

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

Statutory Authority: RSA 151:9

PART He-P 806 NON-EMERGENCY WALK-IN CARE CENTERS

**Readopt He-P 806.01 and He-P 806.02, effective 5-30-19 (Document #12795), to read as follows:**

He-P 806.01 Purpose. The purpose of this part is to set forth the licensing requirements for all non-emergency walk-in care centers (NEWCC), whether stationary or mobile, pursuant to RSA 151:2, I(d).

He-P 806.02 Scope. This part shall apply to any organization, business entity, partnership, corporation, government entity, association, or other legal entity operating a NEWCC, except:

- (a) All facilities listed in RSA 151:2, II(a)-(i);
- (b) Entities that provide health screening services for the purpose of risk assessment only and not for diagnosis or treatment; and
- (c) Immunization clinics that are registered with the department's division of public health services.

**Readopt with amendment He-P 806.03, effective 5-30-19 (Document #12795), to read as follows:**

He-P 806.03 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 patients;
  - (2) "Physical abuse" means the misuse of physical force which results or could result in physical injury to patients; and
  - (3) "Sexual abuse" means contact or interaction of a sexual nature involving patients with or without their informed consent.
- (b) "Addition" means an increase in the building area, aggregate floor area, building height, or number of stories of a structure.
- (c) "Administer" means an act whereby one or more doses of a medication are instilled into the body, applied to the body of, or otherwise given to a person for immediate consumption or use by an individual authorized by law, including RSA 318-B and RSA 326-B.
- (d) "Administrator" means the person responsible for the management of the licensed premises who reports to and is accountable to the governing body.
- (e) "Affiliated or related parties" means companies or individuals that serve as operators, landlords, management companies or advisors, real estate or consulting companies, members of limited liability companies, administrative services companies, lenders and companies providing financial guarantees, or captive or affiliated insurance companies.

(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:35-37.

(g) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate a NEWCC pursuant to RSA 151.

(h) “Area of non-compliance” means any action, failure to act, or other set of circumstances that cause a licensee to be out of compliance with RSA 151, He-P 806, or other federal or state requirements.

(i) “Assessment” means a systematic data collection which enables facility personnel to plan care that allows the patient to reach their highest practicable level of physical, mental, and psychosocial functioning.

(j) “Change of ownership” means the transfer of the controlling interest of an established NEWCC to any individual, agency, partnership, corporation, government entity, association, or other legal entity.

(k) “Clinical laboratory improvement amendments (CLIA)” means the requirements outlined at 42 CFR Part 493 which set forth the conditions that all laboratories need to meet to be certified to perform testing on human specimens.

(l) “Commissioner” means the commissioner of the department of health and human services or their designee.

(m) “Contracted employee” means a temporary employee working under the direct supervision of the NEWCC, but employed by an outside agency.

(n) “Controlling interest” means greater than 50% ownership interest.

(o) “Critical access hospital (CAH)” means a hospital that has been so designated by the state in which it is located and has been surveyed by the state survey agency or by Centers for Medicare and Medicaid Services (CMS) pursuant to 42 CFR Subpart F § 485.606.

(p) “Critical incident stress management (CISM)” means an adaptive, short-term psychological helping-process that focuses solely on an immediate and identifiable problem. Individuals undergoing CISM are able to discuss the situation that occurred and how it affects them and those around them allowing individuals to use this forum to acquire the tools necessary to hopefully limit post-traumatic stress related issues in their own lives and recognize it in others.

(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 they are 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 or services provided to a patient, including but not limited to medical, nursing, psychological, or rehabilitative treatments.

(u) “Discharge instructions” means instructions developed as a result of the assessment process in the provision of services.

(v) “Directed plan of correction” means a plan developed and written by the department that specifies the necessary actions required of the licensee to correct areas of non-compliance.

(w) “Do not resuscitate order (DNR order)” means an order, signed by a licensed provider, in the event of an actual or imminent cardiac or respiratory arrest, that 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. This term includes “do not attempt resuscitation order (DNAR order)”.

(x) “Emergency plan” means a document outlining the responsibilities of personnel in an emergency.

(y) “Enforcement action” means the imposition of an administrative fine, the denial of an application for a license, or the revocation or suspension of a license in response to non-compliance with RSA 151 or He-P 806.

(z) “Equipment” means any plumbing, heating, electrical, ventilating, air-conditioning, refrigerating, and fire protection equipment, and any elevators, dumbwaiters, escalators, boilers, pressure vessels, or other mechanical facilities or installations related to building services. This term includes “fixtures”.

(aa) “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.

(ab) “Facility” means “facility” as defined in RSA 151:19, II.

(ac) “Good cause” means any circumstances beyond a person’s control, that the department considers to be circumstances that prevents that person from taking some required action, including:

- (1) A death in the person’s immediate family;
- (2) Personal injury or serious illness of the person or an immediate family member; or
- (3) Another compelling reason or justification.

(ad) “Governing body” means a person or group of designated persons that appoints the administrator and is legally responsible for establishing and implementing policies regarding the management and operation of the facility.

(ae) “Guardian” means a person appointed in accordance with RSA 463, RSA 464-A, or the laws of another state, to make informed decisions relative to the patient’s health care and other personal needs.

(af) “Health care services” means “health care services” as defined in RSA 151:4-a, I(a).

(ag) “Health screening services” means assessment or testing performed for the purpose of assessing a patient’s risk of having a disease or condition and where the patient with an elevated risk is not diagnosed or treated but encouraged to contact a licensed provider for diagnosis and treatment as needed. This term does not include any on-site services provided by a licensed NEWCC.

(ah) “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.

(ai) “Independent contractor” means an individual or business entity providing service to the licensee or its patients but not employed by the licensee.

(aj) “Infectious waste” means those items specified by Env- Sw 103.28.

(ak) “In-service” means an educational program, which is designed to increase the knowledge, skills, and overall effectiveness of personnel.

(al) “Informed consent” means the decision by a person or their guardian, personal representative, agent, or surrogate decision-maker to agree to a proposed course of treatment, after the person, guardian, personal representative, agent, or surrogate decision-maker has received full disclosure of the facts, including information about risks and benefits of the treatment and available alternatives, needed to make the decision intelligently.

(am) “Inspection” means the process followed by the department to determine an applicant or a licensee’s compliance with RSA 151 and He-P 806 or to respond to allegations pursuant to RSA 151:6, of non-compliance with RSA 151, and He-P 806.

(an) “Laboratory” means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease.

(ao) “License” means the document issued to an applicant or licensee which authorizes operation in accordance with RSA 151 and He-P 806, and includes the name of the licensee, the name of the business, the physical address, the licensing category, the effective date, the name of the administrator, the type(s) of services authorized, the number of beds the facility is licensed for, and license number.

(ap) “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.

(aq) “Licensed premises” means a physical location where care and services pursuant to He-P 806 are provided, including:

- (1) The building or buildings at a site specific address; or
- (2) A mobile vehicle that is registered to a site specific address.

(ar) “Licensee” means any person or legal entity to which a license has been issued pursuant to RSA 151.

(as) “Licensing classification” means the specific category of services authorized by a license.

(at) “Life safety code” means the adoption by reference of the life safety code, as published by the National Fire Protection Association and as amended by the state board of fire control and ratified by the general court pursuant to RSA 153:5.

(au) “Material adverse impact” means "material adverse impact" as defined in RSA 151:4-a, I (b).

(av) “Medical director” means a licensed practitioner in New Hampshire in accordance with RSA 329 or 326-B, who is responsible for overseeing the quality of medical care and services at the NEWCC.

(aw) “Medical staff” means those physicians and other licensed practitioners permitted by law and NEWCC policies to provide patient care services within the scope of their license.

(ax) “Medication” means a substance available with or without a prescription, which is used as a curative or remedial substance.

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

(az) “Mobile NEWCC vehicle” means a vehicle capable of traveling under its own power or being towed from site to site and fully equipped to meet all the requirements specific in section He-P 806.22.

(ba) “Modification” means the reconfiguration of any space, the addition, relocation, or elimination of any door or window, the addition or elimination of load-bearing elements, the reconfiguration or extension of any system, or the installation of any additional equipment. The term does not include repair or replacement of interior finishes.

(bb) “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.

(bc) “Non-emergency walk-in care center (NEWCC)” means a medical facility where a patient can receive medical care which is not of an emergency life-threatening nature, without making an appointment and without the intention of developing an ongoing care relationship with the licensed practitioner. This term includes such facilities that are self-described as urgent care centers, retail health clinics, and convenient care clinics. A NEWCC can be a stand-alone entity, an entity located within a retail store or pharmacy or a mobile vehicle, which can be owned and operated by the retail store or pharmacy, or be owned and operated by a third party.

(bd) “Notice to correct” means a report issued pursuant to RSA 151:6-a, II, following a life safety code inspection when a facility is found to be out of compliance with applicable life safety rules or codes.

(be) “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.

(bf) “Over-the-counter medications” means non-prescription medications.

(bg) “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.

(bh) “Patient” means any person registered to or in any way receiving care, services, or both from a NEWCC licensed in accordance with RSA 151 and He-P 806.

(bi) “Patient record” means documents maintained for each person receiving care and services by the licensee, which includes all documentation required by RSA 151 and He-P 806 and all documentation compiled relative to the person receiving care and services as required by other applicable federal and state requirements.

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

(bk) “Performance-based design” means an engineering approach to fire protection design and construction based on:

- (1) Established fire safety goals and objectives;
- (2) Deterministic and probabilistic analysis of fire scenarios; and
- (3) Quantitative assessment of design alternatives against the fire safety goals and objectives using accepted engineering tools, methodologies, and performance criteria.

(bl) “Personal representative” means “patient’s personal representative” as defined in RSA 151:19, V.

(bm) “Personnel” means an individual(s) who is employed by the facility, a volunteer of, or an independent contractor of a NEWCC who provides services to a patient.

(bn) “Physician” means medical doctor or doctor of osteopathy licensed in the state of New Hampshire pursuant to RSA 329 or a doctor of naturopathic medicine licensed in accordance with RSA 328-E.

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

(bp) “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.

(bq) “Point of care devices” means testing involving a system of devices, typically including, but not limited to:

- (1) A lancing or finger stick device to get the blood sample;
- (2) A test strip or reagents to apply the blood sample for testing; 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. A Cholesterol meter.

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

(bs) “Professional staff” means staff who are licensed, registered, or certified by the state to provide health care services.

(bt) “Qualified personnel” means personnel that have been trained and have demonstrated competency to adequately perform the tasks which they are assigned, including but not limited to nursing staff, clinical staff, housekeeping staff trained in infection control, and kitchen staff trained in food safety protocols.

(bu) “Reconstruction” means the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space, or the reconfiguration of a space such that the rehabilitation work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained.

(bv) “Register” means the point in time when a patient has been accepted by a licensee for the provision of services.

(bw) “Renovation” means the replacement in kind, strengthening, or upgrading of building elements, materials, equipment, or fixtures that do not result in a reconfiguration of the building spaces within.

(bx) “Repair” means the patching, restoration, or painting of materials, elements, equipment, or fixtures for the purpose of maintaining such materials, elements, equipment, or fixtures in good or sound condition.

(by) “Reportable incident” means an occurrence of any of the following while the patient is either in the NEWCC or in the care of NEWCC personnel:

- (1) The unanticipated death of the patient;
- (2) An injury to a patient, that is of a suspicious nature or potential abuse or neglect under circumstances where the injury was not observed by any person or the cause of the injury could not be explained by the patient;
- (3) The unexplained absence of a patient from the NEWCC who is determined to be a danger to themselves or others;
- (4) Circumstances that resulted in the notification or involvement of law enforcement or safety officials;
- (5) Medication errors; and
- (6) Drug diversion.

(bz) “Retention” means the date on which the retainer has been paid securing the independent contractor’s services.

(ca) “Security provisions” means locked when not in use.

(cb) “Service area” means “service area” as defined in RSA 151:4-a, I (c).

(cc) “Stabilize” means to provide medical care to allow the patient to be moved or transferred to another facility.

(cd) “State building code” means “state building code” as defined in RSA 155-A:1, IV.

(ce) “State fire code” means “state fire code” as defined in RSA 153:1 and as amended by rules adopted pursuant to RSA 153:5.

(cf) “State monitoring” means the placement of individuals by the department at an NEWCC to monitor the operation and conditions of the facility.

(cg) “Volunteer” means an unpaid person who assists with the provision of personal care services, food services, or activities, and who does not provide direct care or assist with direct care. This term does not include visitors or those persons who provide religious services or entertainment.

**Adopt He-P 806.04 to read as follows:**

He-P 806.04 Notice to Critical Access Hospitals.

(a) Prior to submitting an application for licensure in accordance with He-P 806.05, a proposed health care facility shall comply with the requirements of RSA 151:4-a, II, and send written notification of its intent to submit an application for licensure as an ambulatory surgical center, emergency medical care center, hospital, birthing center, walk in care center, dialysis center, or special health care service, via certified mail to the department and to the chief executive officer of all critical access hospitals with a primary physical location within a 15 mile radius of the proposed ambulatory surgical center, emergency medical care center, hospital, birthing center, walk in care center, dialysis center, or special health care service.

(b) The written notification required in (a) above shall contain the following:

- (1) Name of the person or entity seeking to establish the proposed ambulatory surgical center, emergency medical care center, hospital, birthing center, walk in care center, dialysis center, or special health care service;
- (2) Proposed physical location of the facility;
- (3) Type of facility; and
- (4) Scope of services for the facility.

(c) Upon receipt of the written notification in (a) above, the chief executive officer of the critical access hospital(s) shall have 30 days to file a written objection with the department.

(d) The written objection in (c) above shall contain the following:

- (1) The critical access hospital’s detailed basis for the objection to the proposed health care facility to include:
  - a. If the proposed health care facility will have a material adverse impact on the critical access hospital’s operations; and



b. How the proposed health care facility will impact the health care services in the service area in terms of utilization, patient charges, market share, physician referral patterns, personnel resources, and referral sources; and

(2) Proof that the objection was sent via certified mail to the proposed individual or entity seeking to establish the proposed health care facility.

(e) Upon receipt of an objection meeting the requirements of (d) above from a critical access hospital located within a 15 mile radius of a proposed ambulatory surgical center, emergency medical care center, hospital, birthing center, walk in center, dialysis center, or special health care service, the department shall send a letter to the proposed health care facility informing them of the:

(1) Objection and the reason for the objection; and

(2) Opportunity to submit a written response to the objection, which shall include at a minimum;

a. Any information regarding the objection that might be relevant to the determination of material adverse impact; and

b. How the proposed health care facility will not impact the health care services in the service area in terms of utilization, patient charges, market share, physician referral patterns, personnel resources, and referral sources.

(f) The department shall provide the names of 3 independent contractors, retained by the department through a competitive procurement process, to the critical access hospital and proposed health care facility for their consideration.

(g) The independent contractors proposed in (f) above shall be experts in the provision of health care services and skilled in determining how utilization, patient charges, market share, physician referral patterns, personnel resources, and referral sources could be impacted by the proposed health care facility.

(h) If, after proposing 3 independent contractors, the critical access hospital and proposed health care facility cannot agree on an independent contractor within 30 days of the proposal by the department, the department shall designate the independent contractor to perform the assessment and create the expert report.

(i) Within 30 days of the selection of the independent contractor in accordance with (f) and (h) above, the department shall send a letter to the selected independent contractor requesting their services. This letter shall include:

(1) A request to engage the independent contractor's services to perform the assessment and create the expert report as required in RSA 151:4-a, II(b);

(2) A summary of the requirements for the content of the expert report, to include:

a. How the proposed project might or might not impact the health care services in the service area in terms of utilization, patient charges, market share, physician referral patterns, personnel resources, and referral sources; and

b. A summary of public comments, received in accordance with (p) below and taken into consideration in completing the assessment;

(3) The contact information for the proposed health care facility and chief executive officer of the critical access hospital(s) raising the objection(s);

(4) The objection and response along with any other documentation received by the department relative to this transaction; and

(5) A deadline for completion of the expert report, which shall be no later than 90 days from the date of retention of the expert, unless an extension is granted by the department in accordance with (s) below. Such an extension shall not exceed 30 days.

(j) Upon selection of the independent contractor, the department shall notify the proposed health care facility and critical access hospital of the selected independent contractor.

(k) The independent contractor will invoice the proposed health care facility and critical access hospital the cost of any fees associated with the retention and work to be completed which shall be shared equally between the proposed health care facility and the critical access hospital.

(l) Invoices in (k) above shall be paid for in advance of any services performed in accordance with RSA 151:4-a, II (b)(6).

(m) Payment of the proposed health care facility and critical access hospital's portion of the advance retainer to the independent contractor shall be paid within 5 business days.

(n) If the proposed health care facility fails to make payment in accordance with (m) above, it shall forfeit its right to submit an application for licensure.

(o) If the critical access hospital fails to make payment in accordance with (m) above, it shall forfeit its right to object and the proposed health care facility shall be allowed to apply for licensure.

(p) In accordance with RSA 151:4-a, II(b), the proposed health care facility and critical access hospital shall provide any information requested by the independent contractor to complete its report in accordance with the following:

(1) Information obtained at the request of the independent contractor shall not be considered confidential under RSA 151:13, unless the department determines that it should be exempt from disclosure under RSA 91-A:5;

(2) The proposed health care facility and critical access hospital shall provide the information within a reasonable time, as determined by the independent contractor based on the scope of work of the project and the expected time to review said documentation, so that the independent contractor can finish its report in the required 90 day time period;

(3) If the proposed health care facility fails to provide requested information in a reasonable time, it shall forfeit its right to submit an application for licensure; and

(4) If the critical access hospital fails to provide requested information in a reasonable time as described in (2) above, it shall forfeit its right to object and the proposed health care facility shall be allowed to apply for licensure.

(q) Within 30 days of retention of the independent contractor, the department shall publish a notice on the department's website to notify the public of the proposed health care facility and solicit public comment for a period of at least 7 days.

(r) All public comments received in (q) above shall be provided to and considered by the independent contractor for use in the analysis.

(s) Within 90 days of retention of the independent contractor, the report as described in RSA 151:4-a, II(b) and (i)(2)-(4) above, shall be submitted to the department, unless an extension is granted by the department in accordance with the following:

(1) The department shall grant an extension for good cause;

(2) Good cause shall be determined by the department and a finding of good cause shall require the independent contractor to show why the report cannot be completed within the 90 days and show that the extension is not a result of the proposed health care facility or critical access hospitals failure to comply with the rules; and

(3) Such an extension shall not exceed 30 days.

(t) Within 10 days of receipt of the expert report, the department shall provide a copy of the report to the proposed health care facility and critical access hospital.

(u) If the report finds that the proposed health care facility will have a material adverse impact, then the proposed health care facility shall not be allowed to apply for licensure.

(v) If the report finds that the proposed health care facility will not have a material adverse impact, then the proposed health care facility may proceed with application for licensure.

(w) The person or entity seeking to establish the proposed health care facility and the critical access hospital(s) shall have the right to request a rehearing by the commissioner, pursuant to RSA 541:3.

(x) The result of the rehearing may be appealed by petition to the NH Supreme Court, pursuant to RSA 541:6.

(y) If the proposed health care facility chooses to move forward with the licensing process prior to all appeal rights being exhausted, the proposed health care facility shall do so at its own risk and shall not hold the critical access hospital or the department liable for any costs incurred.

(z) The appellant shall bear all costs of the state in connection with any rehearing or petition for appeal, including the state's attorneys' fees.

**Readopt with amendment and renumber He-P 806.04 through He-P 806.13, effective 5-30-19 (Document #12795), as He-P 806.05 through He-P 806.14, to read as follows:**

He-P 806.05 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, Health Care License or Special Health Care Services,” (May 2024) signed by the applicant or 2 of the corporate officers, 2 authorized individuals if an association or partnership, or the head of the government agency if a government unit, affirming 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.”; and
- b. “I affirm that I have complied with RSA 151:4-a and a determination is on file with the department that finds the proposed health care facility shall be allowed to apply for licensure;

(2) A floor plan of the prospective NEWCC;

(3) If applicable, proof of authorization from the New Hampshire secretary of state to do business in 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 company; or
- c. “Certificate of Trade Name,” where applicable;

(4) List of affiliated or related parties;

(5) The applicable fee, in accordance with RSA 151:5, XIII payable in cash or, if paid by check or money order, the exact amount of the fee made payable to the “Treasurer, State of New Hampshire”;

(6) A resume identifying the qualifications of and copies of applicable licenses or certificates for the NEWCC administrator and medical director;

(7) Written local approvals as follows:

- a. 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 requirements;
  2. The building official verifying that the applicant complies with all applicable state and local building codes and 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 local fire ordinances and including but not limited to business or ambulatory health care; and

b. For a building under construction, the written approvals required by a. above shall be submitted at the end of construction based on the local official's review of the building plans and their final on-site inspection of the construction project;

(8) If the NEWCC uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Dw 702.02 and Env-Dw 704.02 or, if a public water supply is used, a copy of a water bill;

(9) The results of a criminal records check for the applicant(s), licensee if different than the applicant, the administrator and medical director which shall include a criminal history from the state of New Hampshire;

(10) A copy of the non-conviction attestation as described in He-P 806.19(k)(7) for the administrator and medical director;

(11) The results of the BEAS registry check from the bureau of elderly and adult services for the administrator and medical director; and

(12) Any waiver requests, if applicable.

(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

He-P 806.06 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 806.05(a) or 806.27 have been received.

(b) If an application does not contain all of the items required by He-P 806.05(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 806.14(b) when, it determines that the applicant, or administrator:

(1) Has been convicted of a 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) Following both a clinical and life safety code 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 806.

(g) All licenses issued in accordance with RSA 151 shall be non-transferable by person or location including licenses issued for mobile NEWCC vehicles.

(h) A written notification of denial, pursuant to He-P 806.14(b)(10), shall be sent to an applicant applying for an initial license if it has been determined by the inspection in (f) and a maximum of 2 follow-up inspections that the prospective premises are not in full compliance with RSA 151 and He-P 806.

(i) A written notification of denial, pursuant to He-P 806.14(b)(4), shall be sent to an applicant applying for an initial license if the department has received no communication from the applicant within 3 months of sending written notification to the applicant that their application is complete and an inspection needs to be scheduled.

#### He-P 806.07 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 in which it was issued unless a completed application for renewal has been received.

(b) Each licensee shall complete and submit to the department an application form pursuant the He-P 806.05(a)(1) and (5) at least 120 days prior to the expiration of the current license to include:

(1) The current license number;

(2) A request for renewal of any existing non-permanent waivers previously granted by the department, in accordance with He-P 806.11(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;

(3) A list of any current employees who have a permanent waiver granted in accordance with He-P 806.17 (g)(2); and

(4) A copy of any temporary, new, or existing variances or waivers applied for or granted by the state fire marshal, in accordance with RSA 153:5.

(c) In addition to (b) above, if a private water supply is used, the licensee shall provide documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Dw 702.02 for bacteria and Env-Dw 704.02 for nitrates.

(d) Following an inspection as described in He-P 806.10 a license shall be renewed if the department determines that the licensee:

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

(2) Is found to be in compliance with RSA 151 and He-P 806, and all the federal requirements at the renewal inspections, or submitted a POC that has been accepted by the department and implemented by the licensee if areas of non-compliance were cited.

(e) 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 an initial license pursuant to He-P 806.05 and shall be subject to a fine in accordance with He-P 806.14.

He-P 806.08 NEWCC Construction, Modifications, or Renovations.

(a) As required by RSA 151:6 any licensee or applicant desiring to make renovations, modifications, reconstruction, and additions to its facilities or to construct new facilities shall submit architectural plans and specifications to the NH division of fire safety, state fire marshal's office 60 days prior to commencing such work.

(b) As required by RSA 153:10-b, V, sprinkler and fire alarm plans shall be submitted to the NH division of safety, state fire marshal's office and no device shall be installed until it has been approved by the NH division of fire safety, state fire marshal's office.

(c) The architectural, sprinkler, and fire alarm plans in (a) and (b) above shall accurately show the room designation(s) and exact measurements of each area to be licensed, including but not limited to window and door sizes and each room's use.

(d) New construction, renovations, modifications, reconstruction, and additions initiated prior to receiving NH state fire marshal's office approval shall be done at the licensee's or applicant's own risk.

(e) Any licensee or applicant who wants to use performance-based design to meet the fire safety requirements shall provide the department with documentation of fire marshal approval for such methods.

(f) A licensee or applicant undertaking new construction, renovations, modifications, reconstruction, and additions to its facility shall comply with the appropriate chapters and sections of the adopted state fire codes, state building code, state laws, and rules and local ordinances.

(g) Variances to the State Fire Code shall be granted by the state fire marshal under the process outlined in Saf-C 6005.

(h) All newly constructed or rehabilitated facilities shall comply with the Facility Guidelines Institute's (FGI) "Guidelines for Design and Construction of Outpatient Facilities" (2022 edition), as applicable, available as noted in Appendix A.

(i) Exceptions to the FGI guidelines above shall be granted by the state fire marshal.

(j) Penetrations, holes, or other openings in fire walls, fire partitions, smoke barriers, floors, and ceilings that allow the transfer of fire, heat, or smoke shall be closed and sealed using a listed or approved fire system that provides an equivalent rating as provided by the original surface.

(k) All new construction and rehabilitated spaces shall be subject to an inspection pursuant to He-P 806.10 prior to its use.

(l) He-P 806.08 shall not apply to mobile NEWCC vehicles.

He-P 806.09 NEWCC Requirements for Organizational or Service Changes.

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

- (1) Ownership;
- (2) Physical location;

- (3) Address;
- (4) Name; or
- (5) Services.

(b) The NEWCC shall complete and submit a new application and obtain a new or revised license, license certificate, or both, as applicable, prior to operating, for:

- (1) A change in ownership;
- (2) A change in the physical location; or
- (3) A change in services.

(c) When there is a change in address without a change in location, the NEWCC 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 the name, the NEWCC shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.

(e) When there is to be a change in the services provided, prior to providing the additional services, the NEWCC shall provide the department with a description of the service change and, where applicable, identify what additional personnel will be hired and their qualifications, how the new services will be incorporated into the infection control and quality improvement programs, and describe what changes, if any, will be made to the physical environment.

(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, in which case an inspection will be conducted as soon as practical by department;
- (2) The physical location except for mobile NEWCC vehicle;
- (3) A change in licensing classification; or
- (4) A change that places the facility under a different life safety code occupancy chapter.

(g) A new license shall be issued for a change in ownership, classification, or physical location.

(h) A revised license shall be issued for any of the following:

- (1) A change in name;
- (2) A change of administrator or medical director;
- (3) A change in address without a change in physical location; or
- (4) When a waiver has been granted.

(i) The NEWCC shall inform the department in writing no later than 5 days prior to a change in administrator or medical director or as soon as practicable in the event of a death or other extenuating



circumstances requiring an administrator or medical director change and provide the department with the following:

- (1) A resume identifying the name and qualifications of the new administrator or medical director;
- (2) The results of a criminal records check for the new administrator or medical director which shall include criminal history from the state of New Hampshire;
- (3) Copies of applicable licenses for the new administrator or medical director;
- (4) A copy of the non-conviction attestation as described in He-P 806.17; and
- (5) The results of the BEAS registry check from the bureau of elderly and adult services of the new administrator or medical director.

(j) Upon review of the materials submitted in accordance with (i) above, the department shall make a determination as to whether the new administrator or medical director meets the qualifications for the positions as specified in He-P 806.16(c) or (e).

(k) If the department determines that the new administrator or medical director does not meet the qualifications, it shall so notify the NEWCC in writing so that a waiver can be sought or the licensee can search for a qualified candidate.

(l) The NEWCC 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. The department shall use email as the primary method of contacting the facility in the event of an emergency.

(m) A restructuring of an established NEWCC 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.

(n) The department shall review the information submitted under He-P 806.09(e) and determine if the added services can be provided under the NEWCC current license including physical plant restrictions.

(o) If a licensee chooses to cease operation of an NEWCC, the licensee shall submit written notification to the department at least 60 days in advance which shall include a written closure plan.

#### He-P 806.10 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 806, as authorized by RSA 151:6 and RSA 151:6-a, the applicant or licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The proposed or licensed premises;
- (2) All programs and services provided by the NEWCC; and
- (3) Any records required by RSA 151 and He-P 806.

(b) The department shall conduct a clinical and life safety code inspection, as necessary to determine full compliance with RSA 151 and He-P 806 prior to:

- (1) The issuance of an initial license;

- (2) A change in ownership except as allowed by He-P 806.09(f)(1);
- (3) A change in the physical location of the NEWCC except for mobile NEWCC vehicle;
- (4) A change in the licensing classification;
- (5) Occupation of space after construction, renovations or structural alterations;
- (6) The renewal of a non-certified NEWCC license; or
- (7) The issuance of a mobile NEWCC vehicle license.

(c) In addition to (b) above, the department shall conduct an inspection to verify the implementation of any POC accepted or issued by the department as part of an annual inspection, or as a follow-up inspection focused on confirming the implementation of a POC.

(d) A statement of findings for clinical inspections or a notice to correct for life safety code inspections shall be issued when, as a result of any inspection, the department determines that the NEWCC is in violation of any of the provisions of He-P 806, RSA 151, or other federal or state requirement(s).

(e) If areas of non-compliance were cited in either a notice to correct or a statement of findings, the licensee shall submit a POC, in accordance with He-P 806.13(c), within 21 days of the date on the letter that transmits the inspection report.

#### He-P 806.11 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 806 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;
- (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; and
- (4) The period of time for which the waiver is sought.

(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 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 expiration of the existing waiver, as appropriate, by submitting the information required in (a) above.

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

He-P 806.12 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); or

(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 806.

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

(1) The name and address, of the NEWCC, 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 806.

(c) Investigations shall include all techniques and methods for gathering information which are appropriate to the circumstances of the complaint, including, but not limited to:

(1) Requests for additional information from the complainant or the facility;

(2) A physical inspection of the premises;

(3) Review of any relevant records; and

(4) Interviews with individuals who might have information that is relevant to the investigation.

(d) For a licensed NEWCC, 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 and statutes or rules; and

(4) Require the licensee to submit a POC in accordance with He-P 806.13(c).

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

- (1) In accordance with RSA 151:7-a, II, 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, I(d);
  - (2) In accordance with RSA 151:7-a II, the owner or person responsible shall be allowed 7 days from the date of receipt of the notice required (e)(1) above, to submit a written response to the findings prior to the department's issuance of a warning;
  - (3) In accordance with RSA 151:7-a, I, the department shall issue a written warning, following an investigation conducted under RSA 151:6 or an inspection under RSA 151:6-a, to the owner or person responsible, requiring compliance with RSA 151 and He-P 806;
  - (4) The warning in (e)(3) above, shall include:
    - a. The time frame within which the owner or person responsible shall comply with the directives of the warning;
    - b. The final date by which the action or actions requiring licensure must cease or by which an application for licensure must be received by the department before the department initiates any legal action available to it to cease the operation of the facility; and
    - c. The right of the owner or person responsible to appeal the warning under RSA 151:7-a, III, which shall be conducted in accordance with RSA 151:8 and RSA 541-A:30, III, as applicable; and
  - (5) Any person or entity who fails to comply after receiving a warning as described in (e)(3) above shall be subject to an action by the department for injunctive relief under RSA 151:17 and an administrative fine pursuant to He-P 806.
- (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 any administrative or adjudicative proceedings relative to the licensee.

He-P 806.13 Administrative Remedies.

- (a) The department shall impose administrative remedies for violations of RSA 151, He-P 806, 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 in which the licensee is not in compliance with RSA 151 or a provision of these rules; and
- (2) Identifies the specific remedy(s) that has been proposed.

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

(1) Upon receipt of a statement of findings or a notice to correct, the licensee shall submit its written POC for each item, written in the appropriate place on the statement or notice detailing:

- a. How the licensee intends to correct each area on non-compliance;
- b. What measures will be put in place, or what system changes will be made to ensure that the 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 POC to the department within 21 days of the date on the letter that transmitted the statement of findings or notice to correct, 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 they have made a good faith effort, as verified by documentation or other means, 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 806;
- b. Addresses all areas of non-compliances as cited in the statement of findings or notice to correct;
- c. Prevents a new violation of RSA 151 or He-P 806 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 is applicable;
  - (5) If the POC is not acceptable the department shall notify the licensee in writing within 14 days of the reason for rejecting the POC;
  - (6) 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, either via telephone or in writing, and the department grants the extension, based on the following criteria:
    - a. The licensee demonstrates that they have made a good faith effort, as verified by documentation or other means, to develop and submit the POC within the 14 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;
  - (7) The revised POC shall comply with (c)(1) above and be reviewed in accordance with (c)(3) above;
  - (8) 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, the licensee shall be subject to a directed POC in accordance with He-P 806.13(d) and a fine in accordance with He-P 806.14(c)(13);
  - (9) 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 onsite follow-up inspection; or
    - c. Reviewing compliance during the next inspection;
  - (10) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and
  - (11) If the POC or revised 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 806.13(b); and
    - b. Issued a directed POC in accordance with He-P 806.13 (d) and a fine in accordance with He-P 806.14(c)(14).
- (d) The department shall develop and impose a directed POC that specifies corrective actions for the 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 and 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 or administrator 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 as appropriate:

- (1) Issue a warning that enforcement action will be taken if the POC is not implemented;
- (2) Impose a fine;
- (3) Deny the application for a renewal of a license in accordance with He-P 806.14(b); or
- (4) Revoke the license in accordance with He-P 806.14(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 administrator 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(c) above shall not apply until the notice of the determination in (h) above has been provided to the applicant or licensee.

(j) Any violations cited for the state fire code may be appealed to the New Hampshire state fire marshal and shall not be the subject of informal dispute resolution as described in this section.

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

(l) 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;
- (2) The presence of conditions in the NEWCC that negatively impact the health, safety, or well-being of patients; or
- (3) Concern that the facility is not ending the pattern of citations for violations of licensing rules and coming into compliance with those rules.

He-P 806.14 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 enforcement action becomes final.
- (b) The department shall deny an application or revoke a license if:
- (1) An applicant or a licensee has violated a provision of RSA 151 or He-P 806, which poses a threat to a patient's health, safety, or well-being;
  - (2) An applicant or a licensee has failed to pay an administrative fine imposed by the department;
  - (3) An applicant or a 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 inspection, the applicant or licensee fails to submit an application that meets the requirements of He-P 806.05;
  - (5) An applicant, licensee, or any representative or employee of the applicant or licensee:
    - a. Provides false or misleading information to the department;
    - b. Prevents or interferes, or fails to cooperate, with any inspection or investigation conducted by the department; or
    - c. Fails to provide requested files or documents to the department;
  - (6) The licensee failed to fully implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 806.13(c), (d), and (e);
  - (7) The licensee has submitted a POC that has not been accepted by the department in accordance with He-P 806.13(c)(5) and has not submitted a revised POC as required by He-P 806.13(c)(6);
  - (8) The licensee is cited a third time under RSA 151 or He-P 806 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 (k) below;
  - (10) Unless a waiver has been granted upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 806;
  - (11) Unless a waiver has been granted, the department makes a determination that the applicant, administrator, or licensee has been found guilty of or pled guilty to a felony assault, fraud, theft, 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 entity;
  - (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, 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, the fine for an applicant, unlicensed entity or a licensee 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, the fine for an applicant, licensee, or unlicensed entity shall be \$500.00;
  - (4) For a failure to transfer a patient whose needs exceeds the services or programs provided by the NEWCC in violation of RSA 151:5-a, the fine shall be \$500.00;
  - (5) For accepting a patient whose needs, as determined by the medical evaluation, exceed the services or programs authorized by the NEWCC, in violation of He-P 806.15(b), the fine for a licensee shall be \$1000.00;
  - (6) 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 806.12(e)(5), the fine for an unlicensed provider, unlicensed entity, or licensee shall be \$500.00;
  - (7) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 806.07(e), the fine shall be \$100.00;
  - (8) For a failure to notify the department prior to a change of ownership, in violation of He-P 806.09(a)(1), the fine shall be \$500.00;
  - (9) For a failure to notify the department prior to a change in the physical location, in violation of He-P 806.09(a)(2), the fine shall be \$1000.00;
  - (10) For a failure to notify the department of a change in e-mail address, in violation of He-P 806.09(l), the fine shall be \$100.00;
  - (11) For a failure to notify the department prior to a change in the administrator or medical director, in violation of He-P 806.09(d), the fine for a licensee shall be \$100.00;
  - (12) For a refusal to allow access by the department to the NEWCC's premises, programs, services, or records, in violation of He-P 806.10(a), the fine for an applicant, unlicensed entity, or licensee shall be \$2000.00;
  - (13) 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 806.13(c)(2) and (6), the fine for a licensee shall be \$500.00;

- (14) 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 806.13(c)(8), the fine for a licensee shall be \$1000.00;
- (15) For a failure to establish, implement, or comply with licensee policies, as required by He-P 806.15 the fine for a licensee shall be \$500.00;
- (16) For a failure to provide services or programs required by the licensing classification and specified by He-P 806.15(e), the fine for a licensee shall be \$500.00;
- (17) For providing false or misleading information or documentation, in violation of He-P 806.15(k), the fine shall be \$1000.00 per offense;
- (18) For failure to meet the needs of a patient as described in He-P 806.15(n)(2), the fine for a licensee shall be \$1000.00 per client;
- (19) For utilizing a room or space that has not been approved or licensed by the department, in violation of He-P 806.10(b)(5), the fine for a licensee shall be \$500.00;
- (20) For employing an administrator, medical director or, other personnel who do not meet the qualifications for the position, without having a waiver granted by the department in accordance with He-P 806.11, in violation of He-P 806.16(c) and (e) and He-P 806.17(k), the fine for a licensee shall be \$500.00;
- (21) For failure to submit architectural plans or drawings, when applicable, prior to undertaking construction or renovation of the licensed facility in violation of He-P 806.08(a), the fine for a licensed facility shall be \$500.00;
- (22) For occupying a renovated area of a licensed facility or new construction prior to approval by local and state authorities, as required by He-P 806.10(b)(5), the fine shall be \$500.00 which shall be assessed daily if the facility fails to vacate the renovated area immediately upon receiving notice from the department;
- (23) When an inspection determines that there is a violation of RSA 151 or He-P 806 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 non-compliance, the fine for a licensee shall be \$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 \$2000.00; and
- (24) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 806 shall constitute a separate violation and shall be fined provided that if the applicant or licensee is making good faith efforts to comply with the provisions of RSA 151 or He-P 806, 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 10 days after receipt of the notice of enforcement action to appeal.

(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 provision of services when it finds that the health, safety, or well-being of patients is in jeopardy and requires emergency action in accordance with RSA 541-A:30, III.

(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 806 is achieved.

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

(j) RSA 541 shall govern further appeals of department decisions under this section.

(k) When an NEWCC's license has been denied or revoked, the applicant, licensee or administrator shall not be eligible to reapply for a license or be employed as an administrator or medical director for at least 5 years, if the enforcement action pertained to their role in the NEWCC.

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

(1) The date of the department's decision to revoke or deny the license became effective, if an appeal is filed; or

(2) The date a final decision upholding the action of the department is issued, if a request for an administrative hearing was made and a hearing was held.

(m) 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 806.

(n) 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.

(o) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A, or He-P 806.

**Readopt with amendment and renumber He-P 806.14, effective 5-30-19 (Document #12795), as amended effective 11-26-19 (Document #12928), as He-P 806.15, to read as follows:**

He-P 806.15 Duties and Responsibilities of All Licensees.

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

(b) The licensee shall provide services to only those patients whose needs are compatible with the facility and the services and programs offered, and whose needs can be met by the NEWCC.

(c) The licensee shall comply with the patients' bill of rights as set forth in RSA 151:19–21.

(d) The licensee shall define, in writing, the scope and type of services to be provided by the NEWCC, including the mobile NEWCC vehicle, and shall post the same in the facility and on the facility's website.

(e) The licensee shall have a written policies and procedures setting forth:

(1) The rights and responsibilities of registered patients in accordance with the patients' bill of rights under RSA 151:19-21;

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

(3) The prevention, detection, and resolution of substance abuse, misuse, and diversion pursuant to RSA 151:41, described in (h)(1)-10) below; and

(4) All other polices described in He-P 806.

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

(1) Reviewing the policies and procedures every 3 years; and

(2) Revising them as needed.

(g) The licensee shall have a written policy, as described in RSA 151:41, establishing procedures for the prevention, detection, and resolution of substance abuse, misuse, and diversion.

(h) The policy in (g) above shall apply to all personnel, be the responsibility of a designated employee or interdisciplinary team, and include:

(1) Education;

(2) Procedures for monitoring the distribution and storage of controlled substances;

(3) Voluntary self-referral by employees who are addicted;

(4) Co-worker reporting procedures;

(5) Drug testing procedures to include at a minimum, testing where reasonable suspicion exists;

(6) Employee assistance procedures;

(7) Confidentiality;

(8) Investigation, reporting, and resolution of controlled drug misuse or diversion as required per He-P 805.14(j); and

- (9) The consequences for violation of the controlled substance abuse, misuse, and diversion prevention policy.
- (i) All policies and procedures shall be reviewed and approved by the medical director.
- (j) The licensee shall assess and monitor the quality of care and service provided to patients on an ongoing basis.
- (k) The licensee or any employee shall not falsify any documentation or provide false or misleading information to the department.
- (l) The licensee shall not advertise or provide services that it is not licensed to provide pursuant to RSA 151:2, III.
- (m) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.
- (n) Licensees shall:
- (1) Have the responsibility and authority for managing, controlling, and operating the NEWCC;
  - (2) Meet the needs of the patients during those hours that the patients are in the care of the NEWCC;
  - (3) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the NEWCC;
  - (4) Appoint an administrator;
  - (5) Verify the qualifications of all personnel;
  - (6) Provide sufficient numbers of qualified personnel who are available to meet the needs of patients during all hours that the NEWCC has told the patients that they will provide services;
  - (7) Provide personnel with sufficient supplies, equipment, and lighting to meet the needs of the patients;
  - (8) 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;
  - (9) Initiate action to maintain the NEWCC 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;
  - (10) Implement any POC that has been accepted by the department; and
  - (11) Develop and implement a process for determining staffing levels. The plan shall include an assessment, to be conducted at least quarterly but more frequently if required, of the appropriateness of staffing levels.
- (o) 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;

(2) Has a durable power of attorney for health care that has been activated in accordance with RSA 137-J;

(3) Has a surrogate designated in accordance with RSA 137-J; or

(4) Is an un-emancipated minor.

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

(1) Telephone at 603-271-4496;

(2) Telephone at 603-271-5300 after business hours; or

(3) Fax to 603-271-0545.

(q) If the licensee registers or treats 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 patients, as specified by the 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.

(r) In addition to the posting requirements specified in RSA 151:29, the licensee shall post the following documents in a public area:

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

(2) All statement of findings reports issued for the previous 12 months;

(3) A copy of the patients' bill of rights specified by RSA 151:21;

(4) A copy of the licensee's policies and procedures relative to the implementation of patient rights and responsibilities as required by RSA 151:20;

(5) The licensee's plan for fire safety, evacuation, and emergencies, identifying the location of, and access to all fire exits, except that mobile NEWCC vehicles shall be exempt from this requirement; and

(6) 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, Health Facilities Administration, 129 Pleasant Street, Concord, NH 03301 or by calling 1-800-852-3345.

(s) The licensee shall admit and allow any department representative to inspect the premises and all programs and services that are being provided by the licensee at any time for the purpose of determining compliance with RSA 151 and He-P 806 as authorized by RSA 151:6 and RSA 151:6-a.

(t) A licensee shall, upon request, provide a patient or the patient's guardian, agent, personal representative, or surrogate decision-maker if applicable, with a copy of their patient record pursuant to the provisions of RSA 151:21, X.

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

(v) Any licensee that maintains electronic records shall develop written policies and procedures designed 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 staff; and
- (3) Systems to prevent tampering with information pertaining to patients and staff.

(w) The licensee shall develop policies and procedures regarding the release of information contained in patient records.

(x) The building or mobile vehicle that houses the NEWCC shall comply with all federal, state, and local health, building, fire, and zoning laws, rules, and ordinances.

(y) Smoking shall be prohibited in the facility as required by RSA 155:66, I(b).

(z) For reportable incidents, licensees shall have responsibility for:

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

(2) Faxing to 603-271-4968 or, if a fax machine is not available, submit via regular mail, postmarked within 48 hours of the incident together with a telephone call to the department reporting the incident and notifying the department of the mailed report, the following information to the department within 48 hours of a reportable incident:

- a. The NEWCC 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(s) involved and the name of any witnesses to 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. When the patient's guardian, agent, surrogate decision-maker or personal representative, if any, was notified;
- i. The signature of the person reporting the reportable incident;
- j. The date and time the patient's licensed practitioner was notified, if applicable; and
- k. The date the facility performed the investigation required by (1) above;

(3) As soon as practicable, notifying the local police department, the department, and the guardian, agent, surrogate decision-maker, or personal representative, if any, when a patient

has an unexplained absence and the licensee has searched the building and the grounds of the NEWCC without finding the patient and it has been determined by the facility that the patient is a danger to themselves or others; and

(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.

(aa) The licensee shall maintain a log in each mobile vehicle to document that all on-board water is from a verifiable potable source.

(ab) The licensee shall not exceed the maximum number of patients or beds licensed by the department, unless authorized by the department, such as during an emergency.

(ac) The licensee shall respond to a notice of deficiencies by providing a POC in accordance with He-P 806.13(c).

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

(ae) The licensee shall require all individuals in contact with residents to wear a form of identification which readily discloses the name, licensure status, if any, and staff position as required per RSA 151:3-b.

**Readopt with amendment and renumber He-P 806.15 through He-P 806.26, effective 5-30-19 (Document #12795), as He-P 806.16 through He-P 806.27, to read as follows:**

He-P 806.16 Required Services.

(a) Each facility shall have a governing body or owner whose responsibilities include:

- (1) Management and control of the operation;
- (2) Assurance of the quality of care and services;
- (3) Appointment of the medical director and clinic administrator;
- (4) Determination of the qualifications and appointment of physicians, administrator, and other professional staff;
- (5) Management of overall operation and fiscal viability of the NEWCC; and
- (6) Ensuring compliance with all relevant federal, state, and local laws, rules, codes, and ordinances.

(b) The licensee shall provide administrative services that include the appointment of an administrator who:

- (1) Is responsible for the day-to-day operations of the NEWCC;
- (2) Works no less than 35 hours per week at the NEWCC, which may include day, evening, night, and weekend hours;
- (3) Meets the requirements of He-P 806.16(c);



- (4) Designates, in writing, a qualified staff member who shall assume the responsibilities of the administrator in their absence; and
  - (5) In the event the administrator will be absent for a period to exceed 30 consecutive days, the facility shall notify the department who the interim administrator will be and submit credentials to verify they meet the requirements of He-P 806.16(c).
- (c) Any administrator appointed shall:
- (1) Possess at a minimum, a bachelor's degree in business or a health-related field;
  - (2) Be a registered nurse; or
  - (3) Have at least 4 years equivalent experience in a health-related field.
- (d) The administrator shall be responsible for maintaining the NEWCC in full compliance with all federal, state, and local laws, rules, codes, and ordinances at all times.
- (e) Each facility shall have a medical director who shall be a physician or APRN licensed in the state of New Hampshire and who shall have training and experience commensurate with the services offered by the NEWCC as determined by the governing body described in He-P 806.16(a).
- (f) The medical director shall be responsible for:
- (1) The development and approval of NEWCC procedures and policies;
  - (2) The development of facility protocols for assisting patients whose medical needs are outside the NEWCC's scope of practice;
  - (3) Monitoring and evaluation of the quality of patient care; and
  - (4) Providing medical direction, consultation, and supervision to the professional staff.
- (g) The administrator and medical director may hold more than one position in the NEWCC and may serve in these capacities for multiple NEWCCs.
- (h) All volunteers shall be oriented and educated relative to their prescribed function according to the NEWCC's policies and procedures.
- (i) The licensee shall develop and maintain policies and procedures for its volunteer services that address the following areas:
- (1) Recruitment and retention;
  - (2) Health screening and 2-step TB testing;
  - (3) Orientation;
  - (4) Scope of function;
  - (5) Supervision;
  - (6) Ongoing training and support;

(7) Record of volunteer activities; and

(8) Criminal record checks.

He-P 806.17 Personnel.

(a) Each NEWCC shall be staffed with at least one licensed practitioner on site during all hours of operation.

(b) The licensee shall ensure that sufficient numbers of qualified personnel are present in the NEWCC to meet the needs of the patients at all times.

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

(1) Position title;

(2) Duties of the position;

(3) Physical requirements of the position; and

(4) Qualifications and educational requirements of the position.

(d) For all applicants for employment, for all volunteers, for all independent contractors who will provide direct care or personal care services to clients or who will be unaccompanied by an employee while performing non-direct care or non-personal care services within the facility, the licensee shall:

(1) Obtain and review a criminal records check in accordance with RSA 151:2-d which shall include criminal history from the state of New Hampshire;

(2) Review the results of the criminal records check in accordance with He-P 806.17(e);

(3) Verify the qualifications and licenses, as applicable, of all applicants prior to employment; and

(4) Verify that the applicant is not on the BEAS registry maintained by the department's bureau of elderly and adult services in accordance with RSA 161-F:49.

(e) Unless a waiver is granted in accordance with He-P 806.11 and He-P 806.17(f), the licensee shall not offer employment, contract with, or engage a person in He-P 806.17(d) if the person:

(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 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.

(f) If the information identified in (e) above regarding any person in (d) 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 (e) above.

(g) If a waiver of (e) above is requested, the department shall review the information and the underlying circumstances in (e) 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; or

(2) Grant a waiver of (e) 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).

(h) The licensee shall check the names of the persons in He-P 806.17(d) against the bureau of elderly and adult services (BEAS) state registry, maintained pursuant to RSA 161-F:49, prior to employing, contracting with, or engaging them.

(i) The licensee shall:

(1) Not employ, contract with, or engage any person in (d) 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 licensing site with the NH board of nursing or are licensed with a reciprocal multi-compact state.

(j) In lieu of (d) and (h) above, the licensee may accept from independent agencies contracted by the licensee or by an individual patient to provide direct care or personal care services a signed statement that the agency's employees have complied with (d) and (h) above and do not meet the criteria in (e) above.

(k) Prior to having contact with patients or food, personnel shall:

(1) Receive a tour of the NEWCC;

(2) Receive a copy of the job description for their position at the NEWCC containing:

a. Position title;

b. Duties of the position;

c. Physical requirements of the position; and

d. Education and experience requirements of the position;

(3) Meet the educational qualifications of the position as listed on their job description;

(4) Be licensed, registered, or certified as required by state statute;

(5) Receive an orientation prior to the assumption of duties that includes:

a. The NEWCC'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 NEWCC's policies, procedures, and guidelines;

d. The NEWCC's infection control program policies and procedures;

- e. The NEWCC's fire, evacuation, and emergency plans which outline the responsibilities and educational requirements of personnel in an emergency;
- f. The mandatory reporting requirements such as RSA 161-F:46-48 and RSA 169-C:29-31;
- g. The NEWCC complaint procedures; and
- h. The medical emergency procedures;

(6) Complete mandatory annual in-service education, which includes a review of the NEWCC's:

- a. Policies and procedures on patient rights and responsibilities, and complaints pursuant to RSA 151;
- b. Infection control program;
- c. Education program on fire, evacuation, and emergency procedures; and
- d. Mandatory reporting requirements such as RSA 161-F:46-48 and RSA 169-C:29-31;

(7) Be at least 18 years of age unless they are:

- a. A licensed nursing assistant working under the supervision of a registered nurse in accordance with RSA 326-B:13; or
- b. Part of an established educational program working under the supervision of a registered nurse;

(8) Prior to contact with patients, submit to the NEWCC the results of a physical examination or pre-employment health screening performed by a licensed nurse or a licensed practitioner and submit to the licensee the results of a 2-step tuberculosis test, Mantoux method, or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;

(9) 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

(10) 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.

(l) The licensee shall inform personnel of the line of authority at the NEWCC.

(m) Current, separate, and complete employee files shall be maintained and stored in a secure and confidential manner in one location, for example, hospital human resources department or on site of NEWCC.

(n) The licensee shall maintain a separate employee file for each employee, which shall include the following:

- (1) A completed application for employment or a resume;
  - (2) Proof that the individual meets the minimum age requirements;
  - (3) A signed statement by each individual acknowledging the receipt of the licensee's policy setting forth the patient's rights and responsibilities, and acknowledging training and implementation of the licensee's policy as required by RSA 151:20;
  - (4) A job description signed by the individual that identifies the:
    - a. Position title;
    - b. Qualifications and experience; and
    - c. Duties required by the position;
  - (5) A record of satisfactory completion of the orientation program required by (k)(5) above;
  - (6) A copy of each current New Hampshire license, registration, or certification in health care field and CPR certification, if applicable;
  - (7) Documentation that the required physical examination, health screenings, TB test results, and radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
  - (8) Record of satisfactory completion of all required education programs and demonstrated competencies that are signed and dated by the employee;
  - (9) Documentation of an annual performance review;
  - (10) Information as to the general content and length of all in-service or educational programs attended;
  - (11) A statement, which shall be signed at the time the initial offer of employment, contract, or engagement is made and then annually thereafter, stating that they:
    - a. Do not have a felony conviction in this or any other state;
    - b. Have not been convicted of a sexual assault, other violent crime, assault, fraud, theft, abuse, neglect, or exploitation or pose a threat to the health, safety, or well-being of a patient in this or any other state; and
    - c. Have not 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 in this or any other state;
  - (12) Documentation of the criminal records check; and
  - (13) The results of the registry checks in (h) above.
- (o) The licensee 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 He-P 806.17(n)(1), (2), (3), (5), (6), (7), (8), (11), (12) and (13); and

(2) For independent contractors, the information in He-P 806.17(n)(2), (3), (5), (6), (7), (8), (11), (12), and (13), except that the letter in He-P 806.17(j) above may be substituted for (n) (12) and (13), if applicable.

(p) An individual need not re-disclose any of the matters in He-P 806.17(e) if the documentation is available and the department has previously reviewed the material and granted a waiver so that the individual can continue employment.

(q) Personnel shall not be impaired while on the job by any substances including, but not limited to, legally prescribed medication, therapeutic cannabis, or alcohol.

He-P 806.18 Patient Records.

(a) A patient record shall be maintained for each patient accepted for treatment by the facility.

(b) The licensee shall maintain a legible, current, and accurate record for each patient based on the services provided at the NEWCC.

(c) At a minimum patient records shall contain the following:

(1) Identification data, including the patient's:

- a. Name;
- b. Home address;
- c. Home telephone number;
- d. Name, address, and telephone number for an emergency contact;
- e. Date of birth; and
- f. Guardian, agent, or surrogate decision-maker when applicable;

(2) A signed acknowledgment of receipt of the patient bill of rights and the facility's complaint procedures, signed by the patient, guardian, agent, or surrogate decision-maker;

(3) Patient's health insurance information;

(4) A written or electronic record of a health assessment by a licensed practitioner or registered nurse;

(5) Dated and signed orders for medications, treatments, special diets, laboratory service, and referrals to other practitioners, as applicable;

(6) The consent for release of information signed by the patient, guardian, agent, or surrogate decision-maker, if any;

(7) The medication record as required;

(8) Documentation of any accident or injuries occurring while in the care of the facility and requiring medical attention by a practitioner;

(9) Documentation of all services provided including signed progress notes by:

- a. Nursing personnel;
- b. Physicians; and
- c. Other health professionals authorized by facility policy;

(10) Documentation of a patient's refusal of any care or services;

(11) Transfer or discharge documentation including planning, referrals, and notification to the patient and guardian, agent, or surrogate decision-maker, if any, of involuntary room change, if applicable;

(12) Orders and results of any laboratory tests, x-rays, or other diagnostic tests; and

(13) The name and telephone number of the patient's licensed practitioner, if any.

(d) Patient records shall be available to the professional staff and health care workers and any other person authorized by law or rule to review such records.

(e) Patient records shall be retained in the facility and stored in an area inaccessible to those who do not have authorized access to such records.

(f) The licensee shall develop and implement a written policy and procedure that specifies the method by which release of information from a patient's records shall occur.

(g) When not being used by authorized personnel, patient records shall be safeguarded against loss or unauthorized use by implementation of use, handling, and storage procedures.

(h) Patient records shall be retained 7 years after discharge of a patient. In the case of minors, patient records shall be retained until the patient reaches the age of 18, but in no case shall they be retained for less than 7 years after discharge.

(i) The licensee shall arrange for storage of and access to patient records for 7 years in the event the clinic ceases operation.

(j) The facility shall notify the department where the storage required in He-P 806.18(i) is located.

(k) Referrals to other health care providers shall occur if medically indicated and if the facility does not provide the services required.

(l) Electronic records shall be maintained according to current HIPAA regulations to ensure confidentiality and adequate security.

(m) If the facility uses an electronic record storage system, it shall provide computer access to all patient records for the purpose of verifying compliance with all provisions of RSA 151 and He-P 806 for the onsite inspection. Access shall include assistance navigating the database and printing portions of the record, if needed.

He-P 806.19 Quality Improvement.

(a) The licensee shall develop and implement a quality improvement program that reviews policies and services and maximizes quality by preventing and correcting identified problems.

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

(c) The NEWCC 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 NEWCC;
- (7) Evaluate the effectiveness of the corrective actions and determine additional corrective actions as applicable;
- (8) Ensure that quality control logs are maintained for any laboratory quality control testing; and
- (9) Ensure that quality control logs for preventive maintenance and safety checks are maintained for all equipment according to manufacturer's recommendations.

(e) The quality improvement committee shall meet at least quarterly.

(f) The quality improvement committee shall generate dated, written minutes after each meeting.

(g) Documentation of all quality improvement activities including minutes of meetings, shall be confidential.

He-P 806.20 Infection Control.

(a) The NEWCC 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 specified as infectious waste in Env-Sw 103.28 and regulated by Env-Sw 904; and
- (5) Reporting of infectious and communicable diseases as required by He-P 301.

(c) The NEWCC 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;
- (4) Prevention and containment of infections; and
- (5) Use of universal precautions.

(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 as determined by a licensed practitioner.

(f) Personnel infected with scabies or lice or pediculosis shall not provide direct care to patients until such time as they are no longer infected as determined by a licensed practitioner.

(g) Pursuant to RSA 141-C, personnel with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the NEWCC until a diagnosis of tuberculosis is excluded or until the person is receiving tuberculosis treatment and has been determined to be non-infectious by a licensed practitioner.

(h) Personnel and staff with an open wound who prepare food or provide direct care in any capacity shall cover such wound at all times by an impermeable, tight-fitting, and durable bandage with secure edges.

(i) The licensee shall immunize all consenting personnel for influenza and report immunization data to the department's immunization program.

(j) If the NEWCC has an incident of an infectious disease reported in He-P 806.20(b)(5), the facility shall contact the public health nurse in the county in which the facility is located and follow the instructions and guidance of the nurse.

(k) The licensee shall have available space, supplies, and equipment for proper handling of suspected or actual infectious conditions.

(l) The licensee shall require that licensed practitioners evaluate all patients at risk for an infection or communicable disease to ensure the detection or presence of same.

(m) The administrator shall appoint an infection control officer who shall:

- (1) Receive reports of communicable and infectious diseases; and
- (2) Report to the director of the division of public health services all diseases for which reporting is required under RSA 141-C.

(n) The licensee shall have a policy requiring employees to make a report to the infection control officer if the employee suspects that they, another employee, or patient has a communicable disease.

(o) The NEWCC shall develop and implement a point of care testing policy, if they provide POCT, that educates and provides procedures for the prevention, control, and investigation of infectious and communicable diseases.

(p) If equipment needs to be cleaned in order to prevent contamination, the NEWCC shall develop and maintain written procedures for safe and effective cleaning of the equipment.

(q) The licensee shall identify, track, and report infections and process measures, as required by RSA 151:33 and He-P 309.

He-P 806.21 Sanitation.

(a) The licensee shall maintain a clean, safe, and sanitary environment both inside and outside the facility.

(b) All furniture, floors, ceilings, walls, and fixtures shall be clean, sanitary, and in good repair.

(c) A supply of potable water shall be available for human consumption and food preparation.

(d) A supply of hot and cold running water shall be available at all times, and precautions such as temperature regulation, shall be taken to prevent a scalding injury to the patients.

(e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations, as required in the Facility Guidelines Institutes (FGI) "Guidelines for Design and Construction of Outpatient Facilities," (2022 edition), as available as noted in Appendix A., and summarized as follows:

(1) One hundred five degrees through 120 degrees Fahrenheit for clinical areas, the range represents the minimum and maximum allowable temperatures;

(2) One hundred twenty degrees Fahrenheit for dietary areas. Provisions shall be made to provide 180 degrees Fahrenheit rinse water at the ware washer, and may be by separate booster, unless a chemical rinse is provided; and

(3) One hundred sixty degrees Fahrenheit for laundry by steam jet or separate booster heater, unless a proven process which allows cleaning and disinfection of linen with decreased water temperatures is used, but the process shall meet the designed water temperatures specified by the manufacturer.

(f) All patient bathing and toileting facilities shall be cleaned and disinfected as often as necessary to prevent illness or contamination.

(g) Cleaning solutions, compounds, and substances considered hazardous or toxic materials, as defined in RSA 147-A:2, VII, shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place, such as a locked closet or cabinet, separate from food, medications, and patient supplies.

(h) Toxic materials shall not be used in a way that contaminates food, equipment, or utensils or in any way other than in full compliance with the manufacturer's labeling.

(i) Only individuals authorized under RSA 430:33 may apply pesticides as defined by RSA 430:29, XXVI, in food storage, food preparation, or dining areas.

(j) Solid waste, garbage, and trash shall be stored in a manner to make it inaccessible to insects, rodents, outdoor animals, and pets.

(k) In-house trash and garbage receptacles shall be emptied in a timely manner and lined, or cleaned and disinfected after emptying or when visibly soiled.

(l) Trash receptacles in food service area shall be covered at all times.

- (m) Laundry and laundry rooms, if present, shall meet the following requirements:
  - (1) Laundry and laundry rooms shall be kept separate from kitchen and dining areas;
  - (2) Clean linen shall be stored in a clean area and separated from soiled linens at all times;
  - (3) Soiled materials, linens, and clothing shall be handled as little as possible and transported in a laundry bag, sack, or covered container and washed in a sanitizing solution used in accordance with the manufacturer's recommendations; and
  - (4) Soiled materials, linens, and clothing which are considered contaminated with infectious waste under Env-Wm 103.28 shall be handled as infectious waste.
- (n) Laundry rooms and bathrooms shall have non-porous floors.
- (o) Clean supplies shall be stored in dust-free and moisture-free storage areas or containers.
- (p) Any NEWCC that has its own water supply and whose water has been tested and has failed to meet the acceptable levels identified in this section, or as required by the department of environmental services, shall notify the department upon receipt of notice of a failed water test.
- (q) Sterile supplies and equipment shall:
  - (1) Be stored in dust-free and moisture-free storage areas; and
  - (2) Not be mixed with un-sterile supplies.
- (r) All soiled items at the NEWCC shall be disposed of according to the facility's infection control policies.
- (s) There shall be a designated, enclosed storage area for soiled, dirty, and bio-hazardous materials.
- (t) If equipment or supplies need to be sterilized in order to prevent contamination, the NEWCC shall develop and maintain written procedures for cleaning, packaging, and sterilization that includes:
  - (1) Testing and documenting sterilization processes used;
  - (2) Testing and documenting the effectiveness of sterilization equipment for adequate sterilization in accordance with the manufacturer's recommendations or using industry acceptable quality control standards;
  - (3) Documentation when supplies are outdated; and
  - (4) Ensuring that all sterile packages are stored separately from non-sterile supplies in an enclosed area.

He-P 806.22 Physical Environment.

- (a) The licensed premises, including mobile NEWCC vehicles, shall be maintained, inside and outside, so as to provide for the health, safety, well-being, and comfort of patients and personnel, including reasonable accommodations for patients and personnel with mobility limitations.
- (b) The licensee shall:

- (1) Have all entrances and exits accessible at all times and be free from obstructions during hours of operation;
  - (2) Be maintained in good repair and kept free of hazards to personnel and patients, including but not limited to hazards from falls, burns, or electric shocks;
  - (3) Be free from environmental nuisances, including excessive noise and odors;
  - (4) Keep all corridors free from obstructions; and
  - (5) Take reasonable measures to prevent the presence of rodents, insects, and vermin to include, but not be limited to:
    - a. Having tightly fitting screens on all doors, windows, or other openings to the outside unless the door is self-closing and remains closed when not in use;
    - b. Repairing holes and caulking of pipe channels; and
    - c. Extermination by a pesticide applicator licensed under RSA 430.
- (c) Notwithstanding general access requirements from the FGI's "Guidelines for the Design and Construction of Outpatient Facilities" (2022 edition), available as noted in Appendix A, a NEWCC located on the premises of another entity shall not be required to provide separate exterior entrances or designated parking, or to provide a patient waiting area or reception area that is separated from the public area of the host entity.
- (d) Equipment providing heat within an NEWCC including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove, or pellet stove shall:
- (1) Maintain a temperature of at least 70 degrees Fahrenheit if patient(s) are present; and
  - (2) Be serviced once a year or as recommended by the manufacturer with written documentation of such service retained for at least 4 years.
- (e) Electric heating systems shall be exempt from He-P 806.22 (d)(2).
- (f) Portable space heating devices shall be prohibited, unless the following are met:
- (1) Such devices are used only in employees areas where personnel are present and awake at all times; and
  - (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.
- (g) Unvented fuel-fired heaters shall not be used in any NEWCC.
- (h) Plumbing shall be sized, installed, and maintained in accordance with the provisions of the International Plumbing Code, as specified in the state building code under RSA 155-A:1, IV, as amended by the building code review board pursuant to RSA 155-A:10, V.
- (i) Ventilation shall be provided throughout the entire building by means of a mechanical ventilation system or with one or more screened windows that can be opened.
- (j) Screens shall be provided for doors, windows, or other openings to the outside.
- (k) Doors that are self-closing and remain closed when not in use are exempt from the requirement in (j) above.

- (l) In accordance with RSA 155:66, I(b), smoking shall be prohibited in the NEWCC.
- (m) All NEWCCs shall have access within the NEWCC to a bathroom with a toilet, a hand washing sink, soap dispenser, paper towels, or a hand-drying device providing heated air, and hot and cold running water.
- (n) All bathroom doors shall have a side hinge door and not a folding or sliding door or a curtain.
- (o) Notwithstanding (m) above, if the NEWCC is located within a retail store that has a public bathroom with a toilet and the bathroom complies with all applicable sanitation and construction regulations, the NEWCC shall not be required to have its own bathroom but shall:
  - (1) Have its own hand washing sink with hot and cold running water, soap dispenser, and paper towels or a hand-drying device providing heated air; and
  - (2) Not permit biological samples collected in the retail store's public bathroom to be transported through the retail store except in properly enclosed biohazard containers and bags.
- (p) There shall be sufficient space and equipment for the services provided at the NEWCC.
- (q) All exam tables shall be changed with clean linens or common paper between use by different patients.
- (r) The licensee shall provide patients with continuous access to a device or means that will signal NEWCC personnel when they are in need of assistance with care or in an emergency.
- (s) All bathroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.
- (t) If available, all showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.
- (u) All mattresses and upholstered furniture or draperies shall comply with the state fire code.
- (v) A privacy partition, curtain, or screen shall be required between beds in semiprivate rooms.
- (w) The NEWCC shall be clean, sanitary, maintained in a safe manner and good repair, and kept free of hazards.
- (x) The NEWCC shall provide the following:
  - (1) Reception and waiting areas that include a reception desk or counter, chairs, tables, and lighting adequate to read materials and complete forms as required;
  - (2) Public access to toilet facilities with non-porous floors;
  - (3) A number of examination and treatment rooms adequate to provide services to the average number of patients seen daily; and
  - (4) Hot water available at all times from taps available to patients and not less than 105 degrees Fahrenheit or more than 120 degrees Fahrenheit.
- (y) Medical waste shall be disposed of in accordance with the requirements of Env-Sw 904.

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

(aa) The water used in the NEWCC shall be suitable for human consumption, pursuant to drinking water quality standards as specified in Env-Dw 702 through Env-Dw 706.

He-P 806.23 Fire Safety.

(a) All NEWCCs shall meet the appropriate chapters of NFPA 101, the appropriate chapters of the state fire code pursuant to RSA 153:5 and the appropriate chapters of the state building code.

(b) An emergency and fire safety program shall be developed and implemented and reviewed annually, and revised as needed, to provide for the safety of patients and personnel.

(c) The NEWCC shall have at least one UL listed ABC type fire extinguisher on every level or every 75 feet of corridor as required by NFPA 10 and shall:

(1) Be inspected either manually or by means of an electronic monitoring device or system at least once per calendar month, at intervals not exceeding 31 days;

(2) Have records for manual inspection or electronic monitoring kept to demonstrate that at least 12 monthly inspections have been performed for the most recent 12-month period;

(3) Have annual maintenance performed on each extinguisher by trained personnel, and each extinguisher shall have a tag or label securely attached that indicates that maintenance was performed; and

(4) Have the components of the electronic monitoring device or system tested and maintained annually in accordance with the manufacturer's listed maintenance manual.

(d) The NEWCC shall have an approved carbon monoxide monitor on every level.

(e) The NEWCC shall immediately notify the department by phone, fax, or electronic mail within 24 hours, and in writing within 72 hours, of any fire or emergency situation, excluding a false alarm, that requires either an emergency response to the NEWCC or the evacuation of the licensed premises.

(f) The written notification required by (e) above shall include:

(1) The date and time of the incident;

(2) A description of the location and extent of the incident, including any injuries to patients or personnel or damage sustained by the NEWCC;

(3) A description of events preceding and following the incident;

(4) The name of any personnel or patients who were evacuated as a result of the incident, if applicable;

(5) The name of any personnel or patient who required medical treatment as a result of the incident, if applicable; and

(6) The name of the individual the licensee wishes the department to contact if additional information is required.

(g) For the use and storage of oxygen and other related gases, NEWCCs shall comply with NFPA 99, health care facilities code including, but not limited to, the following:

- (1) All freestanding compressed gas cylinders shall be firmly secured to the adjacent wall or secured in a stand or rack;
  - (2) Storage locations shall be outdoors in an enclosure or within an enclosed interior space of noncombustible or limited-combustible construction, with doors, or with gates if outdoors, that can be secured against unauthorized entry;
  - (3) Oxidizing gases, such as oxygen and nitrous oxide, shall:
    - a. Not be stored with any flammable gas, liquid, or vapor;
    - b. Be separated from combustibles or incompatible materials by:
      1. A minimum distance of 20 ft or 6.1 m;
      2. A minimum distance of 5 ft or 1.5 m if the entire storage location is protected by an automatic sprinkler system designed in accordance with NFPA 13, Standard for the installation of sprinkler systems; or
      3. An enclosed cabinet of noncombustible construction having a minimum fire protection rating of 1/2 hour; and
    - c. Shall be secured in an upright position, such as with racks or chains;
  - (4) A precautionary sign, readable from a distance of 5 ft or 1.5 m, shall be conspicuously displayed on each door or gate of the storage room or enclosure, and shall include, at a minimum, the following: “CAUTION, OXIDIZING GAS(ES) STORED WITHIN - NO SMOKING”;
  - (5) Precautionary signs, readable from a distance of 5 ft or 1.5 m, and with language such as “OXYGEN IN USE, NO SMOKING”, shall be conspicuously displayed wherever supplemental oxygen is in use and in aisles and walkways leading to the area of use, and shall be attached to adjacent doorways or to building walls or be supported by other appropriate means; and
  - (6) Must comply with NH department of transportation requirements with regard to oxygen transport, storage, and use.
- (h) Flammable gases and liquids shall be stored in metal fire retardant cabinets.
- (i) A written plan for fire safety, evacuation, and emergencies shall be adopted and posted in multiple locations throughout the facility.
- (j) Evacuation drills shall include the transmission of a fire alarm signal, and simulation of emergency fire condition.
- (k) Evacuation drills shall be quarterly.
- (l) All staff shall participate in at least one drill annually.

(m) For NEWCCs located within a retail store or pharmacy, the fire drill shall consist of a required review of all fire safety procedures and evacuation protocols for the retail store or pharmacy. All personnel on duty shall participate fully in each drill held by the retail store or pharmacy in which the NEWCC may be located.

(n) At no time shall a staff member who has not participated in an evacuation drill be the only staff member on duty within the facility.

(o) The facility shall conduct an evacuation drill in the presence of a representative of the department, state fire marshal's office, or the local fire department upon request.

(p) All emergency and evacuation drills shall be documented and include the following information:

- (1) The names and titles of the personnel involved in the evacuation;
- (2) The number of people, including patients, personnel, and visitors involved in the evacuation;
- (3) The time, including AM or PM, date, month, and year the drill was conducted and if the actual fire system was used;
- (4) The location of the exits utilized;
- (5) The total time necessary to evacuate the NEWCC;
- (6) The time needed to complete the drill; and
- (7) Any problems encountered and corrective actions taken to rectify problems.

He-P 806.24 Emergency Preparedness.

(a) Each facility shall have a group, known as an emergency management committee, with the authority for developing, implementing, exercising, and evaluating an emergency management program.

(b) The emergency management committee shall include the facility administrator and others who have knowledge of the facility and the capability to identify resources from key functional areas within the facility and shall solicit applicable external representation, as appropriate.

(c) An emergency management program shall include, at a minimum, the following elements:

- (1) The emergency management plan, as described in He-P 806.24(d);
- (2) The roles and responsibilities of the committee members;
- (3) How the plan is implemented, exercised, and maintained; and
- (4) Accommodation for emergency food and water supplies.

(d) The emergency management committee shall develop and institute a written emergency preparedness plan (plan) to respond to a disaster or an emergency that shall:

- (1) Include site-specific plans for the protection of all persons on-site in the event of fire, natural disaster, severe weather, and human-caused emergencies to include, but not be limited to, missing patients and bomb threats;



- (2) Be approved by the local emergency management director and reviewed and approved, as appropriate, by the local fire department;
  - (3) Be available to all personnel;
  - (4) Be based on realistic conceptual events;
  - (5) Be modeled on the ICS in coordination with local emergency response agencies;
  - (6) Include the facility'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;
    - f. Medical gas and vacuum systems, if applicable; and
    - g. Communications systems;
  - (7) Include a plan for alerting and managing staff in a disaster, and for accessing Critical Incident Stress Management (CISM), if necessary;
  - (8) Include the management of participants, particularly with respect to physical and clinical issues to include relocation of participants with their participant record including the medication administration records, if time permits, as detailed in the emergency plan;
  - (9) Include an educational program for the staff, which provides an overview of the components of the emergency management program, concepts of the ICS, and the staff's specific duties and responsibilities; and
  - (10) If the facility is located within 10 miles of a nuclear power plant and is part of the New Hampshire Radiological Emergency Response Plan (RERP), include the required elements of the RERP.
- (e) Annually, the facility shall participate in a community-based disaster drill which may be a table top discussion or an actual or functional drill with outside agencies.
- (f) The facility shall review and update its emergency plan, as needed, as a result of drills and exercises, real event(s), or annual plan review. Any substantial changes to the plan as a result of drills and exercises, or real events, shall be submitted to the local emergency management director for review.
- (g) Notwithstanding He-P 806.24(a)-(f), when an NEWCC is a part of a larger institution which has a comprehensive emergency preparedness plan, the NEWCC may use the institution's plan, and if so, it shall:
- (1) Identify the portions of the plan that pertain to the NEWCC in a separate document for use by NEWCC personnel;

- (2) Provide annual training to prepare personnel in its application as required by He-P 806.24(e); and
- (3) Review and update the plan as required by He-P 806.24(f) above.

He-P 806.25 Pharmacy and Medications.

- (a) Medications shall be administered only by a person licensed to do so by the state of NH.
- (b) If an emergency drug cart is maintained, it shall be under the control of professional staff and shall be inventoried and maintained according to the written policy of the medical director.
- (c) All medications shall be stored in a clean well-organized cabinet or closet which shall be locked when not in use.
- (d) Appropriate security provisions shall be made for medications requiring refrigeration.
- (e) Security provisions such as locked drawers shall be made for individual physician samples if no central storage location is established.
- (f) Schedule I and II drugs scheduled in accordance with RSA 318-B:1-a shall be stored in a locked compartment within the locked medicine cabinet or closet accessible only to authorized personnel.
- (g) The licensee shall develop and implement written policies and procedures regarding a system for maintaining counts of controlled drugs.
- (h) Disposal of outdated medications and controlled drugs shall be in accordance with state and local ordinances and the provisions of RSA 318-B and Ph 707.

He-P 806.26 Laboratory.

- (a) Any NEWCC which obtains or performs tests on human samples for diagnostic or treatment purposes shall meet the requirements of this section.
- (b) The licensee may only perform POCT, that are waived complexity as designated by the federal drug administration (FDA) and known as CLIA-waived laboratory tests, unless the facility is also licensed by the state of New Hampshire as a laboratory under He-P 808.
- (c) If CLIA-waived laboratory testing is performed by personnel, the licensee shall:
  - (1) Obtain the appropriate CLIA certificate as per 42 CFR Part 493.15; and
  - (2) Develop and implement a POCT policy, which educates and provides procedures for the proper handling and use of POCT devices, including the documentation of training and demonstrated competency of all testing personnel.
- (d) The licensee shall have current copies of manufacturer's instructions and package inserts and shall follow all manufacturer's instructions and recommendations for the use of POCT meters and devices to include, but not limited to:
  - (1) Storage requirements for POCT meters and devices, test strips, test cartridges, and test kits;

- (2) Performance of test specimen requirements, testing environment, test procedure, troubleshooting error codes, reporting results; and
  - (3) All recommended and required quality control procedures for POCT meters and devices.
- (e) Licensees performing CLIA-waived laboratory testing or specimen collection shall be in compliance with He-P 808, He-P 817, and 42 CFR 493, as applicable.
- (f) The licensee shall implement and maintain a laboratory service procedure manual that shall:
- (1) Be readily accessible at all times to testing personnel; and
  - (2) Contain:
    - a. The written procedure for each test performed in the laboratory;
    - b. A copy of the package insert for each test performed;
    - c. The laboratory's procedure for test requisition and specimen collection;
    - d. The specimen handling and follow-up procedure for all patient samples that are referred to another laboratory for testing;
    - e. The phlebotomy procedure;
    - f. Job descriptions for the testing personnel and specimen collection personnel; and
    - g. Documentation that the medical director has approved all procedures.
- (g) Unless the facility holds a separate He-P 808 license for the laboratory, the medical director required by He-P 806.16(e) shall be the director for all laboratory testing.
- (h) All patient test requisitions, reports, and records shall be completed and maintained in accordance with 42 CFR 493.
- (i) All patient test requisitions, reports and records shall be safeguarded against loss, damage, tampering, and unauthorized access and maintained for a minimum of 4 years.
- (j) Refrigerator and freezer temperatures shall be recorded each day specimens, reagents, or test kits are stored and must fall within the following ranges:
- (1) Refrigerator temperatures shall be between 2 and 8 degrees centigrade; and
  - (2) Freezer temperatures shall be colder than minus 10 degrees centigrade.
- (k) Centrifuge speed shall fall between 2800 and 3500 revolutions per minute or as specified by the manufacturer and be verified by tachometer on an annual basis.
- (l) No expired specimen collection equipment and reagents, such as vacutainer tubes and glucoala, shall be retained in the station or used for specimen collection.
- (m) Corrective measures such as repair or replacement shall be made in the event of an equipment failure and a written record of the corrective measures shall be kept at the NEWCC.

(n) The medical director shall assure that all testing and phlebotomy personnel have a documented annual competency review that shall include a visual inspection of the performance of a phlebotomy and each test method performed.

(o) If the NEWCC performs phlebotomies to collect blood specimens for testing, the facility shall have:

- (1) A blood collection chair with a device to prevent patient falls or a reclining chair;
- (2) A cot or an alternative method that allows a patient to lie down in the event of dizziness or illness;
- (3) A specimen collection area that:
  - a. Is separate from the reception area;
  - b. Contains a work counter and hand washing facilities;
  - c. Measures, at a minimum, 36 square feet; and
  - d. Maintains patient confidentiality and privacy; and
- (4) A processing area that, at a minimum, has 6 linear feet of counter space.

He-P 806.27 Mobile NEWCC Vehicles.

(a) Mobile NEWCC vehicles shall be eligible for licensure only if they are:

- (1) Operated by a NEWCC that is located in a building or other permanent structure and has a valid NH facility license issued by the department in accordance with He-P 806; or
- (2) Operated by another NH licensed facility that is located in a building or other permanent structure.

(b) Each applicant shall comply with He-P 806, except that:

- (1) He-P 806.08 shall not apply to mobile NEWCC vehicles;
- (2) In lieu of He-P 806.05(a)(1)-(3), (6), and (7), each applicant shall submit:
  - a. A copy of the applicant's current NEWCC license;
  - b. A valid New Hampshire motor vehicle registration for the mobile NEWCC vehicle;
  - c. The VIN of the mobile NEWCC vehicle; and
  - d. A space utilization diagram for the mobile NEWCC vehicle; and

(3) Patient and facility records that are stored off site shall be available for inspection upon request of licensing staff within 30 minutes of being requested.

(c) The NEWCC portions of the mobile NEWCC vehicle shall have a non-porous floor.

(d) Detailed written documentation of travel dates, times, and locations, including periods of non-use, shall be maintained for the mobile NEWCC vehicle.

- (e) The NEWCC mobile vehicle shall have mounted smoke and carbon monoxide detection devices which are installed and maintained.
- (f) The NEWCC mobile vehicle shall contain appropriately rated fire extinguishers mounted within.
- (g) The NEWCC mobile vehicle shall have marked exits.
- (h) The NEWCC mobile vehicle shall have at a minimum battery-operated emergency lighting for exiting.

**Appendix A: Incorporation by Reference Information**

Rule	Title	Publisher; How to Obtain; and Cost
He-P 806.08(h), He-P 806.21(e), He-P 806.22(c)	Facility Guidelines Institutes' (FGI), "Guidelines for Design and Construction of Outpatient Facilities" (2022 edition)	Publisher: Facility Guidelines Institute Cost: Digital: \$90 single-user/per year or \$235 multi-user/per year Print: \$235 per copy  The incorporated document is available at: <a href="https://www.fgiguideines.org/guidelines/editions/">https://www.fgiguideines.org/guidelines/editions/</a>
He-P 806.15(q)	Centers for Disease Control and Prevention's "2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" (June 2007 Edition)	Publisher: Centers for Disease Control and Prevention Cost: Free of Charge  The incorporated document is available at: <a href="https://www.cdc.gov/infectioncontrol/guidelines/isolation/index.html">https://www.cdc.gov/infectioncontrol/guidelines/isolation/index.html</a>
He-P 806.17(k)(10)	Centers for Disease Control and Prevention "Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings" (2005 Edition)	Publisher: Centers for Disease Control and Prevention Cost: Free of Charge  The incorporated document is available at: <a href="https://www.cdc.gov/tb/publications/slidesets/infectionguidelines/default.htm">https://www.cdc.gov/tb/publications/slidesets/infectionguidelines/default.htm</a>

**Appendix B**

<b>Rule</b>	<b>Specific State or Federal Statutes the Rule Implements</b>
He-P 806.01 – He-P 806.03	RSA 151:9,I(a) and (b)
He-P 806.04	RSA 151:4-a, II
He-P 806.05 – He-P 806.07	RSA 151:2,I and II and RSA 151:9,I
He-P 806.08	RSA 153:10-b, V; RSA 151; RSA 153:5, I; RSA 155-A:1, IV; and RSA 155-A:10, V
He-P 806.09	RSA 151:9,I(a)
He-P 806.10	RSA 151:9,I(a)
He-P 806.11	RSA 151:9,I(e)
He-P 806.12	RSA 151:9,I(f), (g), (l), and (m)
He-P 806.13	RSA 151:9,I(f), (h), and (l)
He-P 806.14 – He-P 806.24	RSA 151:9,I(a), (f), (h), (l), and (o); RSA 151:8; RSA 541-A:30, III; RSA 151; RSA 151:2, RSA 151:5-a; RSA 151:7-a; RSA 541-A; RSA 161-F:49; RSA 151: 19-21; RSA 151:21-b; RSA 141-C:7; RSA 151:29; RSA 151:6-a; RSA 151:21, X; RSA 155:66, I(b); RSA 151:2-d; RSA 326-B:26; 42 CFR 483.156; RSA 328, I; RSA 161-F:46-48; RSA 169-C: 29-31; RSA 141-C:1; RSA 151:9-b; RSA 141-C; RSA151:33; RSA 147-A:2, VII; RSA 430:33; RSA 430:29, XXVI; RSA 430; RSA 155-A:1, IV; RSA 155-A:10, V; RSA 155:66, I(b)
He-P 806.25 – He-P 806.27	RSA 151:9, I(a); RSA 318-B: 1-a; RSA 318-B; 42 CFR 493; RSA 151:9, I