

Notice Number \_\_\_\_\_

Rule Number \_\_\_\_\_

**He-P 812**

1. Agency Name & Address:

**Department of Health & Human Services  
Bureau of Licensing & Certification  
Health Facilities Administration  
129 Pleasant Street, Brown Bldg.  
Concord, NH 03301**

2. RSA Authority: **RSA 151:9, I(a)-(m) and (o)**

3. Federal Authority: \_\_\_\_\_

4. Type of Action:

Adoption \_\_\_\_\_

Repeal \_\_\_\_\_

Readoption \_\_\_\_\_

Readoption w/amendment **X**

5. Short Title: **Rules for Ambulatory Surgical Centers**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

**He-P 812 sets forth the licensing requirements for all ambulatory surgical centers (ASC) pursuant to RSA 151:2, I(d).**

**The Department of Health and Human Services (Department) is proposing to readopt with amendment He-P 812. Amendments to the proposed rule as compared to the existing rule include:**

- **Updating various provisions of the rule for better clarity, program integrity, and to be consistent with language used in other licensing rules that have been more recently adopted;**
- **Making no revisions to He-P 812.01 on the purpose of He-P 812;**
- **Making no revisions to He-P 812.02 on the scope of He-P 812;**
- **Updating He-P 812.03 on definitions by:**
  - **Adding the definition of “chemical restraint”, “clinical laboratory improvement amendments (CLIA)”, “controlling interest”, “critical access hospital (CAH)”, “direct care”, “emergency”, “good cause”, “health care services”, “independent contractor”, “laboratory”, “material adverse impact”, “medication error”, “owner”, “rehabilitation”, “reportable incident”, “retention”, “service”, “service area”, “state building code”, “state fire code”, and “state monitoring”;**
  - **Amending the definition of “abuse” by amending its subcategories of “emotional abuse” and “sexual abuse”, “administrator”, “advance directive”, “area of non-compliance”, “assessment”, “care plan or treatment plan”, “commissioner”, “demonstrated competency”, “enforcement action”, “governing body”, “informed consent”, “license”, “life safety code”, “medical staff”, “performance-based design”, “personal representative”, “point of care devices”, and “qualified personnel”; and**
  - **Deleting the definition of “license certificate”; and**
- **Adding new section He-P 812.04 on notice to critical access hospitals to align with RSA 151:4-a, II, pursuant to 2020, 39:64, effective 7-1-20. This statute is being implemented in He-P 812 for the first time;**

- Updating He-P 812.05, formerly He-P 812.04, on initial license application requirements by incorporating by reference the February 2023 edition of the Department Form “Application for Residential, Health Care License or Special Health Care Services” and adding and updating additional requirements for submission with the application;
- Updating He-P 812.06, formerly He-P 812.05, on processing of applications and issuance of licenses by making minor reference revisions and editorial revisions;
- Updating He-P 812.07, formerly He-P 812.06, on license expirations and procedures for renewals by aligning the license expiration with RSA 151:5, updating the requirements of what shall be provided with the renewal application to reflect revisions to RSA 153:5 and Saf-C 6005 of the Department of Safety, and adding what a licensee shall do if they do not submit a complete renewal application prior to expiration and do not intend to cease operation;
- Updating He-P 812.08, formerly He-P 812.07, on ASC construction, modifications, or renovations by adding and amending various requirements for clarity;
- Updating He-P 812.09, formerly He-P 812.08, on ASC requirements for organizational changes by amending the requirements on when the licensee shall apply for a new or revised license from the Department and what documentation that the licensee shall provide to the Department when there is a change in administrator or medical director;
- Updating He-P 812.10, formerly He-P 812.09, on inspections by making clarifying revisions;
- Updating He-P 812.11, formerly He-P 812.10, on waivers by adding that a waiver request shall include the period of time for which the waiver is sought and making other minor editorial revisions;
- Updating He-P 812.12, formerly He-P 812.11, on complaints by adding a warning process for unlicensed facilities and making other minor revisions for clarity;
- Updating He-P 812.13, formerly He-P 812.12, on administrative remedies by clarifying the requirements surrounding plans of correction and updating on when the Department shall impose state monitoring;
- Updating He-P 812.14, formerly He-P 812.13, on enforcement actions and hearings by making minor yet substantive clarifying revisions, adding a fine for failure to notify the Department prior to a change in the administrator or medical director, and clarifying that RSA 541 shall govern further appeals of Department decisions;
- Updating He-P 812.15, formerly He-P 812.14, on duties and responsibilities of all licensees by updating and clarifying the duties and obligations of the licensee to include areas of policies and procedures, patient decision making, documentation, investigations, and reporting to the Department, by updating and clarifying the CLIA-waived laboratory testing requirements, and by making additional minor editorial and substantive revisions;
- Making no revisions to He-P 812.16, formerly He-P 812.15, on adverse event reporting;
- Updating He-P 812.17, formerly He-P 812.16, on organization and administration by making minor editorial revisions;

- Updating He-P 812.18, formerly He-P 812.17, on personnel by updating the criminal background check requirements, updating the timeframe on when the personnel shall complete their orientation, and making other minor editorial revisions;
- Updating He-P 812.19, formerly He-P 812.18, on required services by updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference and making other minor editorial revisions;
- Making no revisions to He-P 812.20, formerly He-P 812.19, on patient records;
- Making no revisions to He-P 812.21, formerly He-P 812.20, on infection control;
- Updating He-P 812.22, formerly He-P 812.21, on quality assessment and performance improvement by making minor citation revisions;
- Updating He-P 812.23, formerly He-P 812.22, on sanitation by updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference;
- Making no revisions to He-P 812.24, formerly He-P 812.23, on pharmacy and medications;
- Updating He-P 812.25, formerly He-P 812.24, on physical environment by making minor revisions, both substantive and editorial, for rule clarity and updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference;
- Updating He-P 812.26, formerly He-P 812.25, on life safety and fire safety procedures making minor clarifying revisions; and
- Updating He-P 812.27, formerly He-P 812.26, on emergency preparedness making minor clarifying revisions.

6. (b) Brief description of the groups affected:

**Groups affected by this rule include operators of ASC’s, clients who receive ASC services, and their families.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>Rule</b>	<b>Specific State or Federal Statutes the Rule Implements</b>
He-P 812.01 – He-P 812.03	RSA 151:9, I(a) and (b)
He-P 812.04	RSA 151:4-a, II
He-P 812.05 – He-P 812.08	RSA 151:2, I and II and RSA 151:9,I
He-P 812.09	RSA 151:9, I(a)
He-P 812.10	RSA 151:9, I(e) and RSA 151:6-a
He-P 812.11	RSA 151:9, I(a) and (b)
He-P 812.12	RSA 151:9, I(e) and RSA 151:6
He-P 812.13	RSA 151:9, I(f), (g), (l), and (m)
He-P 812.14	RSA 151:9, I(f), (h), and (l)
He-P 812.15 – He-P 812.27	RSA 151:9, I(a)

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Allyson Raadmae** Title: **Administrator- Administrative Rules Unit**  
Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9604**  
**Administrative Rules Unit** Fax#: **(603) 271-5590**  
**129 Pleasant Street, 2<sup>nd</sup> Floor** E-mail: [Allyson.E.Raadmae@dhhs.nh.gov](mailto:Allyson.E.Raadmae@dhhs.nh.gov)  
**Concord, NH 03301**

TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)

**The proposed rules may be viewed and downloaded at:**  
<https://www.dhhs.nh.gov/doing-business-dhhs/legal-services/administrative-rules/nh-administrative-rules-public-comment>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, April 9, 2024**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, April 2, 2024 at 1:00 pm**

Physical Location: [\*\*DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH\*\*](#)

Electronic Access (if applicable): **N/A**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # **24:010** , dated **February 14, 2024**

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, the proposed rules may increase costs to independently-owned businesses by an indeterminable amount.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

The Department of Health and Human Services states that He-P 812.04 is a direct result of RSA 151:4-a, II, which establishes notice requirements for licensure near critical access hospitals. Accordingly, any costs or benefits are attributable to statute and rather than to the rule.

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

None.

**C. To independently owned businesses:**

The Department of Health and Human Services has identified the following potential costs to facilities licensed under the proposed rule: This list does not include costs ultimately attributable to RSA 151:4-a, II, as noted in response to (3) above.

(1) If a licensee opts to perform CLIA-waived laboratory testing, there may be an indeterminable cost as a result of complying with additional requirements including infection prevention, protocols, and training.

(2) Facilities may incur administrative costs as a result of daily operation, recordkeeping, and reporting requirements.

(3) Any issuance of a fine to a facility would be a cost to that facility. The Department notes that fines are a rare occurrence and can be avoided through compliance with this rule and applicable law.

(4) Any training requirements that must be met may have a cost to the facility.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

## CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

Statutory Authority: RSA 151:9

**Readopt with amendment He-P 812, effective 11-26-19 (Document #12926), to read as follows:**

### PART He-P 812 RULES FOR AMBULATORY SURGICAL CENTERS

He-P 812.01 Purpose. The purpose of this part is to set forth the licensing requirements for all ambulatory surgical centers (ASC) pursuant to RSA 151:2, I(d).

He-P 812.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association or other legal entity operating an ASC, except:

- (a) All facilities listed in RSA 151:2, II(a)-(g); and
- (b) All entities which are owned or operated by the state of New Hampshire, pursuant to RSA 151:2, II(h).

He-P 812.03 Definitions. In this part, the following words have the following meanings, unless context clearly indicates otherwise:

- (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.  
~~a vulnerable adult as defined in RSA 161-F:43, II(c), or, in the case of sexual abuse of a minor, as defined in RSA 169-C:3, XXV-VII b;~~

- (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 is 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, pursuant to 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~~the licensee or individual appointed by the licensee to be responsible for all aspects of the daily operation of the licensed premises;~~

- (e) “Admission” means the point in time when a patient has been accepted by a licensee for the provision of services;

- (f) “Advance directive” means a legal document allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she~~they~~ should lose the capacity to make health care decisions. The term “advance directive” includes living wills and durable

powers of attorney for health care, in accordance with RSA 137-J or a surrogate decision maker in accordance with RSA 137-J:35;

(g) “Adverse event” means a negative consequence of care, including any misadministration as defined in He-P 4000, which results in unintended injury which might have been preventable, and which is listed in RSA 151:38;

(h) “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, captive or affiliated insurance companies;

(i) “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;

(j) “Ambulatory surgical center (ASC)” means any building, place, or a portion thereof, exclusive of physician or dentist’s offices that maintains and operates services for the performance of outpatient surgical procedures;

(k) “Anesthesiologist” means a physician who is licensed to practice medicine in the state of New Hampshire and who is accredited by the American Board of Anesthesiology, the American College of Anesthesiology, or the American Osteopathic Board of Anesthesiology;

(l) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate a ASC pursuant to RSA 151:2, I(d);

(m) “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 812, or other federal or state requirements;

(n) “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~~an evaluation of the patient to determine the care and services that are needed;~~

(o) “Care plan or treatment plan” means a documented guide developed by the licensee, in consultation with personnel, the patient, and/or the patient’s guardian, agent, or personal representative, if any, as a result of the assessment process for the provision of care and services to a patient;

(p) “Certified ASC” means an ASC certified by the Centers for Medicare and Medicaid Services (CMS) to provide Medicare or Medicaid funded care or services;

(q) “Certified Registered Nurse Anesthetist (CRNA)” means an advanced practice nurse who administers anesthesia for surgery or other medical procedures under the direction of an anesthesiologist;

(r) “Change of ownership” means a change in the controlling interest of an established ASC to an individual or successor business entity;

(s) “Chemical restraint” means any medication that is used for discipline or staff convenience, in order to alter a patient’s behavior such that the patient requires a lesser amount of effort or care, and is not in the patient’s best interest, and not required to treat medical symptoms;

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

(~~us~~) “Commissioner” means the commissioner of the New Hampshire department of health and human services or ~~his or her~~their designee;

(~~vt~~) “Contracted employee” means a temporary employee working under the direct supervision of the ASC but employed by an outside agency;

(~~w~~) “Controlling Interest” means greater than 50% ownership interest;

(~~x~~) “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;

(~~yu~~) “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 ~~ea~~ffects 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;

(~~zv~~) “Days” means calendar days unless otherwise specified in the rule;

(~~aw~~) “Demonstrated competency” means the ability of the employee to demonstrate to an evaluator ~~that he or she is able~~their ability to complete the required task in a way that reflects the minimum standard to a certificate of completion of course material or a post-test to the training provided;

(~~ab~~) “Department” means the New Hampshire department of health and human services;

(~~ac~~) “Direct care” means hands-on care or services provided to a patient, including but not limited to medical, nursing, psychological, or rehabilitative treatments;

(~~yad~~) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the licensee must take to correct identified areas of non-compliance;

(~~zae~~) “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)”;

(~~af~~) “Emergency” means an unexpected occurrence or set of circumstances, which require immediate, remedial attention;

(~~aag~~) “Emergency plan” means a document outlining the responsibilities of personnel in an emergency;

(~~abh~~) “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 or suspension of a license in response to non-compliance RSA 151 or He-P 812;

(~~aje~~) “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;



(a)~~j~~ “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;

(a)~~e~~ “Facility” means “facility” as defined in RSA 151:19, II;

(a) “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;

(a)~~m~~ “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~~a group of individuals who are responsible for policy direction of the ASC;~~

(a)~~g~~ “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;

(a)~~h~~ “Health care occupancy” means occupancy used for purposes of medical or other treatment of care of 4 or more persons where such occupants are mostly incapable of self-preservation due to age, physical or mental disability, or because of security measures not under the occupants control;

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

(a)~~q~~ “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;

(a) “Independent contractor” means an individual or business entity providing service to the licensee or its clients but not employed by the licensee;

(a)~~s~~ “Infectious waste” means those items specified by Env-Sw 904;

(a)~~k~~ “Informed consent” means the decision by a person or ~~his/her~~their guardian, agent, or surrogate decision maker, to agree to a proposed course of treatment, after the person 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;

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

(a~~ym~~) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 812 or to respond to allegations, pursuant to RSA 151:6, of non-compliance with RSA 151 and He-P 812;

(a~~w~~) “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;

(a~~x~~) “License” means the document issued ~~by the department~~ to an applicant ~~or licensee~~ at the start of operation of an ASC which authorizes operation in accordance with RSA 151 and He-P 812, and includes the name of the licensee, the name of the business, the physical address, the license category, its classification, the effective date, the name of the administrator, the type(s) of services authorized, the number of beds the facility is licensed for, and the license number;

~~—(a~~o~~) “License certificate” means the document issued by the department to an applicant or licensee that contains the information on a license and includes the name of the administrator and the type(s) of services authorized;~~

(a~~y~~p) “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 New Hampshire state licensing board;

(a~~z~~e) “Licensed premises” means the building(s) that comprise the physical location that the department has approved for the licensee to conduct operations in accordance with its license;

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

(b~~b~~a) “Licensing classification” means the specific category of services authorized by a license;

(b~~c~~a) “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. ~~means the National Fire Protection Association (NFPA) 101, as adopted by the commissioner of the department of safety in Saf C 6000 under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control;~~

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

(b~~e~~a) “Medical director” means a physician licensed in New Hampshire in accordance with RSA 329 and certified by the American Board of Medical Specialties or certified by the American Osteopathic Association in the field of surgery or anesthesia, who is responsible for overseeing the quality of medical care and services at the ASC;

(bf) “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;

(~~bgav~~) “Medical staff” means those physicians and other licensed practitioners permitted by law and ASC policies to provide patient care services independently within the scope of ~~his or her~~their practice act;

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

(~~biax~~) “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;

(~~bjay~~) “Neglect” means an act or omission which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional, or physical health and safety of any patient;

(~~bkaz~~) “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;

(~~bla~~) “Nursing care” means the provision or oversight by a nurse of a patient’s physical, mental, or emotional condition by diagnosis as confirmed by a licensed practitioner;

(~~bmb~~) “Orders” means a document, produced verbally, electronically, or in writing, by a licensed practitioner for any or all medications, treatments, recommendations, or 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;

(~~bne~~) “Over-the-counter medications” means non-prescription medications;

(bo) “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;

(~~bpd~~) “Patient” means any person admitted to or in any way receiving care, services, or both from an ASC or provider of any special health care service licensed in accordance with RSA 151 and He-P 812;

(~~bqe~~) “Patient record” means documents maintained for each person receiving care, services, or both, which includes all documentation required by RSA 151 and He-P 812 and all documentation compiled relative to the patient as required by other federal and state requirements;

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

(~~bsg~~) “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;

~~“Performance-based design” means a flexible, informed design approach that allows for design freedom while specifically addressing fire and life safety concerns of a specific building project, and that makes use of computer fire models or other fire engineering calculation methodologies, such as timed egress studies, to help assess if proposed fire safety solutions meet fire safety goals under specific conditions;~~

(b~~th~~) “Personal representative” means a person other than the licensee of, an employee of, or a person having a direct or indirect ownership interest in the licensed facility, who is designated in accordance with RSA 151:19, V to assist the patient for a specific, limited purpose or for the general purpose of assisting a patient in the exercise of any rights;

(b~~ui~~) “Personnel” means individual who is employed by the facility, a volunteer, or an independent contractor, who provides direct or personal care or services to a patient;

(b~~vj~~) “Physician” means a medical doctor or doctor of osteopathy currently licensed in the state of New Hampshire pursuant to RSA 329;

(b~~wk~~) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct identified areas of 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;

(b~~xl~~) “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;

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

- (1) A lancing or finger stick device to get the blood sample;
- (2) A test strip or reagents to apply the blood sample for testing; or
- (3) A meter or monitor to calculate and show the results; including but not limited to:
  - a. Blood glucose meters, also called “glucometers”;
  - b. Prothrombin Time (PT) and International Normalized Ration (INR) anticoagulation meters; or
  - c. Cholesterol meter;

(b~~zn~~) “Procedure” means a licensee’s written standardized method of performing duties and providing services;

(c~~abe~~) “Professional staff” means:

- (1) Physicians;
- (2) Physician assistants;
- (3) Advanced practice registered nurses;
- (4) Licensed nurses;
- (5) Physical therapists;
- (6) Speech therapists;

- (7) Respiratory therapists;
- (8) Occupational therapists;
- (9) Social workers; and
- (10) Dieticians;

(~~cbp~~) “Qualified personnel” means ~~any~~ 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;

(~~ccbq~~) “Reconstruction” means the reconfiguration of a space that affects an exit or a corridor shared by more than one occupant space, or 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;

(cd) “Rehabilitation” means any of the following undertaken in an existing building, as defined in this section:

- (1) Addition;
- (2) Modification;
- (3) Reconstruction;
- (4) Renovation; and
- (5) Repair;

(~~cebr~~) “Renovation” means the replacement in kind, strengthening, or upgrading of building elements, materials, equipment, or fixtures, that does not result in reconfiguration of the building spaces within;

(~~cfbs~~) “Repair” means the patching, restoration, or painting of materials, elements, equipment, or fixtures for the purposes of maintaining such materials, elements, equipment, or fixtures in good or sound condition;

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

- (1) The unanticipated death of the patient;
- (2) The unexplained absence of a patient from the ASC who is determined to be a danger to themselves or others;
- (3) Circumstances that resulted in the notification or involvement of law enforcement or safety officials;
- (4) Medication errors; and
- (5) Drug diversion;

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

(ci) “Service” means a specific activity performed by the licensee, either directly or indirectly, to benefit or assist a patient;

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

(ck~~bt~~) “Stabilize” means to provide medical care to allow the patient to be moved or transferred to another ASC or general hospital without negative effects;

(cl) “State Building Code” means “state building code” as defined in RSA 155-A:1, IV;

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

(cn) “State monitoring” means the placement of individuals by the department at an ACS to monitor the operation and conditions of the facility;

(co~~bu~~) “Surgery” means a branch of medicine concerned with disease or conditions requiring or amenable to operative or manual procedures; and

(cp~~bu~~) “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 persons who provide religious services or entertainment.

#### He-P 812.04 Notice to Critical Access Hospitals.

(a) Prior to submitting an application for licensure in accordance with He-P 812.05, 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, hospital, ~~emergency medical care center~~, 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 may 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 (g) 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 may or may 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 shall be 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. Such an extension shall not exceed 30 days.

(j) Upon selection of the independent contractor, the department will 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 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 may 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, 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) above, shall be submitted to the department, unless an extension is granted by the department in accordance with the following:

(1) The department may choose to grant an extension for good cause;

(2) Good cause is determined by the Department and shall require the independent contractor is required to show why the report cannot be completed within the 90 days and 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 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.

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

(1) A completed application form entitled "Application for Residential, Health Care License or Special Health Care Services" (~~March 2019~~February 2023), 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.";

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;

For any ACS to be newly licensed:

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

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

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

~~d. For facilities to be licensed under the listed categories:~~

~~"I understand that, in accordance with RSA 151:4, III(a)(7), this facility cannot be licensed pursuant to He P 802, 806, 810, 811, 812, 816, 823, or 824 if it is within a radius of 15 miles of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. 485.610(b) and (c), until the Commissioner makes a determination that the proposed new facility will not have a material adverse impact on the essential health care services provided in the service area of the critical access hospital. I also understand that if the Commissioner is not able to make such a determination, the license will not be issued."~~

(2) A floor plan of the prospective ASC;

(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 corporation; or

c. "Certificate of Trade Name" if a sole proprietorship or if otherwise applicable;

(4) List of affiliated or related parties;

- (54) The applicable fee in accordance with RSA 151:5, 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”;
- (65) A resume identifying the qualifications of and copies of applicable licenses or certificates for the name and qualifications of the ASC administrator and medical director;
- ~~(6) Copies of applicable licenses and/or certificates for the ASC administrator and medical director;~~
- (7) Written local approvals as follows:
- a. For an existing building, 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 and drinking water and wastewater requirements;
    2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
    3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
    4. The fire chief verifying that the applicant complies with the state fire code, ~~Saf-C 6000, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control, including but not limited to the ambulatory health care occupancy chapter of NFPA 101 as adopted by the commissioner of the department of safety,~~ and local fire ordinances applicable for an ASC; and
  - b. For a building under construction, the written approvals required by He-P 812.04(a) shall be submitted at the time of the application based on the local official’s review of the building plans and upon completion of the construction project;
- (8) If the ASC uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Dw 702.02, or, if a public water supply is used, a copy of a water bill;~~and~~
- (9) The results of a criminal records check ~~from the NH department of safety~~ for the applicant(s), licensee if different than the applicant, the administrator, and the medical director which includes criminal history from the state of New Hampshire; as applicable.
- (10) A copy of the non-conviction attestation as described in He-P 812.18(m)(9) 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 812.0~~65~~ 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 812.0~~54~~(a) have been received.

(b) If an application does not contain all of the items required by He-P 812.0~~54~~(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 812.1~~43~~(b) if when it determines that the applicant(s), administrator, or medical director:

(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, neglect, or exploitation of any person; or

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

(f) Following both a clinical and life safety 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 812.

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

(h) A written notification of denial, pursuant to He-P 812.1~~43~~(a), shall be sent to an applicant applying for an initial license if it has been determined by the inspection in He-P 812.0~~56~~(g) and a maximum of 2 follow-up inspections that the prospective premises are not in full compliance with RSA 151 and He-P 812.

(i) A written notification of denial, pursuant to He-P 812.1~~34~~(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 812.0~~6~~-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 it was issued~~one year from date of issuance~~, unless a completed application for renewal has been received.

(b) Each licensee ~~seeking renewal~~ shall complete and submit to the department an application form pursuant to He-P 812.0~~54~~(a)(1) at least 120 days prior to the expiration of the current license ~~and include with the application 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 812.1~~19~~(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 812.1~~87~~(e)(2);
- (4) A copy of any ~~temporary, new, or existing non-permanent or new~~ variances ~~or waivers~~ applied for or granted by the state fire marshal, in accordance with ~~Saf-C 6005~~RSA 153:1-03-6005.04, ~~or successor rules, whether adopted by the department of safety, or amended pursuant to RSA 153:5, I by the state fire marshal, with the board of fire control;~~ and
- (5) A list of specialties that are performed at the center.

(c) In addition to ~~He-P 812.06~~(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 812.~~1009~~, a license shall be renewed if the department determines that the licensee:

- (1) Submitted an application containing all the items required by ~~He-P 812.06~~(b) and (c) ~~as applicable~~above, prior to the expiration of the current license; and
- (2) Is found to be in compliance with RSA 151, He-P 812, and all federal requirements at the renewal inspections, or has 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 812.05 and shall be subject to a fine in accordance with He-P 812.15.

#### He-P 812.0~~87~~ ASC 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 applicants 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 812.10 prior to its use.

~~(a) For new construction and for rehabilitation of an existing building, including, but not limited to certain repairs, renovations, modifications, reconstruction, and additions, construction documents, and shop drawings, including architectural, sprinkler, and fire alarm plans shall be submitted to the department 60 days prior to the start of such work.~~

~~— (b) The architectural, sprinkler, and fire alarm plans in (a) 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.~~

~~— (c) Architectural, sprinkler, and fire alarm plans shall be submitted to the state fire marshal's office, as required by RSA 153:10 b, V.~~

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

~~— (e) The department shall review construction documents, drawings, and plans of a newly proposed or existing facility for compliance with all applicable sections of RSA 151 and He P 812 and shall notify the applicant or licensee whether the proposal complies with these requirements.~~

~~— (f) The ASC shall comply with all applicable state laws, rules, and local ordinances when undertaking construction or rehabilitation.~~

~~— (g) A licensee or applicant undertaking construction or rehabilitation of a building shall comply with the following:~~

~~(1) The state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety under RSA~~

~~153, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control, including but not limited to at a minimum:~~

~~a. If certified either directly or through accreditation with CMS, shall meet with Ambulatory Health Care Occupancy Chapter; or~~

~~b. If not certified either directly or through accreditation with CMS, meet the appropriate chapter of the life safety code occupancy, including but not limited to business, ambulatory health care occupancy; and~~

~~(2) The state building code as defined in RSA 155-A:1, IV, as amended by the building code review board pursuant to RSA 155-A:10, V.~~

~~— (h) All ASCs, newly constructed or rehabilitated, after the 2019 effective date of He P 812 shall comply with the Facility Guidelines Institute (FGI) “Guidelines for Design and Construction of Outpatient Facilities” (2018 edition) available as listed in Appendix A.~~

~~— (i) Where rehabilitation is done with an existing facility, all such work shall comply, insofar as practicable, with applicable sections of the FGI “Guidelines for Design and Construction of Outpatient Facilities” (2018 edition), available as listed in Appendix A.~~

~~— (j) Per the FGI “Guidelines for Design and Construction of Outpatient Facilities” (2018 edition) available as noted in Appendix A.~~

~~— (k) The department’s bureau of health facilities administration shall be the authority having jurisdiction for the requirements in (h) — (j) above and shall negotiate compliance and grant waivers in accordance with He P 812.10 as appropriate.~~

~~— (l) 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 sealant that provides an equivalent rating as provided by the original surface.~~

~~— (m) Waivers granted by the department for construction or rehabilitation under the FGI guidelines above shall not require renewal unless the underlying reason or circumstances for the waivers change.~~

~~— (n) Exceptions or variances pertaining to the state fire code referenced in (h)(1) above shall be granted only by the state fire marshal.~~

~~— (o) The building, including all construction and rehabilitated spaces, shall be subject to an inspection pursuant to He P 812.09 prior to its use.~~

#### He-P 812.08<sup>2</sup> ASC Requirements for Organizational Changes.

(a) The ASC 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 ASC 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; or
- (2) A change in the physical location.

(c) When there is a change in address without a change in location, the ASC shall provide the department with a copy of the notification from the local, state, or federal agency that requires the change.

(d) When there is a change in the name, the ASC 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, including the type of sedation used, the ASC 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, in the physical environment will be made.

(f) The department shall review the information submitted under (e) above and determine if the added services can be provided under the ASC current license.

(g) An inspection by the department shall be conducted prior to operation when there are changes in the following:

- (1) Ownership, unless the current licensee is in full compliance, in which case an inspection shall be conducted as soon as practical by the department;
- (2) The physical location;
- (3) A change in licensing classification; or
- (4) A change that places the facility under a different life safety code occupancy chapter.

(h) A new license ~~and license certificate~~ shall be issued for a change in ownership, classification, or a change in physical location.

~~(i) A revised license and license certificate shall be issued for changes in the ASC's name.~~

~~(j)~~ A revised license ~~certificate~~ shall be issued for any of the following:

(1) 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 under He-P 812.101.

~~(k)~~ The ASC shall inform the department in writing no later than 5 days prior to a change in administrator or medical director in the event of 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) Copies of applicable licenses for the new administrator or medical director;
  - (3) The results of a criminal records check from the NH department of safety for the new administrator or medical director which shall include criminal history from the state of New Hampshire; and
  - (4) A copy of the criminal non-conviction attestation as described in He-P 812.178(m)(9); and  
(5) The results of the BEAS registry check from the bureau of elderly and adult services for the new administrator or medical director.
- (~~k~~) Upon review of the materials submitted in accordance with (k) above, the department shall make a determination as to whether the administrator or medical director meets the qualifications for the position as specified in He-P 812.167(c) and He-P 812.03(a~~y~~).
- (~~l~~) If the department determines that the new administrator or medical director does not meet the qualifications, it shall so notify the ASC in writing so that a waiver can be sought or the licensee can search for a qualified candidate.
- (~~m~~) The ASC shall inform the department in writing via email, fax, or mail of any change in the e-mail address no- 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.
- (o) A restructuring of an established ASC 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.
- (p) If a licensee chooses to cease operation of an ASC, the licensee shall submit written notification to the department at least 60 days in advance which shall include a written closure plan.

He-P 812.1009 Inspections.

- (a) For the purpose of determining compliance with RSA 151 and He-P 812, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:
- (1) The proposed or licensed premises;
  - (2) All programs and services provided by the ASC; and
  - (3) Any records required by RSA 151 and He-P 812.
- (b) The department shall conduct a clinical and life safety inspection, as necessary, to determine full compliance with RSA 151 and He-P 812, prior to:
- (1) The issuance of an initial license;
  - (2) A change in ownership except as allowed by He-P 812.098(g)(1);
  - (3) A change in the physical location of the ASC;
  - (4) A change in the licensing classification;
  - (5) Occupation of space after construction, renovations or structural alterations; or

(6) The renewal of a non-certified ASC license.

(c) In addition to (b) above, the department shall conduct an inspection ~~as necessary~~ to verify the implementation of any POC accepted or issued by the department 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 ASC is in violation of any of the provisions of He-P 812, 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 812, within 21 days of the date on the letter that transmits the inspection report.

#### He-P 812.1~~10~~ Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 812 shall submit a written request for a waiver to the commissioner that includes:

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

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

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

(4) The period of time for which the waiver is sought.

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

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

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

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

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

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

(e) Waivers shall not be transferable.

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

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

#### He-P 812.1~~24~~ 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 complainants' first-hand knowledge regarding the allegations 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 812.
- (b) When practicable the complaint shall be in writing and contain the following information:
- (1) The name and address of the ASC, 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 812.
- (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 the licensed ASC, 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, rules, or regulations based on the results of the investigation, as appropriate;
  - (3) Notify the licensee, in writing, and take no further action if the department determines that the complaint is unfounded, under (a) above, or does not violate any statutes or rules; and
  - (4) Require the licensee to submit a POC in accordance with He-P 812.13(c).
- (e) The following shall apply for the unlicensed individual or entity:
- (1) In accordance with RSA 151:7-a, II, Fthe 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 by (e)(1) above to submit a ~~completed application for a license;~~ 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 may 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 812;
- (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
- ~~(3) If the owner of an unlicensed ASC does not comply with (e)(2) above, the department shall issue a written warning to immediately comply with RSA 151 and He-P 812; and~~
- (54) 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 812.
- (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 adjudicative proceedings relative to the licensee.

He-P 812.1~~32~~ Administrative Remedies.

- (a) The department shall, ~~after notice and an opportunity to be heard,~~ impose administrative remedies for violations of RSA 151, He-P 812, 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 a 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 state notice detailing:

- a. How the licensee intends to correct each area of non-compliance;
- b. What measures will be put in place, or what system changes will be made to ensure that the 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~~ ~~he or she has~~ 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 and accept each POC that:

- a. Achieves compliance with RSA 151 and He-P 812;
- b. Addresses all areas of non-compliance as cited in the statement of findings or notice to correct;
- c. Prevents a new violation of RSA 151 or He-P 812 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 ~~he or she has~~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 waiver;

(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 (d) below and a fine in accordance with He-P812.1~~34~~(c)(12);

(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 a follow-up inspection; or
- c. Reviewing compliance during the next annual 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 812.1~~23~~(b); and
- b. Issued a directed POC in accordance with (d) below and shall be subject to a fine in accordance with He-P 812.1~~34~~(c)(13)-~~below~~.

(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 812.1~~43~~(b); or

(4) Revoke the license in accordance with He-P 812.1~~43~~(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.

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

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

(i) The deadline to submit a POC in accordance with (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 resolutions as described in this section.

(k) An informal dispute resolution shall not be available for any applicant or licensee against whom the department has imposed an administrative fine or initiated action to 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 health, safety, or well-being of patients; or

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

(3) Concern that the facility is not ending the pattern of citations for violations of licensing rules and coming into compliance with those rules; or

(4) Conditions exist for implementation of temporary management as described in (i) below but no temporary manager can be found.

#### He-P 812.1~~43~~ 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 an administrative hearing in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable, before the enforcement action becomes final.

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

- (1) An applicant or a licensee has violated a provision of RSA 151 or He-P 812, which ~~violations have the potential to harm~~ poses a threat 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 or fine in the form of cash, money order, or certified check;
- (4) After being notified of and given an opportunity to supply missing information, or schedule an initial inspection, an applicant, or licensee fails to submit an application that meets the requirements of He-P 812.05~~4~~;
- (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 with, 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 implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 812.13~~2~~(c), (d), and (e);
- (7) The licensee has submitted a POC that has not been accepted by the department in accordance with He-P 812.13~~2~~(c)(5) and has not submitted a revised POC in accordance with He-P 812.13~~2~~(c)(5)(b);
- (8) The licensee is cited a third time under RSA 151 or He-P 812 for the same violations within the last 5 inspections;
- (9) A licensee, or its corporate officers, has had a license revoked and submits an application during the 5-year prohibition period specified in (j) below;
- (10) Unless a waiver has been granted, upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 812;
- (11) Unless a waiver has been granted, the department makes a determination that the applicant, administrator, licensee, or a household member 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 who does not meet the qualifications for the position under circumstances in which the department has not granted a waiver; or
- (13) The applicant has had a license revoked by any division or unit of the department within 5 years prior to the application.

(c) The department shall impose fines as follows:



- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00 for an applicant or unlicensed ~~provider~~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 provider shall be \$500.00;
- (4) For a failure to transfer a patient whose needs exceed the services or programs provided by the ASC, in violation of RSA 151:5-a, the fine shall be \$500.00;
- (5) For admission of a patient whose needs exceed the services or programs authorized by the ASC, in violation of RSA 151:5-a, II and He-P 812.1~~65~~(a), 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 812.1~~24~~(e)(5), the fine for an unlicensed ~~provider~~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 812.0~~76~~(b), 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 812.0~~98~~(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 812.0~~98~~(a)(2), the fine shall be \$500.00;
- (10) For a failure to notify the department of a change in e-mail address, in violation of He-P 812.0~~98~~(n), 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 812.09(d), the fine for a licensee shall be \$100.00;
- (1~~2~~3) For a refusal to allow access by the department to the ASC's premises, programs, services or records, in violation of He-P 812.1~~009~~(a), the fine for an applicant, unlicensed entity, or licensee shall be \$2000.00;
- (1~~3~~2) 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 812.1~~23~~(c)(2) or (5), the fine for a licensee shall be \$500.00;
- (1~~4~~3) 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 812.1~~23~~(c)(8), the fine for a licensee shall be \$1000.00;
- (1~~5~~4) For a failure to establish, implement or comply with licensee policies, as required by He-P 812.1~~89(b) and (f)~~, the fine for a licensee shall be \$500.00;

- (1~~56~~) For a failure to provide services or programs required by the licensing classification and specified by He-P 812.1~~89~~, the fine for a licensee shall be \$500.00;
- (1~~76~~) For providing false or misleading information or documentation, in violation of He-P 812.1~~45~~(g), the fine shall be \$1,000.00 per offense;
- (1~~87~~) For a failure to meet the needs of a patient or patients, as described in He-P 812.1~~45~~(j), the fine for a licensee shall be \$1,000.00 per patient;
- (1~~98~~) For ~~placing a patient in a room~~utilizing a room or space that has not been approved or licensed by the department, in violation of He-P 812.~~0910~~(b)(5), the fine for a licensee shall be \$500.00;
- (~~2019~~) For employing an administrator 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 812.1~~01~~, in violation of He-P 812.1~~67~~(b), the fine for a licensee shall be \$500.00;
- (2~~19~~) 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 812.0~~78~~(a), the fine for a licensed facility shall be \$500.00;
- (2~~21~~) For occupying a renovated area of a licensed facility or a new construction prior to approval by local and state authorities; as required by He-P 812.~~0910~~(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;
- (2~~32~~) When an inspection determines that a violation of RSA 151 or He-P 812 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 shall be \$1,000.00; 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
- (2~~43~~) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 812 shall constitute a separate violation and shall be fined in accordance with He-P 812.1~~23~~(c), provided that if the applicant or licensee is making good faith efforts to comply with the provisions of RSA 151 or He-P ~~807812~~, 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 130 days after receipt of the notice of enforcement action to ~~request a hearing to contest the action~~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 cessation of operations~~provision of services when it finds that the health, safety, or welfare 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 812 is achieved.

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

(j) When an ASC'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 for at least 5 years, if the enforcement action pertained to their role in the ASC.

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

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

(1) The date of the department's decision to revoke or deny the license, if not filed; or

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

~~(m)~~ Notwithstanding ~~(j)~~ 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 812.

~~(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 812.

#### He-P 812.1~~54~~ Duties and Responsibilities of All Licensees.

(a) The licensee shall comply with all relevant federal, state, and local laws, rules, regulations, codes, and ordinances, including RSA 161-F:40 and rules promulgated thereunder.

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

(c) The licensee shall define, in writing, the scope and type of services to be provided by the ASC, which shall include at a minimum, the required services listed in He-P 812.1~~98~~.

(d) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the ASC.

(e) Pursuant to RSA 151:41, the licensee shall have a written policy establishing procedures for the prevention, detection, and resolution of substance abuse, misuse, and diversion that apply to all personnel, and which shall be the responsibility of a designated employee or interdisciplinary team.

(f) The written policy in (e) above shall 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.

(ge) All policies and procedures shall be reviewed annually.

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

(ig) The licensee or any employee shall not falsify any documentation or provide false or misleading information to the department.

(jh) The licensee shall not advertise or provide services that it is not licensed to provide pursuant to RSA 151:2, III~~The licensee shall not:~~

~~(1) Advertise or otherwise represent itself as operating a ASC, unless it is licensed; and~~

~~(2) Advertise that it provides services that it is not authorized to provide.~~

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

(lj) Licensees shall:

(1) Meet the needs of the patients during those hours that the patients are in the care of the ASC;

(2) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the ASC;

(3) Appoint an administrator and medical director;

(4) Verify the qualifications of all personnel;

- (5) Provide sufficient numbers of qualified personnel to meet the needs of patients during all hours of operation;
- (6) Provide sufficient supplies, equipment, and lighting to meet the needs of the patients; and
- (7) Implement any POC that has been accepted by the department.

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

- (1) Has a guardian appointed by a court;
- (2) Has a durable power of attorney for health care or surrogate that has been activated; or
- (3) Is an un-emancipated minor.

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

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

(pn) 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 ~~and license certificate~~ issued in accordance with RSA 151:2;
- (2) All inspection reports issued in accordance with He-P 812.1099(b), for the previous 12 months;
- (3) A copy of the patients’ bill of rights;
- (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 floor plan, identifying the location of, and access to all fire exits;
- (6) A copy of the licensee’s complaint procedure, including a statement that complaints may be submitted by calling 1-800-852-3345 or in writing to:

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

- (7) A list of physicians who have an ownership or financial interest in the ASC.

(qe) 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 812 as authorized by RSA 151:6 and RSA 151:6-a.

(rp) Licensees shall, in accordance with He-P 812.156:

- (1) Report all adverse events to the department as required by He-P 812.1~~56~~(a)-(c);
- (2) Submit additional information if required by the department; and
- (3) Report the event to other agencies as required by law.

(~~se~~) A licensee shall, upon request, provide a patient or the patient's guardian or agent, if any, with a copy of ~~his or her~~their patient record pursuant to the provisions of RSA 151:21, X.

(~~te~~) 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.

(~~us~~) 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 personnel; and
- (3) Systems to prevent tampering with information pertaining to patients and personnel.

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

(~~wu~~) The licensee shall provide cleaning and maintenance services, as needed, to protect patients, personnel, and the public.

(~~xv~~) The licensed premises shall comply with all federal, state, and local health, building, fire, and zoning laws, rules and ordinances.

- ~~(1) Health requirements;~~
- ~~(2) Building ordinances;~~
- ~~(3) Fire ordinances; and~~
- ~~(4) Zoning ordinances.~~

(~~yw~~) Smoking shall be prohibited in the ASC per RSA 155:66, I(b), except as permitted by RSA 155:67. If allowed, smoking shall be restricted to designated smoking areas as per the licensee's official smoking policy, but in no case shall smoking be permitted in any room containing an oxygen cylinder or oxygen delivery system or in a resident's bedroom.

(~~zx~~) If the licensee is not on a public water supply, the water used by the licensee shall be suitable for human consumption, pursuant to Env-Dw 702.02 and Env-Dw 704.02.

(~~ay~~) Upon request, the licensee shall give a patient and the patient's guardian, agent, or personal representative, or surrogate decision-maker as applicable, a listing of all known applicable charges and identify what care and services are included in the charge.

(ab) The licensee may only perform point of care testing (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.

(ac) 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.

(ad) 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.

(ae) Licensee's 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.

(af) 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.

~~—(z) The licensee may perform the following Clinical Laboratory Improvement Amendments (CLIA) waived tests, as per 42 CFR Part 493.15, without obtaining a NH state laboratory license:~~

~~(1) Urine drug screening;~~

~~(2) Alcohol screening;~~

~~(3) Urine pregnancy; and~~

~~(4) Glucose testing.~~

~~—(aa) If the licensee collects urine specimens for laboratory testing, the licensee shall follow the manufacturer's instructions and the reference laboratory's instructions for collection, transporting, and storage of urine specimens.~~

~~—(ab) If the licensee collects other human specimens it shall be licensed as a collection station in accordance with He P 817.~~

~~—(ac) If the ASC performs any laboratory test other than those exempted by (z) above, the licensee shall be licensed as a laboratory in accordance with He P 808.~~

~~—(ad) The ASC shall hold the appropriate CLIA certificate to perform any laboratory tests.~~

~~—(ae) The licensee shall maintain the manufacturer's test system instructions including package inserts and operator's manuals.~~

(a) Pursuant to RSA 151:37-38, the ASC administrator or designee shall report to the department the following adverse events:

- (1) Serious reportable events and specifications published in the National Quality Forum's "Serious Reportable Events in Healthcare- 2011 Update" <http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=69573>, available as noted in Appendix A;
- (2) The exposure of a patient to a non-aerosolized blood borne pathogen by a health care worker's intentional unsafe act; and
- (3) An act by a hospital or ambulatory surgery center staff with the potential to result or resulting in an infection or disease.

(b) If the licensee suspects an adverse event occurred, the ASC administrator or designee shall send a report to the department in electronic or paper format, within 15 business days after discovery of event including:

- (1) ASC information;
  - (2) Patient information;
  - (3) Event information; and
  - (4) Type of occurrence as listed in (a) above.
- (c) For events reported in (b) above the ASC shall, within 60 days, provide the department:
- (1) An analysis that includes the type of harm and contributing factors; and
  - (2) A corrective action plan that includes what corrective actions are planned, who is responsible for implementation, when the action will be implemented and what measurements will be used to evaluate the corrective action plan or the justification for not implementing a corrective action plan if the ASC determines that one is not required.
- (d) If the ASC suspects that it received a patient from a sending ASC or hospital that was subject to an adverse event, then the receiving ASC administrator or designee shall notify the sending ASC or hospital's administrator or designee and the department. The department shall inform the sending ASC or hospital that a report is required in accordance with (b) above.

(e) Upon receipt of a report of an adverse event, the department shall:

- (1) Acknowledge receipt of event and review information for completeness;
- (2) Review corrective action plan for system changes that reduce the risk repeat of similar adverse events;
- (3) Communicate specific concerns to the ASC if the department does not find the corrective action plan credible;
- (4) Track and analyze adverse events for trends, underlying system problems; and
- (5) Provide information and make referrals to other state agencies as appropriate.



He-P 812.167 Organization and Administration.

- (a) Each ASC shall have a governing body whose duties include:
  - (1) Management and control of the operation of the ASC;
  - (2) Assessment and improvement of the quality of care and services;
  - (3) Appointment of the ASC administrator;
  - (4) Adoption of policies and procedures defining responsibilities for the operation of the ASC and the establishment of a medical staff;
  - (5) Approval of medical staff policies and procedures establishing the medical staff responsibilities;
  - (6) Responsibility for management of the overall operation and fiscal viability of the ASC;
  - (7) Responsibility for determination of the qualifications for appointment for all managers, medical staff and personnel; and
  - (8) Ensuring compliance with all relevant health and safety requirements of federal, state and local laws rules and regulations.
- (b) If the ASC is a sole proprietorship, the duties in (1) above shall pertain to the individual in ownership status.
- (c) Each ASC shall have a full-time administrator who:
  - (1) Meets one of the following qualifications:
    - a. The administrator shall have a master's degree from an accredited institution in business administration or a health-related field;
    - b. The administrator shall have a bachelor's degree from an accredited institution and at least 2 years of experience working in a health-related field; or
    - c. The administrator shall be a registered nurse and have at least 3 years of experience working in a health-related field; and
  - (2) Shall be responsible to the governing body for the daily management and operation of the ASC including:
    - a. Management and fiscal matters;
    - b. Implementing the policies and procedures adopted by the governing body;
    - c. The employment and termination of personnel necessary for the efficient operation of the ASC;
    - d. The designation of an alternate, in writing, who shall be responsible for the daily management and operation of the ASC in the absence of the administrator;
    - e. Attendance at meetings of the governing body, medical staff, and personnel, to serve as a liaison to the governing body;

- f. The planning, organizing, and directing of such other activities as may be delegated by the governing body;
- g. The delegation of responsibility to subordinates as appropriate;
- h. Ensuring development and implementation of ASC policies and procedures on:
  - 1. Patient's rights as required by RSA 151:20-21;
  - 2. Advanced directives as required by RSA 137-J;
  - 3. Discharge planning as required by RSA 151:26;
  - 4. Organ and tissue donor identification and procurement, as applicable;
  - 5. Withholding of resuscitative services from patients pursuant to RSA 137-J; and
  - 6. Adverse event reporting; and
- i. Notifying the department, directly or through delegation, as specified in He-P 812.15, of any adverse event involving a patient; and

(3) May hold more than one position within the ASC provided the individual meets the qualifications of each position.

(~~de~~) Each ASC shall have a medical staff in accordance with the policies and procedures established under (a)(4) above.

(~~ed~~) There shall be a full-time director of nursing services who:

- (1) Is currently licensed in the state of New Hampshire pursuant to RSA 326-B, or licensed pursuant to the multi-state compact;
- (2) Has a minimum of 4 years' relevant experience;
- (3) Is responsible for:
  - a. Establishment of standards of nursing practice used in the ASC;
  - b. Ensuring that the admission process and patient assessment process coordinates patient requirements for nursing care with available nursing resources;
  - c. Participating with the governing body, administrator and medical staff to improve the quality of nursing care at the ASC; and
  - d. Nursing care as authorized by their nurse practice act and according to RSA 326-B; and
- (4) May hold more than one position within the ASC provided the director of nursing meets the qualifications of each position.

He-P 812.1~~78~~ Personnel.

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

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

- (1) Obtain and review a criminal records check ~~from the New Hampshire department of safety~~ 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 (d) below;
- (3) Verify the qualifications of all applicants prior to employment;
- (4) Verify that the applicant is not on the List of Excluded Individuals/Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General; and
- (5) Verify that the applicant is not listed on the BEAS registry maintained by the department's bureau of elderly and adult services.

(c) Unless a waiver is granted in accordance with (e)(2) below, the licensee shall not offer employment, contract with, or engage a person in (b) above, if the person:

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

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

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

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

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

(f) The licensee shall:

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

(g) In lieu of (c) and (f) 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 (c) and (f) above and do not meet the criteria in (c) and (g) above.

(h) All personnel shall:

- (1) Meet the educational and physical qualifications of the position as listed in their job description;
- (2) Be licensed, registered, or certified as required by state statute and as applicable;
- (3) Receive an orientation ~~within the first 3 days of work or~~ prior to the assumption of duties that includes:
  - a. The ASC's policies on rights and responsibilities and complaint procedures as required by RSA 151:20;
  - b. The duties and responsibilities, policies, procedures, and guidelines, of the position they were hired for;
  - c. The ASC's infection prevention program;
  - d. The ASC's fire, evacuation, and emergency plans which outline the responsibilities and educational requirements of personnel in an emergency; and
  - e. Mandatory reporting requirements for abuse or neglect such as those found in RSA 161-F and RSA 169-C:29;
- (4) Complete a mandatory annual in-service education, which includes a review of the ASC's:
  - a. Policies and procedures on patient rights and responsibilities and abuse or neglect;
  - b. Infection prevention; and
  - c. Education program on fire and emergency procedures.

(i) Prior to having contact with patients, personnel shall:

- (1) Submit to the licensee proof of a physical examination or a health screening conducted not more than 12 months prior to employment which shall include at a minimum the following:
  - a. The name of the examinee;
  - b. The date of the examination;
  - c. Whether or not the examinee has a contagious illness or any other illness that would affect the examinee's ability to perform their job duties;
  - d. Results of a 2-step tuberculosis (TB) test, Mantoux method or other method approved by the Centers for Disease Control (CDC); and
  - e. The dated signature of the licensed health practitioner;
- (2) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first step are negative for TB; and

- (3) Comply with the requirements of the United States Centers for Disease Control “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.
- (j) Personnel who have direct contact with patients who have a history of TB or a positive laboratory and antigen testing shall have a symptomology screen of a TB test.
- (k) The licensee shall provide all personnel with an annual continuing education or in-service education training, which at a minimum contains the following:
- (1) The licensee’s patient’s rights and complaint procedures required under RSA 151;
  - (2) The licensee’s written emergency plan; and
  - (3) The mandatory reporting requirements including RSA 161-F:46 and RSA 169-C:29.
- (l) Current, separate and complete personnel files shall be maintained and stored in a secure and confidential manner.
- (m) The licensee shall maintain a separate employee file for each employee, which includes the following:
- (1) A completed application for employment or a resume;
  - (2) A signed statement acknowledging the receipt of the ASC’s policy setting forth the patient’s rights and responsibilities, and acknowledging training and implementation of the policy as required by RSA 151:20;
  - (3) A job description signed by the individual that identifies the:
    - a. Position title;
    - b. Qualifications and experience; and
    - c. Duties required by the position;
  - (4) Record of satisfactory completion of the orientation program required by (h)(3) above;
  - (5) A copy of each current New Hampshire license, registration, or certification in health care field and basic life support certification, if applicable;
  - (6) Documentation that the required physical examination or health screening and TB test results or radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
  - (7) Record of satisfactory completion of all required education programs and demonstrated competencies that are signed and dated by employee;
  - (8) Documentation of annual performance review;
  - (9) A statement which shall be signed at the time the initial offer of employment, contract, or engagement is made and then annually thereafter, that ~~he or she~~they:

- a. Does not have a felony conviction in this or any other state;
- b. Has 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(s) in this or any other state; and
- c. Has 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;

(10) Documentation of the criminal records check;

(11) Documentation that the individual is not on the List of Excluded Individuals/Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General; and

(12) The results of the registry checks in (11) above.

(n) 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 (m)(1), (3), (4), (6) and (8) through (12) above; and

(2) For independent contractors, the information in (m) (3), (4), (6) and (8) through (12) above.

(o) An individual need not re-disclose any of the matters in (9) and (10) above if the documentation is available and the department has previously reviewed the material and granted a waiver so that the individual can continue employment.

| He-P 812.1~~98~~ Required Services.

(a) The licensee shall determine the scope of surgical services that shall be performed in the surgical suite.

(b) The licensee shall determine the types of anesthesia to be utilized and shall meet NFPA 99, Health Care Facilities Code for supply and storage. Once determined, the ASC shall assure its availability in the surgical suite. Flammable anesthetics shall not be used in an ASC.

(c) Each licensee shall ensure the availability of sufficient personnel, with the required skills and experience, to provide the services in (a) above.

(d) The licensee shall have a policy governing basic life support training and use.

(e) The licensee shall have a surgical suite, which shall be a separate unit, physically set apart from all other departments.

(f) The surgical suite shall contain the following:

(1) At least one operating room equipped for general operating use within the scope of surgical services determined by the ASC in accordance with (a) above;

(2) Facilities for sterilization, scrubbing, and clean-up, separate from the operating room;

- (3) Clean, sterile, soiled, or decontamination rooms which shall be separate and distinct from each other;
  - (4) Appropriate storage space for sterile supplies, instruments, anesthesia and medications;
  - (5) Emergency lighting;
  - (6) Heating ventilation and air conditioning (HVAC) systems shall comply with the FGI “Guidelines for Design and Construction of Outpatient Facilities” (20~~22~~<sup>18</sup> Edition), available as noted in Appendix A, including the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE/ANSI/ASHE) Standard 170-2017 and the State of NH [the 2009 International Mechanical Code](#); and
  - (7) Space routinely used for administering inhalation anesthesia and inhalation analgesia, which shall be served by a scavenging system to vent waste gases.
- (~~gh~~) The ASC shall have appropriately certified or licensed supervisory personnel present during the procedures being performed.
- (~~hi~~) No operation shall be performed until:
- (1) The patient has had a physical examination and medical history completed, within the past 30 days;
  - (2) Any indicated laboratory and x-ray examinations have been completed;
  - (3) The preoperative diagnosis has been recorded in the patient’s record; and
  - (4) The patient has signed a consent for anesthesia.
- (~~ij~~) The ASC shall complete discharge planning on all patients admitted to the ASC including the provision of verbal and written instructions to the patient, and/or personal representative, agent, surrogate decision-maker, or guardian as applicable.
- (~~jk~~) Discharge planning shall include, as applicable:
- (1) The patient’s medication needs upon discharge;
  - (2) The need for medical equipment, special diets, or potential food-drug interactions; and
  - (3) The need for home health services upon discharge.
- (~~kl~~) The ASC shall have a procedure for the immediate transfer to a hospital, of patients requiring emergency medical care beyond the capabilities of the ASC.

He-P 812.~~2019~~ Patient Records.

- (a) A patient record shall be maintained for each patient accepted for treatment by the facility.
- (b) The license shall maintain a legible, current, and accurate record for each patient based on the services provided at the ASC.
- (c) At a minimum, patient records shall contain the following:
  - (1) Identification data including the patient’s:

- a. Name;
  - b. Home address;
  - c. Telephone number;
  - d. Name, address, and telephone number for an emergency contact;
  - e. Date of birth; and
  - f. Guardian, agent, or surrogate decision-maker, as applicable;
- (2) A signed acknowledgment of receipt of the patients' bill of rights by the patient, guardian, agent, or surrogate decision-maker;
- (3) Patient's health insurance information;
- (4) Written or electronic record of a health examination by a licensed practitioner;
- (5) Written, dated, and signed orders for medications, treatments, special diets, laboratory services, 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;
- (8) Documentation of any accident or injuries occurring while in the care of the facility;
- (9) Documentation of all services provided including signed notes by:
- a. Nursing personnel;
  - b. Physicians; and
  - c. Other health professionals authorized by ASC policy;
- (10) Documentation of a patient's refusal of any care or services;
- (11) Transfer or discharge documentation including planning, referrals, and notifications to the patient and guardian, agent, or surrogate decision-maker, if any, of involuntary room change, if applicable;
- (12) Laboratory, x-rays, or results of other diagnostic tests; and
- (13) The consent for treatment signed by the patient, guardian, agent or surrogate decision-maker, 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's policy shall determine the method by which release of information from patient records shall occur.



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

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

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

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

(k) The facility shall notify the department where the storage required in (i) above is located.

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

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

(n) 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 812 for the onsite inspection. Access shall include assistance navigating the database and printing portions of the record, if needed.

(o) Radiologic services shall only be provided when integral to procedures offered by the ASC.

(p) The ASC shall adopt and implement policy and procedures that provide safety for patient and personnel and are based on nationally recognized standards.

He-P 812.210 Infection Control.

(a) The licensee shall appoint an individual who will oversee the development and implementation of 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 standard precautions, as specified by the United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007), available as noted in Appendix A;

(3) The management of patients with infectious or contagious diseases or illnesses;

(4) The handling, transport, and disposal of those items identified as infectious waste in Env-Sw 103.28 and regulated by Env-Sw 904;

(5) Reporting of infectious and communicable diseases as required by He-P 301;

(6) Evaluating and revising the infection control program in accordance with current CDC recommended actions;

- (7) Maintenance of a sanitary physical environment; and
- (8) Infection control policies specific to each department.
- (c) The infection control education program shall:
  - (1) Be completed by all personnel on an annual basis; and
  - (2) Address the:
    - a. Cause of infections;
    - b. Effect of infections;
    - c. Transmission of infections; and
    - d. Prevention and containment of infections.
- (d) Personnel infected with a disease or illness transmissible through food, saliva, or droplets, shall not provide direct care in any capacity until they are no longer contagious.
- (e) Personnel infected with scabies or lice shall not provide direct care to patients until such time as they are no longer infected.
- (f) Pursuant to RSA 141-C:1, employees with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the employee is receiving tuberculosis treatment and has been determined to be noninfectious by a licensed practitioner.
- (g) Personnel and staff with an open wound who provide direct care in any capacity shall cover the wound at all times by an impermeable, durable, secure-fitting bandage.
- (h) If the ASC has an incident of an infectious disease reported in (b)(5) above, 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.
- (i) The ASC shall have available space, supplies and equipment for proper handling of suspected or actual infectious conditions.
- (j) The ASC shall require that licensed practitioners evaluate all patients at risk for an infection or communicable disease to ensure the detection or presence of same.
- (k) The ASC 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.
- (l) The ASC 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.
- (m) The ASC shall identify, track, and report infections, as required by RSA 151:33 and He-P 309.

(n) The infection control program shall report to quality assurance and performance improvement (QAPI) on at least a quarterly basis.

He-P 812.2~~24~~ Quality Assessment and Performance 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, an interdisciplinary quality assurance and performance improvement committee shall be created and required to:

- (1) Meet at least quarterly to evaluate quality assurance and performance improvement activities;
- (2) Generate dated, written minutes for each meeting;
- (3) Maintain all quality improvement activities, including minutes of meetings, for at least 2 years from the date the record was created; and
- (4) Make recommendations to the governing body to improve the quality of care.

(c) Quality assurance and performance improvement activities shall include:

- (1) Review of patterns and trends of activities which affect the quality of care;
- (2) Ensuring that quality control logs for preventive maintenance and safety checks are maintained for all equipment according to manufacturer's recommendations or code requirements;
- (3) Monitoring and evaluation of the quality of patient care and patient care services in the ASC which shall include:
  - a. Monitoring of medication use and review of pharmacy activity in the ASC;
  - b. Review of patient record quality;
  - c. Review of blood use in the ASC, as applicable; and
  - d. Review of other functions such as risk management, infection control, disaster planning, ASC safety, and utilization review; and
- (4) Reviewing and making recommendations for improvement in areas such as:
  - a. Infection surveillance;
  - b. Morbidity;
  - c. Mortality;
  - d. Monitoring of personnel quality control practices in each service; and
  - e. Adverse events in accordance with He-P 812.1~~56~~.

(d) For each quality assurance and performance improvement activity, the 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 ASC; and
- (7) Evaluate the effectiveness of the corrective actions and determine additional corrective actions as applicable.

He-P 812.2~~32~~ Sanitation.

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

(b) The 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.

(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 when used for laundry, as required in the Facility Guidelines Institute's (FGI) "Guidelines for Design and Construction of Outpatient Facilities," (20~~22~~<sup>18</sup> edition), available as noted in Appendix A, and summarized as follows:

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

(2) One hundred and 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 which meets the designed water temperatures specified by the manufacturer.

(f) All patient bathing and toileting facilities shall be cleaned and disinfected 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 separate from food, medications and program 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) Solid waste, garbage, and trash shall be stored in a manner to make it inaccessible to insects, rodents, and outdoor animals.

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

(k) Laundry and laundry rooms, if present, shall meet the following requirements:

- (1) Clean linen shall be stored in a clean area and separated from soiled linens at all times;
  - (2) Soiled materials, linens, and clothing shall be transported in a laundry bag, sack, or container and washed in a sanitizing solution used in accordance with the manufacturer's recommendations; and
  - (3) Soiled linens and clothing which are considered contaminated with infectious waste under Env-Sw 103.28 shall be handled as infectious waste.
- (l) Laundry rooms and bathrooms shall have non-porous floors.
  - (m) Clean supplies shall be stored in dust-free and moisture-free storage areas.
  - (n) Any ASC 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.

He-P 812.2~~34~~34 Pharmacy and Medications.

- (a) Medications shall be administered only by a person licensed to do so by the state of NH.
- (b) An emergency drug cart shall be maintained, it shall be under the control of a licensed nurse or physician, and shall be inventoried, in accordance with the written policy of the ASC.
- (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.
- (g) 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 812.2~~45~~45 Physical Environment.

- (a) The licensed premises shall be maintained so as to provide for the health, safety, well-being, comfort, and privacy of patients and personnel, including reasonable accommodations for patients and personnel with mobility limitations.
- (b) The licensed premises shall:
  - (1) Have all emergency entrances and exits accessible at all times;
  - (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) Equipment providing heat within an ASC including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood furnace or boiler, or pellet furnace or boiler shall:
  - (1) Maintain a temperature of at least 55 degrees Fahrenheit during the day 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.
- (d) Electric heating systems shall be exempt from (c)(2) above.
- (e) Portable space heating devices shall be prohibited, unless the following are met:
  - (1) Such devices are used only in employee areas where personnel are present and awake at all times; and
  - (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.
- (f) Any heating device other than a central plan shall be designed and installed so that:
  - (1) Combustible material cannot be ignited by the device or its appurtenances;
  - (2) If fuel-fired, such heating devices comply with the following:
    - a. They shall be chimney or vent connected;
    - b. They shall take air for combustion directly from outside; and
    - c. They shall be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area; and
  - (3) Any heating device has safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.
- (g) Unvented fuel-fired heaters shall not be used in any ASC.
- (h) Plumbing shall be sized, installed, and maintained in accordance with the state building code under RSA 155-A.
- (i) Screens shall be provided for doors and windows that are left open to the outside.
- (j) Doors that are self-closing and remain closed when not in use shall be exempt from the requirement in (i) above.
- (k) The ASC shall have a telephone to which the patients have access.

(l) Toilet and bathing facilities shall be provided to meet patient needs in relation to the number, acuity, and gender of the patients, but no less than one toilet per 8 patient care stations.

(m) Separate toilet facilities with hand washing sinks shall be provided for personnel and visitors.

(n) All toilets shall be vented out-of-doors.

(o) Each bathroom shall be equipped with:

(1) Soap dispensers;

(2) Paper towels or a hand-drying device providing heated air; and

(3) Hot and cold running water.

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

(q) All hand-washing facilities shall be provided with hot and cold running water.

(r) All bathroom and closet doors must either swing or slide and have latches or locks which shall be designed for easy opening from the inside and outside in an emergency.

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

~~with all state and local codes and ordinances for:~~

~~(1) Zoning;~~

~~(2) Building;~~

~~(3) Health;~~

~~(4) Fire;~~

~~(5) Waste disposal; and~~

~~(6) Water.~~

(t) The facility shall be accessible at all times of the year.

(u) The licensee shall provide housekeeping and maintenance adequate to protect patients, personnel and the public.

(v) Reasonable precautions, such as repair of holes and caulking of pipe channels, shall be taken to prevent the entrance of rodents and vermin.

(w) Doors shall be of such width as to permit removal of a patient in a bed and meet the state fire and building codes.

(x) Ventilation shall be provided throughout the entire ASC and, whenever necessary, mechanical means such as fans shall be provided to remove excessive heat, moisture, objectionable odors, dust, or explosive or toxic gases.

(y) There shall be an emergency generator system to provide emergency power pursuant to the following, as adopted by the State Fire Code ~~commissioner of the department of safety in Saf C 6000, under RSA 153, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control:~~

- (1) The Electrical Systems chapter of NFPA 99, Health Care Facilities Code; and
- (2) The Standard for Emergency and Standby Power Systems, NFPA 110.

(z) Waste water shall be disposed of through a system which meets the requirements of RSA 485:1-A and Env-Wq 1000. Sink drains which have no connection to sanitary sewers or septic systems and similar methods of disposal above ground shall be strictly prohibited.

(aa) Facilities shall provide for prompt cleaning of bedpans, urinals and other utensils.

(ab) Any locking mechanism utilized by the facility on egress doors shall comply with the Ambulatory Health Care Occupancy Chapter of NFPA 101 as adopted by the [State Fire Code commissioner of the department of safety under Saf C 6000, under RSA 153, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control.](#)

(ac) The ASC shall maintain a system for sterilization of equipment and supplies as follows:

- (1) The sterilization system shall be checked for effective sterilization in accordance with the manufacturer's recommendation; and
- (2) The results of these quality control tests shall be documented.

(ad) The ASC shall have a storage room for clean/sterile supplies, including packs, which meets the following requirements:

- (1) There shall be provisions for ventilation, humidity, and temperature control;
- (2) Sterile supplies and equipment shall not be mixed with unsterile supplies; and
- (3) Sterile supplies shall be stored in dustproof and moisture free, labeled containers or cupboards.

(ae) Signs shall be provided at all entrances to restricted areas and shall clearly indicate that surgical attire is required.

(af) The ASC shall be divided into 3 designated areas, unrestricted, semi-restricted, and restricted, which are defined by the physical activities performed in each area and by the FGI's "Guidelines for Design and Construction of Outpatient Facilities, Chapter 2.7 [Specific Requirements for Outpatient Surgery Facilities](#)" (2022+8 edition), available as noted in Appendix A.

(ag) Operating room sizes shall be based on procedures to be performed, including the number of staff required and the amount and size of equipment that will be used. At a minimum operating room sizes shall meet the requirements of the FGI's "Guidelines for the Design and Construction of Outpatient Facilities, Chapter 2.1 Common Elements for Outpatient Facilities and Chapter 2.7 [Specific Requirements for Outpatient Surgery Facilities](#)" (2022+8 edition), available as noted in Appendix A. In addition, at a minimum, the square footage requirements, shall take into account circulation pathways, sterile fields, movable equipment, and anesthesia work area.

(ah) Operating rooms shall be located within the restricted corridors of the surgical suite.

(ai) Semi-restricted areas shall have ceilings that are smooth and without crevices, scrubbable, non-absorptive, Non-perforated and capable of withstanding cleaning with chemicals.



(aj) Restricted areas shall have ceilings that are monolithic. Cracks or perforations in these ceilings shall not be permitted and the central diffusers shall not be considered part of a monolithic ceiling. All access openings in these ceilings shall be gasketed.

(ak) If utilizing lay-in ceilings, it shall be gasketed or each ceiling tile shall weigh at least one pound per square foot.

(al) A nurse call system shall be required per the FGI's "Guidelines for the Design and Construction of Outpatient Facilities" (2022~~18~~ edition), available as noted in Appendix A.

He-P 812.2~~56~~ Life Safety and Fire Safety Procedures.

(a) All ASC's shall meet the appropriate chapter 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.

~~(ba)~~ The administrator or designee shall appoint a safety committee to include representatives from administration, clinical services and support services.

~~(cb)~~ The safety committee shall:

(1) Appoint a safety officer who shall:

- a. Inspect the ASC at least semi-annually to assure that all safety precautions are met; and
- b. Report to the safety committee any findings noted during the inspections;

(2) Develop or approve written policies and procedures covering all matters of safety and fire protection and an emergency response plan, including:

- a. The emergency procedures required by the emergency response plan shall include, but are not limited to, evacuation routes, emergency notification numbers and emergency instructions and shall be posted in locations accessible to personnel and visitors;
- b. The ASC fire safety plan shall provide for the following:
  1. Use of alarms;
  2. Transmission of alarm to fire department;
  3. Emergency phone call to fire department;
  4. Response to alarms;
  5. Isolation of fire;
  6. Evacuation of immediate area;
  7. Evacuation of smoke compartment;
  8. Preparation of floors and building for evacuation; and
  9. Extinguishment of the fire;
- c. Ensuring that the fire safety and evacuation plans are available to all supervisory personnel;

d. Ensuring that all employees receive in-service annual training to clarify their responsibilities in carrying out the emergency plan; and

e. Ensuring that the required plan shall be readily available at all times in the telephone operator's location or at the security center; and

(3) Conduct fire drills, including the transmission of a fire alarm signal and simulation of emergency fire situation, as follows:

a. Recovery and operating room patients shall not be required to be moved during drills to safety areas or to the exterior of the building; and

b. Drills shall be conducted quarterly on each shift to familiarize ASC personnel with the signals and emergency action required under varied conditions.

(de) The emergency plan required by (b)(2) above shall be approved and signed by the local fire chief.

(ed) The ASC shall notify the department and local fire department when a required sprinkler or fire alarm system is out of service for more than 4 hours in a 24-hour period. The ASC shall be evacuated or an approved dedicated fire watch shall be provided for all parties left unprotected by the shutdown until the sprinkler or alarm system has been returned to service.

(fe) The ASC shall notify the department when the emergency power has been utilized for 6 or more hours due to power outage.

(gf) Provisions shall be made for the medical gas(es) used in the facility. Adequate space for supply and storage, including space for serve cylinders, shall be provided. Protection of this area shall meet NFPA 101 and NFPA 99 Health Care Facilities Code, as adopted ~~by the State Fire Code in Saf C 6000 as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control.~~

(hg) If piped medical gas is used, the installation, testing, and certification of nonflammable medical gas and air systems shall comply with the requirements of NFPA 99, as adopted ~~by the State Fire Code in Saf C 6000 by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control.~~

(ih) Where the functional program requires, central clinical vacuum system installations shall be in accordance with NFPA 99, as adopted ~~by the State Fire Code in Saf C 6000 as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I by the state fire marshal with the board of fire control.~~

(ji) If there is an incident including, but not limited to, fire, toxic fumes including smoke, flooding, and power outage, which requires the evacuation of the ASC all or in part, the ASC shall immediately notify the department by phone, once the incident has been stabilized. Within 72 hours of the incident, the ASC shall submit a written report which gives further details of the incident and the action taken.

#### He-P 812.267 Emergency Preparedness.

(a) Each facility shall have an emergency management committee, of which the facility administrator must be a member.

(b) The emergency management committee shall have the authority for developing, implementing, exercising, and evaluating an emergency management program.

(c) The emergency management committee shall include other individuals 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.

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

- (1) The emergency management plan, as described in (e) and (f) below;
- (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.

(e) The emergency management committee shall develop and institute a written emergency preparedness plan (plan) to respond to a disaster or an emergency.

(f) The plan in (e) above 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 participants 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 Incident Command System (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.
- (g) Annually, the facility shall participate in a community-based disaster drill which may be a table top discussion drill with outside agencies, actual, and functional drills.
- (h) The facility shall review and update its emergency plan, as needed, as a result of drills and exercises, real event(s), and annual plan review.
- (i) Notwithstanding (a)-(g) above, when an ASC is a part of a larger institution which has a comprehensive emergency preparedness plan, the ASC may use the institution's plan, and if so, it shall:
- (1) Identify the portions of the plan that pertain to the ASC in a separate document for use by ASC personnel;
  - (2) Provide annual training to prepare personnel in its application as required by (g) above; and
  - (3) Review and update the plan as required by (h) above.

**APPENDIX A: Incorporation by Reference Information**

<b>Rule</b>	<b>Title</b>	<b>Publisher; How to Obtain; and Cost</b>
He-P 812.08(h), He-P 812.19(f)(6); He-P 812.23(e), He-P 812.25(af), (ag), and (al)	Facility Guidelines Institutes' (FGI) "Guidelines for Design and Construction of Outpatient Facilities" (2022 edition)	<p>Publisher: Facility Guidelines Institute</p> <p>Cost:</p> <p>Digital: \$90 single-user/per year or \$235 multi-user/per year Print: \$235 per copy</p> <p>The incorporated document is available at: <a href="https://www.fgiguideines.org/guidelines/editions/">https://www.fgiguideines.org/guidelines/editions/</a></p>
He-P 812.15(n), He-P 812.21(b)(2)	Centers for Disease Control and Prevention's "2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings" (June 2007 Edition)	<p>Publisher: Centers for Disease Control and Prevention</p> <p>Cost: Free of Charge</p> <p>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></p>
He-P 812.16(a)(1)	National Quality Forum's "Serious Reportable Events in Healthcare- 2011 Update"	<p>Publisher: National Quality Forum</p> <p>Cost: Free of Charge</p> <p>The incorporated document is available at <a href="http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&amp;ItemID=69573">http://www.qualityforum.org/WorkArea/linkit.aspx?LinkIdentifier=id&amp;ItemID=69573</a></p>
812.18(i)(3)	Centers for Disease Control and Prevention "Guidelines for Preventing the Transmission of <i>M. tuberculosis</i> in Health-Care Settings" (2005 Edition)	<p>Publisher: Centers for Disease Control and Prevention</p> <p>Cost: Free of Charge</p> <p>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></p>

**Appendix B**

<b>Rule</b>	<b>Specific State or Federal Statutes the Rule Implements</b>
He-P 812.01 – He-P 812.03	RSA 151:9, I(a) and (b)
He-P 812.04	RSA 151:4-a, II
He-P 812.05 – He-P 812.08	RSA 151:2, I and II and RSA 151:9,I
He-P 812.09	RSA 151:9, I(a)
He-P 812.10	RSA 151:9, I(e) and RSA 151:6-a
He-P 812.11	RSA 151:9, I(a) and (b)
He-P 812.12	RSA 151:9, I(e) and RSA 151:6
He-P 812.13	RSA 151:9, I(f), (g), (l), and (m)
He-P 812.14	RSA 151:9, I(f), (h), and (l)
He-P 812.15 – He-P 812.27	RSA 151:9, I(a)

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF LEGAL AND REGULATORY SERVICES  
HEALTH FACILITIES ADMINISTRATION  
129 Pleasant Street, Concord, NH 03301  
TDD Access: Relay NH 1-800-735-2964  
Agency Phone: 603-271-9039

**APPLICATION FOR RESIDENTIAL, HEALTH CARE LICENSE OR SPECIAL HEALTH CARE SERVICES**

EXISTING FACILITY LICENSE #: \_\_\_\_\_  
CURRENT FACILITY LICENSE EXPIRATION DATE, IF APPLICABLE: \_\_\_\_\_

THIS APPLICATION SHALL BE FILLED OUT IN ACCORDANCE WITH RSA 151:4. A SEPARATE APPLICATION MUST BE SUBMITTED FOR EACH LICENSURE CATEGORY. **PLEASE BE SURE TO COMPLETE THE ENTIRE APPLICATION.** IF A SECTION DOES NOT APPLY TO YOUR FACILITY, MARK NOT APPLICABLE (N/A). FAILURE TO COMPLETE THE APPLICATION WILL RESULT IN A DELAY IN THE LICENSURE PROCESS. SEND THE ENTIRE COMPLETED FORM TO THE ADDRESS ABOVE. IF YOU NEED TO REVIEW YOUR LICENSING RULES, THEY CAN BE FOUND ONLINE AT: <https://www.dhhs.nh.gov/administrative-rules-health-facilities>

Check all applicable items:

<input type="checkbox"/> License renewal:	<input type="checkbox"/> *New facility:	<input type="checkbox"/> Other (please explain):
<input type="checkbox"/> *New owner:	<input type="checkbox"/> **Change in # of beds:	<input type="checkbox"/> ***Change in classification:
<input type="checkbox"/> **Change in address:		

\* Requires processing as a new application.

\*\* Requires Local Approval Forms

\*\*\*Requires both

LICENSEE (Legal Owner of Facility): \_\_\_\_\_ TELEPHONE #: ( ) \_\_\_\_\_

NAME OF FACILITY (DBA): \_\_\_\_\_ TELEPHONE #: ( ) \_\_\_\_\_

FAX #: ( ) \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

ADMINISTRATOR: \_\_\_\_\_

MEDICAL DIRECTOR (IF APPLICABLE): \_\_\_\_\_

FACILITY E-MAIL ADDRESS (REQUIRED): \_\_\_\_\_

**IF APPLICABLE:**

NUMBER OF BEDS: \_\_\_\_\_ PRESENTLY LICENSED: \_\_\_\_\_ TOTAL # TO BE LICENSED: \_\_\_\_\_

NUMBER OF HCBC CFI OR STATE PLACED INDIVIDUALS IN HOME (Complete for He-P 804, He-P 805 and He-P 814): \_\_\_\_\_

NUMBER OF ESRD STATIONS (Completed for He-P 811 licensees only): \_\_\_\_\_

BRANCH OFFICE LOCATIONS (Complete if applies under He-P 809.07, 819.07, 822.07 & 823.07 only): \_\_\_\_\_

## **OWNERSHIP**

- a. Type of ownership: ☐ Association ☐ Partnership ☐ Corporation  
☐ LLC ☐ Individual ☐ Other (explain \_\_\_\_\_)
- b. List name and address of each person having an ownership interest (directly or indirectly) of greater than 5% in the facility.
- c. If the licensee is organized as an association or corporation, list the name of the association or corporation and the name, address, and title of each officer.
- d. If the licensee is a partnership, list the name and address of each partner.
- e. Is this a certified facility? (**Facilities with deem status under RSA 151**) ☐ YES ☐ NO  
Only applies to He-P 802, 803, 809, 811, 812, 815, & 823

If you are already a certified facility, is this an increase in services? If YES, please call 1-800-852-3345 ext. 9049

- f. Are you planning on being a certified facility? If YES, please call 1-800-852-3345 ext. 9049

## **FEES:**

Hospitals (General, CAH, Psychiatric, Rehabilitation) (802)	\$25 per licensed bed
Free Standing Emergency Rooms (802)	\$500
Nursing Homes (803)	\$25 per licensed bed
Residential and Supported Residential Care Homes (804 & 805)	\$15 per licensed bed (NO CHARGE FOR HCBC OR NH STATE PLACED RESIDENTS)
Non-Emergency Walk-In Care Centers (806)	\$500
Residential Treatment and Rehabilitation Facilities (807)	\$25 per licensed bed
Home Health Care Providers (809)	\$250
Birthing Centers (810)	\$150
End Stage Renal Disease Dialysis Centers (811)	\$500
Ambulatory Surgical Centers (812)	\$500
Intermediate Care Facilities for Individuals with Intellectual Disabilities(ICF/IID)(815)	\$25 per licensed bed
Educational Health Centers (816)	\$500
Adult Day Care Centers (818)	\$200
Case Management Agencies (819)	\$150
Home Care Service Provider Agencies (822)	Less than ten clients \$25; Ten or more clients \$250
Home Hospice Care Providers (823)	\$250
Hospice Houses (824)	\$25 per licensed bed
Substance Use Disorder Residential Treatment Facilities (826)	\$25 per licensed bed
Freestanding Megavoltage Radiation Therapy Facility (827)	\$500
Psychiatric Residential Treatment Programs (830)	\$25 per licensed bed

A check or money order (payable to: TREASURER, STATE OF NEW HAMPSHIRE) must be attached to this application.

Applications submitted by those facilities exempt under RSA 151:4 I (a), (b) & (c) are not required to pay the license fee.

**ADDITIONAL APPLICATION REQUIREMENTS: NOTE THAT NOT ALL APPLICATION REQUIREMENTS ARE LISTED HERE PLEASE REFER TO THE APPROPRIATE RULE TO DETERMINE OTHER ITEMS THAT NEED TO BE SUBMITTED.**



1. Renewal applications must be submitted at least 120 days prior to expiration of the current license. **(Yearly)**
2. Include qualifications, including a resume with education and experience, and copies of all applicable licenses and certifications, for the administrator and medical director **(if applicable). (Initial Application Only, unless changing Administrator or Medical Director)**
3. Include information relative to whether the facility has been granted any waivers, exemptions, or variances to the rules by the Department of Health and Human Services and/or the State Fire Marshal. **(Yearly)**
4. Include a floor plan indicating the location of all rooms, # of beds in each bedroom, and fire exits. **(Initial Application Only – NOT FOR He-P 809, 819, 820 & 823)**
5. Include NH Secretary of State Authority to do business in the State of NH and/or tradename registration **(Initial Application Only)**
6. Include written local approvals from the health officer, the building official, the zoning officer, and the fire chief. For a building under construction, the written approvals required shall be submitted at the time of the application based on the local official's review of the building plans and again upon completion of the construction project. **(Initial Application Only for ALL categories)**
7. Include documentation that the water supply has been tested in accordance with RSA 485 and Env-Dw 702.02 and 704.02 (formerly Env-Ws 313.01 and 314.01). **(Initial Application Only – NOT FOR He-P 809, 819, 820 & 823)**
8. Include 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 (formerly Env-Ws 313.01) for bacteria and Env-Dw 704.02 (formerly Env-Ws 314.01) for nitrates. **(NOT FOR He-P809, 819, 820 & 823)**
9. Include a list of all employees who have previously been granted waivers for criminal background check results from the Department of Health and Human Services. **(Yearly and on initial application if change of ownership or category)**
10. Include the results of a criminal records check to include results for the state of New Hampshire for the applicant(s), the licensee (owner even if entity) if different than the applicant, the administrator, medical director and, if applicable, each household member 17 years of age or older who resides at the facility. **(Initial Application Only)**

**FACILITY SERVICE DESCRIPTION: Complete even on renewal**

The following information will be used to determine which licensure category your facility will be placed in.

- I. Provide a detailed description of the services and programs you wish to provide.
- \*II. Describe the facility's health care you wish to provide to residents.
- \*III. Identify who will provide the health care listed in II.

\*To be completed if applying for beds. **SIGNATURES:** This application must be signed by:

1. The owner if a private facility;
2. Two officers if a corporation;

3. Two authorized individuals if an association or partnership; or
4. The head of the government agency if a government unit.

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.

DATE: \_\_\_\_\_ SIGNED: \_\_\_\_\_  
(NAME AND TITLE)

DATE: \_\_\_\_\_ SIGNED: \_\_\_\_\_  
(NAME AND TITLE)

**For all facilities to be newly licensed as an ambulatory surgical center (He-P 812), hospital (He-P 802), birthing center (He-P 810), walk in care center (He-P 806), dialysis center (He-P 811), or special health care service (He-P 802 and He-P 827) located within a 15 mile radius of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. section 485.610 (b) and (c):**

I affirm that I have complied with 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.

DATE: \_\_\_\_\_ SIGNED: \_\_\_\_\_  
(NAME AND TITLE)

DATE: \_\_\_\_\_ SIGNED: \_\_\_\_\_  
(NAME AND TITLE)

***HFA OFFICE USE ONLY***

CHECK NUMBER: \_\_\_\_\_ AMOUNT: \_\_\_\_\_  
APPLICATION COMPLETE: \_\_\_\_\_ NOT COMPLETE: \_\_\_\_\_  
(Describe in comments)

NEW ☐RENEWAL ☐CHANGE ☐

QUALIFICATIONS OF ADMINISTRATOR	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
COPY OF ADMINISTRATOR LICENSE	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
LIST OF EMPLOYEES WITH WAIVERS	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
WATER TEST (INITIAL OR 3YR)	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
FLOOR PLAN*	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
SECRETARY OF STATE INFORMATION	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
LOCAL APPROVAL	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
LSC INSPECTION	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
LSC PLAN OF CORRECTION	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
LICENSURE INSPECTION	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
PLAN OF CORRECTION	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>
COMPLIED WITH RSA 151:4-a	Required	<input type="checkbox"/>	Not Required	<input type="checkbox"/>	Received	<input type="checkbox"/>

FEDERAL FACILITY (EXEMPT FROM INSPECTION) YES ☐ NO ☐

## LICENSURE CATEGORY:

- |   |   |
|---|---|
| <input type="checkbox"/> 02 Hospitals (General, CAH, Psychiatric, Rehabilitation) | <input type="checkbox"/> 14 Community Residence                           |
| <input type="checkbox"/> 03 Nursing Homes   | <input type="checkbox"/> 15 ICF/IID                                       |
| <input type="checkbox"/> 04 Residential Care Home Facility                        | <input type="checkbox"/> 16 Educational Health Services                   |
| <input type="checkbox"/> 05 Supported Residential Health Care Facility            | <input type="checkbox"/> 18 Adult Day Care                                |
| <input type="checkbox"/> 06 Non-Emergency Walk-in Care                            | <input type="checkbox"/> 19 Case Management                               |
| <input type="checkbox"/> 07 Residential Treatment & Rehabilitation Facility       | <input type="checkbox"/> 22 Home Care Service Provider                    |
| <input type="checkbox"/> 09 Home Health Care Provider                             | <input type="checkbox"/> 23 Home Hospice Care Provider                    |
| <input type="checkbox"/> 10 Birthing Center                                       | <input type="checkbox"/> 24 Hospice House                                 |
| <input type="checkbox"/> 11 End Stage Renal Disease Dialysis                      | <input type="checkbox"/> 26 Substance Use Disorder Res Treatment Facility |
| <input type="checkbox"/> 12 Ambulatory Surgical Center                            | <input type="checkbox"/> 27 Freestanding Megavoltage Radiation Therapy    |
|   | <input type="checkbox"/> 30 Psychiatric Residential Treatment             |

REVIEWED BY: \_\_\_\_\_  
(NAME & TITLE) (DATE)

ISSUE ANNUAL LICENSE: YES \_\_\_\_\_ NO \_\_\_\_\_

LICENSE CERTIFICATE DATES: FROM \_\_\_\_\_ TO \_\_\_\_\_

NUMBER OF PATIENTS/STATIONS/BEDS: \_\_\_\_\_

NOTES:

COMMENTS ON CERTIFICATE: