no provider or licensing entity mandates any resident of New Hampshire receive this vaccination as a condition of licensure. The Department has received feedback from foster parents that any mandate for vaccination to prevent COVID-19 would result in the loss of foster parents.

The Department is proposing to amend section He-C 6446.14 entitled "License and Permit Requirements" by amending subparagraph He-C 6446.14(h)(1) to add that the COVID vaccination shall be exempt from the list of immunizations that all child household members must be up to date on for any foster parent seeking to provide care to a child under 6 years old or a child with special needs.

The Department is utilizing emergency rulemaking to prevent substantial fiscal harm to the citizens of the state and risk to the health and safety of children served by the state's child welfare program. Specifically, the loss of foster parents would result in insufficient foster family care homes across the state to serve local children in need of out-of-home care due to child welfare concerns for their safety. The loss of foster family care homes increases the costs for the care of children including the use of out-of-state programs or agency-supervised care in public establishments (such as hotels), increases cost of transportation of children and families based on the placement of children at greater geographical distances from their families and communities, and barriers to reunification of children resulting in longer placement episodes for greater expenses over time. The loss of foster family care homes also results in the lack of safe settings to receive children who have been court ordered into the Department's care. At this time, foster parents seeking licensure or re-licensure under the current rule, whose children under 6 have not been vaccinated to prevent COVID-19, would not meet the immunization requirements for licensure. Because of this, some foster family care providers are not pursuing licensure or re-licensure, resulting in a decrease in available foster family care homes.

While there is no public hearing for emergency rulemaking, the Department will enter into regular rulemaking to permanently adopt the amendments to He-C 6446.14(h)(1).

9. A summary of the effect if the rule were not adopted.

If the amendments to He-C 6446.14(h)(1) were not adopted, the applicants for foster parent licensure or re-licensure would be required to have any children under age 6 in their home vaccinated to prevent COVID-19, which could significantly impact the state's child welfare system by decreasing the quantity of foster family care homes. The decrease in foster family care homes would be due to fewer foster parent applicants, and the loss of foster parents seeking (or being eligible for) re-licensing. The loss of foster family care homes to meet the need of the child welfare system, which already has a system capacity shortfall to meet the placement needs for the number of children requiring placement services, puts the burden on the state to pay more costly placement options with greater risk to the well-being of children and families. The increased costly placement options include accessing out-of-state programs or paying staff to provide supervision in lieu of a caregiver and paying to use room in a public establishment (such as hotel) to house children until an alternative placement setting can be identified. The availability of alternative placement options once noted are most often at a greater distance from the child's home community resulting in greater costs to facility supports and services to meet the child's permanency and well-being, which in turn results in longer placement episodes. The increased use of higher cost systems, cost of additional services, and duration of placement episodes result in greater fiscal impact paid by the state's general funds.

10. A description of those affected.

These rules apply to entities who wish to be licensed or permitted by the department of health and human services to be foster parents.

CHAPTER He-C 6400 PROGRAM AND SERVICE INFORMATION

PART He-C 6446 FOSTER FAMILY CARE LICENSING REQUIREMENTS

Amended He-C 6446.14(h)(1), effective 6-16-20 (Document #13056), cited and to read as follows:He-C 6446.14 License and Permit Requirements.

(h) Each foster parent and household member shall meet the physical health eligibility criteria set by the U.S Department of Health and Human Services, Administration on Children Youth and Families, “National Model Foster Family Home Licensing Standards” (February 2019) available at <https://www.acf.hhs.gov/sites/default/files/cb/im1901.pdf>, as noted in Appendix A, as follows:

(1) For any foster parent seeking to provide care to a child under 6 years old, or a child with special medical needs, all children who are household members shall be up to date on immunizations consistent with the recommendations of the American Academy of Pediatrics (AAP), the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (ACIP), and the American Academy of Family Physicians (AAFP), with the exception of vaccines used for the prevention of COVID-19, unless the immunization is contrary to the child’s health as documented by a licensed health care professional;

APPENDIX A: Incorporation by Reference Information

Rule	Title	Publisher; How to Obtain; and Cost
He-C 6446.14 (h)	“National Model Foster Family Home Licensing Standards” (February 2019)	Publisher: U.S. Department of Health and Human Services, Administration on Children, Youth and Families Cost: Free to the public The incorporated document is available: https://www.acf.hhs.gov/sites/default/files/cb/im1901.pdf

APPENDIX B

Rule Section	State or Federal Statute the Rule Implements
He-C 6446.14	RSA 170-E:25, XI and XII; RSA 170-E:34