

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

PART He-P 814 COMMUNITY RESIDENCES AT THE RESIDENTIAL CARE AND SUPPORTED RESIDENTIAL CARE LEVEL

He-P 814.01 Purpose. The purpose of these rules is to set forth the licensing requirements for all community residences (CR) at the residential care and supported residential care level licensed pursuant to RSA 151:2, I(e), and thereby ensure, through basic standards, the health and safety of individuals in a community residence receiving shelter, food, training, and protective oversight services.

Source. #5515, eff 11-25-92, EXPIRED: 11-25-98

New. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.02 Scope. This part shall apply to any person, agency, partnership, corporation, government entity, association, or other legal entity operating a community residence 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).

Source. #5515, eff 11-25-92, EXPIRED: 11-25-98

New. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.03 Definitions.

- (a) “Abuse” means any one of the following:
 - (1) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or confinement which results or could result in the mental anguish or emotional distress of an individual;
 - (2) “Physical abuse” means the misuse of physical force which results or could result in physical injury to an individual; or
 - (3) “Sexual abuse” means contact or interaction of a sexual nature involving an individual without his or her informed consent.
- (b) “Acquired brain disorder” means a disruption in brain functioning that:
 - (1) Is not congenital or caused by birth trauma;
 - (2) Presents a severe and life-long disabling condition, which significantly impairs a person’s ability to function in society;
 - (3) Occurs prior to age 60;

(4) Is attributable to one or more of the following reasons:

- a. External trauma to the brain as a result of:
 - 1. A motor vehicle incident;
 - 2. A fall;
 - 3. An assault; or
 - 4. Another related traumatic incident or occurrence;
- b. Anoxic or hypoxic injury to the brain such as from:
 - 1. Cardiopulmonary arrest;
 - 2. Carbon monoxide poisoning;
 - 3. Airway obstruction;
 - 4. Hemorrhage; or
 - 5. Near drowning;
- c. Infectious diseases such as encephalitis and meningitis;
- d. Brain tumor;
- e. Intracranial surgery;
- f. Cerebrovascular disruption such as a stroke;
- g. Toxic exposure; and
- h. Other neurological disorders such as Huntington's disease or multiple sclerosis which predominantly affect the central nervous system; and

(5) Is manifested by:

- a. Significant decline in cognitive functioning and ability;
- b. Deterioration in:
 - 1. Personality;
 - 2. Impulse control;
 - 3. Judgment;
 - 4. Modulation of mood; or
 - 5. Awareness of deficits; or
- c. Both a. and b. above.

(c) "Activities of daily living (ADL)" means basic daily routine tasks such as:

- (1) Walking;

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- (2) Bathing;
- (3) Shaving;
- (4) Brushing teeth;
- (5) Combing hair;
- (6) Dressing;
- (7) Food preparation and eating;
- (8) Getting into or out of bed;
- (9) Laundry;
- (10) Cleaning room;
- (11) Managing money;
- (12) Shopping;
- (13) Using public transportation;
- (14) Writing letters;
- (15) Making telephone calls;
- (16) Obtaining and keeping appointments;
- (17) Monitoring and supervision of medication;
- (18) Recreational and leisure activities; and
- (19) Management of incontinence.

(d) “Addition” means an increase in the building area, aggregate floor area, building height, or number of stories of a structure.

(e) “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 an individual for immediate consumption or use by a person authorized by law, including RSA 318-B and RSA 326-B.

(f) “Administrator” means the licensee or person appointed by the licensee to be responsible for all aspects of the daily operation of the licensed premises.

(g) “Admission” means accepted by a licensee for the provision of services to an individual.

(h) “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.

(i) “Applicant” means an person, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate a CR pursuant to RSA 151:2, I(e).

(j) “Area of non-compliance” means any action, failure to act, or other set of circumstances that causes a licensee to be out of compliance with RSA 151, He-P 814, or other federal and state requirements.

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(k) “Building 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.

(l) “Change of ownership” means a change in the controlling interest of an established CR to a successor business entity.

(m) “Chemical restraint” means any medication prescribed to control an individual’s behavior or emotional state without a supporting diagnosis or for the convenience of personnel.

(n) “Commissioner” means the commissioner of the New Hampshire department of health and human services or his or her designee.

(o) “Community residence (CR)” means a facility of 4 or more individuals that is both certified by the department under RSA 126-A and licensed by the department under RSA 151, and that is operating in accordance with He-M 1001 or He-M 1002. The term includes “home”.

(p) “Critical Incident Stress Management (CISM)” means an adaptive, short-term psychological helping-process that focuses solely on an immediate and identifiable problem. Its purpose is to enable people to return to their daily routine more quickly and with less likelihood of experiencing post-traumatic stress disorder.

(q) “Days” means calendar days unless otherwise specified in the rule.

(r) “Department” means the New Hampshire department of health and human services at 129 Pleasant Street, Concord, NH 03301.

(s) “Designated Receiving Facility (DRF)” means a facility which receives persons for involuntary admissions under RSA 171-B, designated by the commissioner for one or more purposes, including, but not limited to:

- (1) Receiving persons for involuntary admission directly pursuant to a court order; and
- (2) Receiving involuntarily admitted persons by transfer with the approval of the commissioner or designee.

(t) “Developmental disability” means “developmental disability” as defined in RSA 171-A:2, V, namely, “a disability:

- (1) Which is attributable to an intellectual disability, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to an intellectual disability as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for persons with an intellectual disability; and

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(2) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe disability to such individual's ability to function normally in society.

(u) "Direct care" means hands-on care or services provided to an individual, including but not limited to medical, nursing, psychological, or rehabilitative treatments.

(v) "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.

(w) "Elopement" means when an individual who is cognitively, physically, mentally, emotionally, or chemically impaired, or any combination thereof, wanders away, walks away, runs away, escapes, or otherwise leaves a caregiving facility or environment unsupervised, unnoticed, and/or contrary to the hours of supervision specified in his or her service agreement, as described in He-M 401 or He-M 503.

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

(y) "Equipment or fixtures" 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.

(z) "Exploitation" means the illegal use of an individual'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 an individual through the use of undue influence, harassment, duress, deception, or fraud.

(aa) "Guardian" means a person appointed in accordance with RSA 464-A to make informed decisions relative to the individual's health care and other personal needs.

(ab) "Household member" means the caregiver, all family members, and any other persons age 17 or older, who is not an individual, as defined in (ad) below, who resides at the licensed premises for more than 30 days.

(ac) "Incident Command System (ICS)" means a standardized on-scene emergency management system specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents.

(ad) "Individual" means the person who is admitted to the CR for care, services, and training regardless of the length of stay and who is eligible for services due to acquired brain disorder, developmental disability, or mental illness.

(ae) "Individual record" means a separate file maintained for each individual receiving care and services, which includes all documentation required by RSA 151 and He-P 814, and all documentation received relative to the individual as required by other federal and state requirements.

(af) "Infectious waste" means those items specified by Env-Wm 2604.

(ag) "Inspection" means the process followed by the department to determine an applicant's or a licensee's compliance with RSA 151 and He-P 814 or to respond to allegations, pursuant to RSA 151:6, of non-compliance with RSA 151 or He-P 814.

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(ah) “License” means the document issued to an applicant or licensee which authorizes operation of a CR in accordance with RSA 151 and He-P 814, and includes the name of the licensee, the name of the business, the physical address, the licensing classification, the effective date, and license number.

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

(aj) “Licensed practitioner” means a:

- (1) Medical doctor;
- (2) Physician’s assistant;
- (3) Advanced practice registered nurse (APRN);
- (4) Doctor of osteopathy;
- (5) Doctor of naturopathic medicine; or
- (6) Any other practitioner with diagnostic and prescriptive powers licensed by the appropriate state licensing board.

(ak) “Licensed premises” means the building(s), or portion thereof, that comprises the physical location the department has approved for the licensee to conduct operations in accordance with its license.

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

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

(an) “Load-bearing element” means any column, girder, beam, joist, truss, rafter, wall, floor, or roof sheathing that supports any vertical load in addition to its own weight, or any lateral load.

(ao) “Mechanical restraint” means locked, secured, or alarmed CRs or units within an CR, or anklets, bracelets, or similar devices that cause a door to automatically lock when approached, thereby preventing an individual from freely exiting the CR or unit within.

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

(aq) “Mental illness” means “mental illness” as defined in RSA 135-C:2, X, namely “a substantial impairment of emotional processes, or of the ability to exercise conscious control of one’s actions, or of the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions. It does not include impairment primarily caused by:

- (1) Epilepsy;
- (2) Mental retardation;
- (3) Continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or
- (4) Dependence upon or addiction to any substance such as alcohol or drugs.”

(ar) “Modification” means:

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- (1) The reconfiguration of any space;
- (2) The addition, relocation, or elimination of any door or window;
- (3) The addition or elimination of load-bearing elements;
- (4) The reconfiguration or extension of any system;
- (5) The installation of any additional equipment; and
- (6) The term does not include repair or replacement of interior finishes.

(as) “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 an individual.

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

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

(av) “Personal assistance” means providing or assisting an individual in obtaining one or more of the following services:

- (1) Assistance with ADL, such as grooming, toileting, eating, dressing, getting into or out of a bed or chair, walking, or monitoring, supervision, or administration of medication;
- (2) Assistance with instrumental activities of daily living such as doing laundry, food preparation, obtaining appointments, or engaging in recreational or leisure activities;
- (3) Supportive services such as recreational and leisure activities, transportation, social services, medical, dental, and other health care services, habilitation or rehabilitative services, day care, or other services required to meet an individual’s needs; or
- (4) Monitoring an individual’s activities to provide for the individual’s and others’ safety and well-being including, general supervision or oversight of the physical and mental well-being of an individual who needs assistance to maintain his or her participation in the facility or who needs assistance to manage his or her personal or financial affairs, regardless of whether a guardian has been appointed for the individual.

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

(ax) “Personnel” means a person who is employed by the facility, who is a volunteer, or who is an independent contractor who provides direct care or personal care services to individuals.

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

(az) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct non-compliance with applicable rules or codes identified at the time of

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a clinical or life safety inspection conducted pursuant to RSA 151:6-a or during the course of a complaint investigation conducted pursuant to RSA 151:6.

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

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

(bc) “Protective care” means the provision of individual monitoring services, including but not limited to:

- (1) Knowledge of individual whereabouts; and
- (2) Minimizing the likelihood of accident or injury.

(bd) “Reconstruction” means the reconfiguration of a space:

- (1) That affects an exit or a corridor shared by more than one occupant space; or
- (2) Such that the building 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.

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

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

(bg) “Reportable incident” means an occurrence of any of the following while the individual is either in the CR or in the care of CR personnel:

- (1) The unanticipated death of the individual;
- (2) An injury to an individual that is potentially due to abuse or neglect; or
- (3) The elopement or unexplained absence of an individual from the CR.

(bh) “Residential board and care occupancy”, as defined in National Fire Protection Association (NFPA) 101 of the fire code, means an occupancy used for lodging and boarding of 4 or more individuals not related by blood or marriage to the owners or operators for the purpose of providing personal care services.

(bi) “Service” means a specific activity performed by the licensee, either directly or indirectly, to benefit or assist an individual.

(bj) “Supervision” means the process by which the individual is guided and assisted in the activities and behaviors necessary to achieve and maintain his or her maximum independence.

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

(bl) “Written and signed orders” means a document, produced electronically or via paper, by a licensed practitioner for medications, treatments, recommendations, and referrals, and signed by the licensed

practitioner using terms such as authorized by, authenticated by, approved by, reviewed by, or any other term that denotes approval by the licensed practitioner.

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New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.04 Certification Required. In order to be licensed under He-P 814, a community residence shall also be certified under He-M 1001 or He-M 1002.

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New. #12374, eff 9-1-17

He-P 814.05 Initial License Application Requirements.

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

(1) A completed application form entitled “Application for Residential or Health Care License” (May 2017 edition), signed by the applicant or 2 of the corporate officers affirming and certifying the following:

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

b. For any CR to be newly licensed on or after July 1, 2016:

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

c. For any CR to be newly licensed on or after July 1, 2016 and to be located within a radius of 15 miles of a hospital certified as a critical access hospital, pursuant to 42 C.F.R. 485.610 (b) and (c):

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

(2) A floor plan of the prospective CR;

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- (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) A resume identifying the name and qualifications of the CR administrator;
- (5) Copies of applicable licenses, certificates, or both for the CR administrator;
- (6) 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 Saf-C 6000, the state fire code, including, at a minimum, the residential board and care chapter of National Fire Protection Association (NFPA) 101, as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control, and local fire ordinances applicable for a health care facility; and
 - b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and upon completion of the construction project;
- (7) If the CR uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Dw 702.02 and Env-Dw 704.02, or if a public water supply, a copy of a water bill; and
- (8) The results of a criminal records check from the NH department of safety for the applicant(s), licensee if different than the applicant, administrator, and all household members.
- (b) The applicant shall mail or hand-deliver the documents to:

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

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New. #12374, eff 9-1-17

He-P 814.06 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 814.05(a) have been received.

(b) If an application does not contain all of the items required by He-P 814.05(a), the department shall notify the applicant in writing of the items required before the application can be processed.

(c) Unless a waiver has been granted, the department shall deny a licensing request in accordance with He-P 814.14(b) if it determines that the applicant, licensee, administrator, or household member:

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

(d) Following a life safety code inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 814.

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

(f) If the applicant does not provide the items required by the written notice in (b) above within 90 days, the application will be closed and a new application will be required.

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New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.07 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 prior to the month in which it was issued unless a completed application for renewal has been received.

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(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 814.05(a)(1) at least 120 days prior to the expiration of the current license.

(c) The licensee shall submit with the renewal application:

- (1) The materials required by He-P 814.05(a)(1);
- (2) The current license number;
- (3) A request for renewal of any existing non-permanent waiver(s) previously granted by the department, in accordance with He-P 814.11(f), if applicable;
- (4) A list of any current employees who have a permanent waiver granted in accordance with He-P 814.18(e), He-M 506, He-M 1001, or He-M 1002; and
- (5) A statement identifying any variances applied for or granted by the state fire marshal.

(d) In addition to (c) 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.

(e) Following an inspection as described in He-P 814.10, a license shall be renewed if the department determines that the licensee:

- (1) Submitted an application containing all the items required by (c) and (d) above as applicable, prior to the expiration of the current license; and
- (2) Is found to be in compliance with RSA 151 and He-P 814 at the renewal inspection.

(f) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license and does not intend to cease operation shall be required to submit an application for initial license pursuant to He-P 814.05 and shall be subject to a fine in accordance with He-P 814.14(c)(6).

(g) Prior to issuing a renewal license the department shall review any of the information submitted in accordance with He-P 814.05(b) above and shall deny a license renewal in accordance with He-P 814.06(c).

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New. #12374, eff 9-1-17

He-P 814.08 CR New Construction and Existing Building Rehabilitation.

(a) For new construction and for building 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 windows and door sizes and each room's use.

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

(d) 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.

(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 814 shall and notify the applicant or licensee as to whether the proposal complies with these requirements.

(f) Construction and building rehabilitation initiated prior to receiving department approval shall be done at the applicant or licensee's own risk.

(g) The CR shall comply with all applicable state laws, rules, and local ordinances when undertaking construction or building rehabilitation.

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

(1) The state fire code, Saf-C-6000, including, but not limited to, at a minimum, for 4 residents or more, the residential board and care occupancy chapter of NFPA 101, as adopted by the commissioner of the department of safety under RSA 153, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control; and

(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.

(i) All CRs newly constructed or rehabilitated after the 2017 effective date of these rules shall comply with the Facility Guidelines Institutes (FGI) "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities," Residential Healthcare chapter, 2014 edition, as applicable, as available as noted in Appendix A.

(j) Where building rehabilitation is done within an existing facility, all such work shall comply, insofar as practicable, with applicable sections of the FGI "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities," Residential Healthcare chapter, 2014 edition, as available as noted in Appendix A.

(k) Per the FGI "Guidelines for Design and Construction of Residential Health, Care, and Support Facilities," Residential Healthcare chapter, 2014 edition, as available as noted in Appendix A, and notwithstanding (j) above, where it is evident that a reasonable degree of safety is provided, the requirements for existing buildings shall be permitted to be modified if their application would be impractical in the judgment of the authority having jurisdiction.

(l) The department's bureau of health facilities administration shall be the authority having jurisdiction for the requirements in (i)-(k) above and shall negotiate compliance and grant waivers in accordance with He-P 814.11 as appropriate.

(m) 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.

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

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

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(p) The building, including all construction and rehabilitated spaces shall be subject to an inspection pursuant to He-P 814.10 prior to its use.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.09 CR Requirements for Organizational Changes.

(a) The CR 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) Capacity.

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

- (1) A change in ownership;
- (2) A change in the physical location; or
- (3) An increase in the number of individuals beyond what is authorized under the current license.

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

(d) When there is a change in the name, the CR shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.

(e) An inspection by the department shall be conducted prior to operation for changes in the following:

- (1) Ownership, unless an inspection was conducted within 90 days of the date of the change in ownership and a plan of correction designed to address any areas of non-compliance was submitted and accepted by the department;
- (2) The physical location;
- (3) An increase in the number of beds;
- (4) A change in licensing classification; or
- (5) A change in the life safety code occupancy chapter.

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

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- (g) A revised license and license certificate shall be issued for changes in the CR name.
- (h) A revised license certificate shall be issued for any of the following:
- (1) A change of administrator;
 - (2) A change in the number of individuals from what is authorized under the current license;
 - (3) A change in address without a change in physical location; or
 - (4) When a waiver has been granted.
- (i) The CR shall notify the department in writing no later than 5 days prior to a change in administrator as soon as practicable in the event of a death or other extenuating circumstances and provide the department with the following:
- (1) A resume identifying the name and qualifications of the new administrator;
 - (2) Copies of applicable licenses, certificates, or both, for the new administrator; and
 - (3) The results of a criminal records check from the NH department of safety for the new administrator.
- (j) Upon review of the materials submitted in accordance with (i) above, the department shall make a determination as to whether the new administrator meets the qualifications for the position as specified in He-P 814.18(l) and either He-M 1001 or He-M 1002.
- (k) If the department determines that the new administrator does not meet the qualifications as specified in (j) above, it shall so notify the CR in writing so that a waiver can be sought or the CR can search for a qualified candidate.
- (l) The CR shall inform the department in writing via e-mail, fax, or mail of any change in the e-mail address as soon as practicable and in no case later than 10 days of the change as this is the primary method used for all emergency notifications to the facility.
- (m) A restructuring of an established CR that does not result in a transfer of the controlling interest of the facility, but which might result in a change in the name of the facility or corporation, shall not constitute a change in ownership and a new license shall not be required.
- (n) Licenses issued for a change in ownership shall expire on the date the license issued to the previous owner would have expired.
- (o) If a licensee chooses to cease the operation of the CR, the licensee shall submit written notification to the department at least 30 days in advance, which shall include a written closure plan that ensures adequate care of individuals until they are transferred or discharged to an appropriate alternate setting.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.10 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 814, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the CR; and
- (3) Any records required by RSA 151 and He-P 814.

(b) The department shall conduct a life safety inspection, and a clinical inspection, as appropriate, to determine full compliance with RSA 151 and He-P 814 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as allowed under He-P 814.09(e)(1);
- (3) A change in the physical location of the CR;
- (4) An increase in the number of beds beyond what is currently authorized;
- (5) Occupation of space after construction, modifications, or structural alterations; or
- (6) The renewal of a license.

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

(d) A statement of findings for clinical inspections or notice to correct for life safety inspections shall be issued when, as a result of an inspection, the department determines that the CR is in violation of any of the provisions of He-P 814, RSA 151, or any applicable state law, administrative rule, or code.

(e) If areas of non-compliance were cited in either a notice to correct or a statement of findings, the licensee shall submit a written POC, in accordance with He-P 814.13(c), within 21 days of the date on the letter that transmits the inspection report.

(f) A written notification of denial shall be sent to an applicant applying for an initial license if it has been determined by the inspection mentioned in (b) above, that the prospective premises is not in full compliance with RSA 151 and He-P 814.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.11 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 814 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 how a waiver is justified; and

- (3) A full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health and individuals as the rule from which a waiver is sought or provide a reasonable explanation why the applicable rule should be waived.
- (b) A waiver shall be permanent unless the department specifically places a time limit on the waiver.
- (c) A request for waiver shall be granted if the commissioner determines that the terms of the waiver proposed by the applicant or licensee:
 - (1) Meet the objective or intent of the rule;
 - (2) Do not negatively impact public health or the health or safety of the individuals; and
 - (3) Do not affect the quality of individual services.
- (d) The licensee's subsequent compliance with the terms of the waiver as approved shall be considered equivalent to complying with the rule from which waiver was sought.
- (e) Waivers shall not be transferable.
- (f) When a licensee wishes to renew a non-permanent waiver beyond the approved period of time, the licensee shall apply for a new waiver with the renewal application or at least 60 days prior to the expiration of the existing waiver, as appropriate, by submitting the information required by (a) above.
- (g) The request to renew a waiver shall be subject to (b) through (f) above.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.12 Complaints.

- (a) The department shall investigate complaints that allege:
 - (1) A violation of RSA 151, He-P 814, or rules adopted under RSA 126-A:20;
 - (2) That a person or entity is operating as a CR without being licensed; or
 - (3) That an person or entity is advertising or otherwise representing the CR as having or performing services for which it is not licensed to provide, pursuant to RSA 151:2, III.
- (b) When practicable, the complaint shall be in writing and contain the following information:
 - (1) The name and address of the CR, or the alleged unlicensed person 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, He-P 814, or rules adopted under RSA 126-A:20.
- (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;

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- (2) A physical inspection of the premises;
 - (3) Review of any records that might be relevant and have probative value; and
 - (4) Interviews with individuals who might have information that is relevant to the investigation and might have probative value.
- (d) For the licensed CR, the department shall:
- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if areas of non-compliance were found as a result of the investigation;
 - (2) Notify any other federal, state, or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate;
 - (3) Notify the licensee in writing and take no further action if the department determines that the complaint is unfounded or does not violate any statutes or rules; and
 - (4) Require the licensee to submit a POC in accordance with He-P 814.13(c) if the inspection results in areas of non-compliance being cited.
- (e) For the unlicensed person or entity, the department shall:
- (1) 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(e);
 - (2) Require the owner or person responsible to submit a completed application for a license in accordance with RSA 151:7-a, II, within 7 days from the date of the notice required by (1) above; and
 - (3) Issue a written warning to immediately comply with RSA 151 and He-P 814 if the owner of an unlicensed facility does not comply with (2) above.
- (f) 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 as described in He-P 814.14(c)(1).
- (g) 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

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(4) In connection with any administrative or judicial proceedings relative to the licensee.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.13 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 814, 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 license; or
- (4) Monitoring of a licensee in accordance with (l) below.

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

- (1) Identifies each area in which the licensee is not in compliance with RSA 151 or a provision of these rules; and
- (2) Identifies the specific remedy(s) that has been imposed.

(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 a written POC for each item, written in the appropriate place on the notice and containing:

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

(2) The licensee shall submit a written POC to the department within 21 days of the date on the letter that transmitted the statement of findings 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 he or she has made a good faith effort to develop and submit the POC within the 21 day period but has been unable to do so; and
- b. The department determines that the health, safety, or well-being of an individual will not be jeopardized as a result of granting the extension;

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

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- a. Achieves compliance with RSA 151 and He-P 814;
 - b. Addresses all areas of non-compliance cited in the statement of findings or notice to correct;
 - c. Prevents a new violation of RSA 151 or He-P 814 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:
- a. The department shall notify the licensee in writing of the reason for rejecting the POC;
 - b. The licensee shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected unless, within the 14 day period, the licensee requests an extension, via telephone or in writing, and the department grants the extension, based on the following criteria:
 1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and
 2. The department determines that the health, safety or well being of an individual will not be jeopardized as a result of granting the waiver;
 - c. The revised POC shall comply with (c)(1) above and be reviewed in accordance with (c)(3) above; and
 - d. If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, unless the department has granted an extension, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(11) below;
- (6) The department shall verify the implementation of any POC that has been submitted and accepted by:
- a. Reviewing materials submitted by the licensee;
 - b. Conducting an onsite follow-up inspection; or
 - c. Reviewing compliance during the next annual inspection;
- (7) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and
- (8) If the POC 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 (b) above; and
 - b. Issued a directed POC in accordance with (d) below and shall be subject to a fine, as appropriate, in accordance with He-P 814.14(c)(12) below.

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(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 individuals and employees;
- (2) A revised POC is not submitted within 14 days of the written notification from the department or such later date as is 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 been found not to have been implemented by the completion date stated in the directed POC, the department shall, as appropriate:

- (1) Impose a fine;
- (2) Deny the application for a renewal of a license in accordance with He-P 814.14(b); or
- (3) Revoke the license in accordance with He-P 814.14(b).

(f) The department shall offer an opportunity for informal dispute resolution to any applicant or licensee who disagrees with an area or areas of non-compliance cited by the department on a statement of findings or a notice to correct, 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 administrator no later than 14 days from the date the statement of findings or notice to correct was issued by the department.

(h) Any violations cited for fire code may be appealed to the New Hampshire state fire marshal, pursuant to RSA 151:6-a, II.

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

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

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

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

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

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

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.14 Enforcement Actions and Hearings.

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

- (1) The reasons for the proposed action;
- (2) The action to be taken by the department;
- (3) If a fine is imposed, the automatic reduction of the fine by 25% if the fine is paid within 10 days of the date on the written notice from the department and the area of non-compliance has been corrected, or a POC has been accepted and approved by the department; and
- (4) The right of an applicant or licensee to 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 violated RSA 151 or He-P 814 in a manner which poses a risk of harm to an individual's health, safety, or well-being;
- (2) An applicant or a licensee has failed to pay an administrative fine;
- (3) An applicant or a licensee has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order, or certified check;
- (4) After being notified of and given an opportunity to supply missing information, an applicant or licensee fails to submit an application that meets the requirements of He-P 814.05;
- (5) An applicant, licensee, or any representative or employee of the applicant or licensee:
 - a. Provides false or misleading information to the department;
 - b. Prevents, interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
 - c. Fails to provide requested files or documents to the department;
- (6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 814.13(c), (d), and (e);
- (7) The licensee is cited a third time under RSA 151 or He-P 814 for the same violations within the last 5 inspections;
- (8) A licensee, including corporate officers or board members, has had a license revoked and submits an application during the 5-year prohibition period specified in (i) below;

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- (9) Unless a waiver has been granted, upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 814;
- (10) Unless a waiver has been granted, the department makes a determination that the applicant, administrator, licensee, or a household member has been convicted of or adjudicated for a sexual assault or other violent crime, theft or fraud, or a finding of abuse, neglect or exploitation in this or any other state, or poses a threat to the health, safety, or well-being of an individual;
- (11) The applicant or licensee fails to employ a qualified administrator; or
- (12) The applicant has had a license revoked by another division or unit of the department within a 5 year period of 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 person or 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, or continuing to operate after a failure to renew the license by the expiration date, the fine for an applicant, unlicensed person or 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 and He-P 814.15(g), the fine for an applicant, licensee, or unlicensed person or entity shall be \$500.00;
- (4) For a failure to transfer an individual whose needs exceed the services or programs provided by the CR after being directed by the department to transfer the individual, in violation of RSA 151:5-a, the fine shall be \$500.00;
- (5) 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 814.12(f), the fine shall be \$500.00;
- (6) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 814.07(b), the fine shall be \$100.00;
- (7) For a failure to notify the department prior to a change of ownership, in violation of He-P 814.09(a)(1), the fine shall be \$500.00;
- (8) For a failure to notify the department prior to a change in the physical location, in violation of He-P 814.09(a)(2), the fine shall be \$1000.00;
- (9) For a failure to notify the department of a change in e-mail address, in violation of He-P 814.09(m), the fine shall be \$100.00;
- (10) For a refusal to allow access by the department to the CR's premises, programs, services, or records, in violation of He-P 814.10(a), the fine for an applicant, person, or licensee shall be \$2000.00;
- (11) 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 814.13(c)(2) and (5), the fine for a licensee shall be \$500.00;

- (12) 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 814.13(c)(8), the fine for a licensee shall be \$1000.00;
- (13) For a failure to establish, implement, or comply with licensee policies, as required by He-P 814.15(d), the fine for a licensee shall be \$500.00;
- (14) For a failure to provide services or programs required by the licensing classification and specified by He-P 814.15(c), the fine for a licensee shall be \$500.00;
- (15) For exceeding the maximum number of occupants, in violation of He-P 814.15(k), the fine for a licensee shall be \$500.00;
- (16) For providing false or misleading information or documentation, in violation of He-P 814.15(f), the fine shall be \$1000.00 per offense;
- (17) For a failure to meet the needs of an individual, in violation of He-P 814.15(i)(1), the fine for a licensee shall be \$1000.00 per individual;
- (18) For placing an individual in a room that, based on the floor plan required by He-P 814.05(a)(2), has not been approved or licensed by the department, the fine for a licensee shall be \$500.00;
- (19) 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 814.11, in violation of He-P 814.15(i)(4) and (5), the fine for a licensee shall be \$500.00;
- (20) 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 814.08(a), the fine for a licensed facility shall be \$500.00;
- (21) For occupying a renovated area of a licensed facility or new construction prior to approval by local and state authorities, the fine shall be \$500.00, which shall be assessed daily;
- (22) When an inspection determines that a violation of RSA 151 or He-P 814 has the potential to jeopardize the health, safety, or well-being of an individual, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:
- a. If the same area of non-compliance is cited within 2 years of the original area of non-compliance, the fine for a licensee shall be \$1000.00; or
 - b. If the same area of non-compliance is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be \$2000.00;
- (23) Each day that the person or licensee continues to be in violation of the provisions of RSA 151 or He-P 814 shall constitute a separate violation and shall be fined in accordance with He-P 814.14(c); and
- (24) If the applicant or licensee is making good faith efforts to comply with (4), (5) or (19) above, 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

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(2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

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

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

(g) The department shall order the immediate suspension of a license and the cessation of operations when it finds that the health, safety, or well-being of individuals is in jeopardy and emergency action is required 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 814 is achieved.

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

(j) When a CR's license has been denied or revoked, if the enforcement action specifically pertained to his or her role in the CR, 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.

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

(1) The date of the department's decision to revoke or deny the license, if no appeal is filed; or

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

(l) Notwithstanding (k) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of knowledge, skills, and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 814.

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

(n) RSA 541-A shall govern further appeals of department decisions under this section.

(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 814.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRES: 5-18-17

New. #12374, eff 9-1-17

He-P 814.15 Duties and Responsibilities of All Licensees.

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

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(b) In accordance with RSA 151:20, the licensee shall have a written policy setting forth the rights and responsibilities of individuals receiving services at the CR, as well as written procedures to implement its policy to ensure that the rights set forth in RSA 151:21, "Patients' Bill of Rights" are upheld.

(c) The licensee shall define, in writing, the scope and type of services to be provided by the CR, which shall include at a minimum, the required services listed in He-P 814.16.

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

- (1) Reviewing the policies and procedures annually;
- (2) Revising them as needed; and
- (3) Implementing a written policy that ensures the safety of all persons present on the licensed premises where firearms are permitted.

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

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

(g) The licensee shall not:

- (1) Advertise or otherwise represent the program as operating a CR, unless it is licensed; and
- (2) Advertise that it provides services that it is not authorized to provide.

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

(i) Licensees shall:

- (1) Meet the needs of the individuals during those hours that the individuals are in the care of the CR;
- (2) Initiate action to maintain the CR in full compliance at all times with all relevant health and safety requirements contained in applicable federal, state, and local laws, rules, regulations, and ordinances;
- (3) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the CR;
- (4) Appoint a qualified administrator;
- (5) Verify the qualifications of all personnel, in accordance with He-M 1001 or 1002;
- (6) Provide sufficient numbers of personnel who are present in the CR and are qualified to meet the needs of individuals during all hours of operation;
- (7) Provide the CR with sufficient supplies, equipment, and lighting to meet the needs of the individuals; and
- (8) Implement any POC that has been accepted or issued by the department.

(j) The licensee shall consider all individuals to be competent and capable of making health care decisions unless the individual:

- (1) Has a guardian appointed by a court of competent jurisdiction; or
- (2) Has a durable power of attorney for health care that has been activated.

(k) The licensee shall not exceed the number of occupants as authorized by NFPA 101 as adopted by the commissioner of the department of safety under RSA 153 as Saf-C 6000, and as amended pursuant to RSA 153:5, I, by the state fire marshal with the board of fire control, and identified on the license certificate issued by the department.

(l) The licensee shall not admit an individual whose needs exceed the program and services offered by the CR.

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

(n) The licensee shall report all positive tuberculosis test results for employees to the department's bureau of disease control in accordance with RSA 141-C:7, He-P 301.02, and He-P 301.03.

(o) Any licensee who admits or who has an individual with a diagnosis of dementia, Alzheimer's disease, or a primary or secondary diagnosis of mental illness shall:

- (1) Require all direct care personnel caring for the individual to be trained in the special care needs of individuals with dementia, Alzheimer's disease, or mental illness; and
- (2) Provide a physical environment that has a safety and security system that prevents an individual from leaving the premises without the knowledge of personnel, if the individual:
 - a. Has eloped from the CR in the last 60 days; or
 - b. Is a danger to self or to others.

(p) 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 certificate issued in accordance with RSA 151:2;
- (2) All inspection reports issued in accordance with He-P 814.12(d), for the previous 12 months;
- (3) A copy of the patients' bill of rights specified by RSA 151:21;
- (4) A copy of the licensee's policies and procedures relative to the implementation of patient rights and responsibilities as required by RSA 151:20;
- (5) A copy of the licensee's complaint procedure, including a statement that complaints may be submitted, in writing, to "Department of Health and Human Services, Office of Legal and Regulatory Services, Health Facilities Administration, 129 Pleasant Street, Concord, NH 03301" or by calling 1-800-852-3345, and information on how to contact the office of the long-term care ombudsman; and

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

(q) For reportable incidents, the licensee shall:

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

(2) Fax to 271-4968 or, if a fax machine is not available, convey by electronic or regular mail, the following information to the department within 48 hours of a reportable incident:

- a. The CR name;
- b. A description of the incident, including identification of injuries, if applicable;
- c. The name of the licensee(s) or employees involved in, witnessing, or responding to the reportable incident;
- d. The name of individual(s) involved in or witnessing the reportable incident;
- e. The date and time of the reportable incident;
- f. The action taken in direct response to the reportable incident, including any follow-up;
- g. If medical intervention was required, by whom and the date and time;
- h. When the individual's guardian or agent, if any, or personal representative was notified;
- i. The signature of the person reporting the reportable incident;
- j. The date and time the individual's licensed practitioner was notified, if applicable; and
- k. The date the facility performed the investigation required by (1) above;

(3) As soon as practicable, notify the guardian, agent, or personal representative, if any;

(4) As soon as practicable, notify the local police department, the department, and the guardian, agent, or personal representative, if any, when an individual has an elopement or unexplained absence and the licensee has searched the building and the grounds of the CR without finding the individual; and

(5) Notify the department with a written report within 5 days describing the actions taken by personnel, the final outcome or continuation of the reportable incident, and actions taken to prevent a reoccurrence if it was not submitted in the initial report.

(r) The licensee shall admit and allow any department representative to inspect the CR and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 814 as authorized by RSA 151:6 and RSA 151:6-a.

(s) Applicants, licensees, and employees shall cooperate with the department during all departmental inspections and investigations authorized under RSA 151 and He-P 814, including allowing representatives of the department to:

- (1) Enter and complete an inspection of the premises;

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(2) Review and reproduce any records, forms, or reports which are required to be maintained or made available to the department; and

(3) Interview employees and individuals of the CR.

(t) A licensee shall, upon request, provide an individual or the individual's guardian or agent, if any, with a copy of his or her individual record pursuant to the provisions of RSA 151:21, X.

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

(v) Any licensee that maintains electronic records shall develop written policies and procedures designed to protect the privacy of individuals and employees 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 individuals and employees; and

(3) Systems to prevent tampering with information pertaining to individuals and employees.

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

(x) The licensee shall provide cleaning and maintenance services, as needed, to protect individuals, employees, and the public.

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

(z) If the CR is not on a municipal water system, the water used in the CR shall be potable and suitable for human consumption.

(aa) The licensee shall determine whether smoking will be allowed at the CR.

(ab) If smoking is to be allowed, the licensee shall develop and implement smoking policies and designate smoking-permitted areas in accordance with RSA 155:68 and RSA 155:69 and He-P 1900, as applicable.

(ac) If the licensee holds or manages an individual's funds or possessions, it shall first receive written authorization in accordance with RSA 151:24 and RSA 151:21, VII, and such funds shall not be used for the benefit of the licensee, other individuals, or other household members.

(ad) At the time of admission the licensee shall give an individual and the individual's guardian, agent, or personal representative, if applicable, a listing of all CR charges and identify what care and services are included in the charge.

(ae) The licensee shall give an individual a 30-day written notice before any increase is imposed in the cost or fees for any CR services.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

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He-P 814.16 Required Facility and Individual Services. Each CR shall provide, at a minimum, services and programs for the individuals they provide services to in accordance with He-M 1001 or He-M 1002.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.17 Medication Services.

(a) Each CR shall provide medication services in accordance with He-M 1201 or He-M 1202.

(b) The therapeutic use of cannabis by individuals who are qualifying patients possessing a registry identification card shall be permitted at a CR provided:

(1) The facility designates itself as a facility caregiver as allowed by RSA 126-X:2, XVI; or

(2) The facility permits an individual to possess and use cannabis at the licensed premises, the individual is able to self-administer medication without assistance, and the cannabis remains in the possession of the individual.

(c) A CR that permits the therapeutic use of cannabis in accordance with (b) above shall develop, maintain, and implement a general policy relative to individual use of cannabis at the licensed premises, including storage, security, and administration.

(d) A CR that designates itself as a facility caregiver according to (b)(1) above shall:

(1) Have an individual-specific policy relative to the therapeutic use of cannabis that identifies how the cannabis will be obtained, stored, and administered to the individual; and

(2) Treat cannabis in a manner similar to medications with respect to its storage and security when assisting qualifying patients with the therapeutic use of cannabis.

(e) A CR shall not permit the smoking of cannabis if smoking is not allowed on the CR premises.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.18 Personnel.

(a) CRs operating under He-M 1001 shall provide personnel in accordance with He-M 506 staff qualifications and staff development requirements for developmental services agencies.

(b) Prior to delivering services to an individual, personnel in all CRs shall have received training in the following areas:

(1) Rights as set forth in He-M 309 or He-M 310;

(2) The specific health-related requirements of each individual, including:

a. All current medical conditions, medical history, and routine and emergency protocols; and

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b. Any special nutrition, dietary, hydration, elimination, or ambulation needs;

(3) Any specific communication needs of individuals served;

(4) Any behavioral supports required of individuals served; and

(5) Any assistance individuals need to evacuate the residence in the case of emergency.

(c) Documentation of the training in (b) above shall be maintained in personnel records.

(d) Unless a waiver is granted in accordance with (e) below, the licensee shall not offer employment, allow to be a volunteer, contract with an independent contractor who will provide direct care or personal care services to individuals or who will be unaccompanied by an employee while performing non-direct care or non-personal care services within the facility, or allow a household member to continue to reside in the residence if the person:

(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, abuse, theft, neglect, or exploitation in this or any other state;

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

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

(e) The department shall grant a waiver of (d) above if, after reviewing the underlying circumstances, it determines that the person does not pose a current threat to the health, safety, or well-being of individuals.

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

(1) Cease employing, contracting with, or engaging the person, or not permit the household member to continue to reside in the residence; or

(2) Request a waiver of (d) above.

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

(1) Notify the licensee that the person cannot or can no longer be employed, contracted with, or engaged by the licensee, or the person cannot or can no longer reside in the residence if, after investigation, it determines that the person poses a threat to the health, safety, or well-being of an individual; or

(2) Grant a waiver of (d) above if, after investigation, it determines that the person does not pose a current threat to the health, safety, or well-being of an individual.

(h) The licensee shall check the names of the persons in (d) above against the bureau of elderly and adult services (BEAS) state registry, maintained pursuant to RSA 161-F:49 and He-E 720, and, if appropriate, the NH board of nursing registry maintained pursuant RSA 326-B:26 and 42 CFR 483.156, prior to employing, contracting with, or engaging them, or prior to allowing or continuing to allow a household member to reside at the residence.

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(i) The licensee shall not employ, contract with, engage, or allow to reside in the residence any person in (d) above who is listed on the BEAS state registry or the NH board of nursing, nursing assistant registry, unless a waiver is granted by BEAS or the NH board of nursing, respectively.

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

(k) All personnel shall sign a statement at the time the initial offer of employment, contract, or engagement is made, and then annually thereafter, stating that they:

- (1) Do not have a felony conviction in this or any other state;
- (2) Have not been convicted of a sexual assault, other violent crime, assault, theft, fraud, abuse, neglect, or exploitation or pose a threat to the health, safety, or well-being of a resident; and
- (3) Have not had a finding upheld by the department or any administrative agency in this or any other state for assault, fraud, theft, abuse, neglect, or exploitation of any person.

(l) All administrators appointed after the 2017 effective date of these rules shall be at least 21 years of age and have one of the following combinations of education and experience:

- (1) A bachelor's degree from an accredited institution and one year of experience working in a health care facility;
- (2) A New Hampshire license as an RN and at least 6 months of experience working in a health care facility;
- (3) An associate's degree from an accredited institution and at least 2 years of experience working in a health care facility; or
- (4) A New Hampshire license as an LPN and at least one year of experience working in a health care facility.

(m) All administrators shall obtain and document 12 hours of continuing education related to the operation and services of the CR each annual licensing period.

(n) The licensee shall document evidence of immunization against influenza and pneumococcal disease for all consenting employees and shall provide to its consenting employees annual immunizations against influenza, to include:

- (1) That immunizations shall be provided and reported in accordance with RSA 151:9-b, I-V and as required by He-P 309.02 and He-P 309.08; and
- (2) The facility shall have a plan that identifies and documents, with dates, all individuals and employees that have received or declined to receive immunizations.

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

(p) The CR shall have a written policy, as described in RSA 151:41, establishing procedures for the prevention, detection, and resolution of controlled substance abuse, misuse, and diversion, which shall apply to all personnel, and which shall be the responsibility of a designated employee or interdisciplinary team.

(q) The policy in (p) 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; and
- (9) The consequences for violation of the controlled substance abuse, misuse, and diversion prevention policy.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.19 Quality Improvement. Each CR shall provide quality improvement in accordance with He-M 1001 or He-M 1002.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRES: 5-18-17

New. #12374, eff 9-1-17

He-P 814.20 Infection Control.

(a) The licensee shall develop and implement an infection control program that educates and provides procedures for the prevention, control, and investigation of infectious and communicable diseases.

(b) The infection control program shall include written procedures for:

- (1) Proper hand washing techniques;
- (2) The utilization of universal precautions;
- (3) The management of individuals with infectious or contagious diseases or illnesses who can safely participate in the program;
- (4) The handling, transport, and disposal of those items identified as infectious waste in Env-Sw 904; and
- (5) Reporting of infectious and communicable diseases as required by He-P 301.

(c) The infection control program shall address at a minimum the:

- (1) Cause of infection;
- (2) Effect of infections;

(3) Transmission of infections; and

(4) Prevention and containment of infections.

(d) If the CR has an incident of an infectious diseases 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.

(e) Personnel infected with a disease or illness transmissible through food, saliva, or droplets shall not work in food service or provide direct care in any capacity until they are no longer contagious.

(f) Personnel infected with scabies or lice shall not provide direct care to individuals or work in food services until such time as they are no longer infected.

(g) 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 non-infectious by a licensed practitioner.

(h) Personnel with an open wound who work in food service or provide direct care in any capacity shall cover the wound at all times by an impermeable, durable, tight-fitting bandage.

(i) In accordance with RSA 151:9-b, the licensee shall:

(1) Arrange for or provide all consenting individuals an immunization for influenza and pneumococcal disease;

(2) Arrange for or provide all consenting employees an immunization for influenza; and

(3) Report immunization data to the department's immunization program as required by He-P 309.02 and He-P 309.08.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.21 Sanitation.

(a) The licensee shall maintain a clean, safe, and sanitary environment throughout the CR licensed premises.

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

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

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

(e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations.

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

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(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, program supplies, and other cleaning materials.

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

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

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

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

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

(m) If the CR provides laundry services, the following requirements shall be met:

(1) The laundry room shall be kept separate from kitchen and dining areas;

(2) Clean linen shall be stored in a clean area and separated from soiled linens at all times;

(3) Soiled materials, linens, and clothing shall be transported in a laundry bag, sack, or container and washed in a sanitizing solution used in accordance with the manufacturer's recommendations; and

(4) Soiled linens and clothing which are considered contaminated with infectious waste under Env-Sw 904 shall be handled as infectious waste.

(n) Laundry rooms and bathrooms shall have non-porous floors.

(o) Sterile or clean supplies shall be stored in dust and moisture-free storage areas and shall not be mixed with soiled supplies.

(p) Any CR 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 NH department of environmental services, shall notify the NH department of health and human services upon receipt of notice of a failed water test.

(q) Waste water shall be disposed of through a system that meets the requirements of the NH department of environmental services. Sink drains not connected to the sanitary sewer or septic system and similar methods of disposal above ground shall be strictly prohibited.

(r) Tightly fitting screens shall be provided for all doors, windows, or other outside openings, which are kept open during the season when flies, mosquitoes, and other insects are prevalent. Reasonable precautions such as repair of holes and caulking of pipe channels shall be taken to prevent the entrance of rodents and vermin.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.22 Physical Environment.

(a) The licensed premises shall be maintained, inside and outside, so as to provide for the health, safety, well-being, and comfort of individuals and employees, including reasonable accommodations for individuals and employees with mobility limitations.

(b) The CR shall comply with all state and local codes and ordinances for:

- (1) Zoning;
- (2) Building;
- (3) Health;
- (4) Fire;
- (5) Waste disposal; and
- (6) Water.

(c) The CR shall be accessible at all times of the year.

(d) The CR shall have a telephone accessible at all times in case of emergency.

(e) Doors and windows opening to the outside air shall be tight fitting.

(f) The CR shall be free from environmental nuisances such as noise and odors.

(g) Equipment providing heat within a CR including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove, or pellet stove shall:

- (1) Maintain a temperature of at least 70 degrees Fahrenheit during the day if individual(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.

(h) Electric heating systems shall be exempt from (g)(2) above.

(i) Portable space heating devices shall be prohibited, unless the following are met:

- (1) Such devices are used only in personnel areas where personnel are present and awake at all times; and
- (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.

(j) Unvented fuel-fired heaters shall not be used in any CR.

(k) Plumbing shall be sized, installed, and maintained in accordance with the state plumbing code as adopted under RSA 329-A:15 and RSA 155-A.

(l) Ventilation shall be provided by means of a mechanical ventilation system or one or more screened windows that can be opened.

(m) Doors that are self-closing and remain closed when not in use shall be exempt from the requirement in He-P 814.21(r).

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(n) Lighting shall be available to allow individuals to partake in activities such as reading, needlework, or handicrafts.

(o) The CR shall have dining facilities to accommodate each individual.

(p) All CRs shall have at least one toilet and one hand sink and as many additional toilets and sinks as are necessary to meet the needs of the individuals in the home, as follows:

(1) At a minimum there shall be one sink, toilet, and tub or shower for every 6 individuals, and there shall be as many additional showers or bathing facilities as are necessary to meet the needs of the individuals in the home; and

(2) Separate bathroom facilities for family members and employees shall not be counted in the 1:6 ratio as set forth in (1) above.

(q) 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.

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

(s) All bathroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.

(t) There shall be sufficient space and equipment for the services provided at the CR, as follows:

(1) Furniture to allow for each individual to sit comfortably as necessary throughout the day;

(2) Tables and chairs to assure that each individual has a seat at a table for each meal or snack and for doing activities such as crafts or puzzles; and

(3) Supplies such as plates, cups, glasses, silverware, liquid soap for hand washing, toilet tissue, and paper towels in a supply to accommodate the number of individuals authorized by the license.

(u) There shall be at least 80 square feet per one bedroom and 140 square feet per room with 2 beds exclusive of space required for closets, wardrobe, dressers, and toilet room.

(v) No individual's room shall accommodate more than 2 individuals.

(w) Each individual shall have:

(1) A bed appropriate to the needs of the individual;

(2) A firm mattress with cover;

(3) A pillow, linens, and blankets;

(4) Personal hygiene and grooming equipment such as a comb, toothbrush, and razor;

(5) A bureau with mirror;

(6) A bedside table;

(7) A lamp; and

(8) An upholstered chair.

(x) The individual or guardian may indicate and the home shall document that the individual does not wish or need to have one or more of the items in (w) above and the reason for the removal.

(w) The individual may provide items listed in (w) from his or her own personal possessions provided that they are clean and in good repair.

(z) Each individual room door shall be of the side hinge type. Folding doors or curtains shall be prohibited.

(aa) Each individual room shall contain a closet or storage space for the individual's personal belongings.

(ab) Each individual room shall have its own separate entry to permit the individual to reach his or her room without passing through the room of another person.

(ac) Individuals shall have a living or multi-purpose room for their use which has a capacity of meeting the needs of the individuals. Such rooms shall be provided with reading lamps, chairs, tables, and couches, which shall be comfortable and in good repair.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.23 Fire Safety.

(a) All CRs shall meet the requirements of the appropriate chapter of NFPA 101 as adopted by the commissioner of the department of safety as 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, and any pertinent chapter and related codes regarding the installation, testing, and maintenance of the fire alarm system.

(b) All CRs shall have, at a minimum:

(1) One of the following:

a. Approved smoke alarms installed inside every sleeping room, outside every sleeping area in the immediate vicinity of the bedrooms, and on all levels, including basements, that are interconnected and powered by the CR's electrical service; or

b. A wireless fire alarm system approved by the NH fire marshal;

(2) At least one UL Listed, ABC type portable fire extinguisher, with a minimum rating of 2A-10BC installed on every level of the building with a maximum travel distance to each extinguisher not to exceed 50 feet and maintained as follows:

a. Fire extinguishers shall be inspected either manually or by means of an electronic monitoring device or system at least once per calendar month, at intervals not exceeding 31 days;

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- b. Records for manual inspection or electronic monitoring shall be kept to demonstrate that at least 12 monthly inspections have been performed for the most recent 12-month period;
- c. Annual maintenance shall be performed on each extinguisher by trained personnel, and a tag or label shall be securely attached that indicates that maintenance was performed; and
- d. The components of the electronic monitoring device or system in a. above, if used, shall be tested and maintained annually in accordance with the manufacturers listed maintenance manual; and

(3) A carbon monoxide monitor on every level.

(c) An emergency and fire safety program shall be developed and implemented to provide for the safety of individuals and personnel.

(d) Immediately following any fire or emergency situation, licensees shall notify the department by phone and in writing within 72 hours, with the exception of:

- (1) A false alarm or emergency medical services (EMS) transport for a non-emergent reason; or
- (2) EMS transport related to known pre-existing conditions.

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

- (1) The date and time of the incident;
- (2) A description of the location and extent of the incident, including any injuries to individuals or employees or damage sustained by the CR;
- (3) A description of events preceding and following the incident;
- (4) The name of any employees or individuals who were evacuated as a result of the incident, if applicable;
- (5) The name of any employees or individuals who required medical treatment as a result of the incident, if applicable; and
- (6) The name of the person the licensee wishes the department to contact if additional information is required.

(f) For the use and storage of oxygen and other related gases, CRs shall comply with NFPA 99 as adopted by the commissioner of the department of safety as 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, including, but not limited to, the following:

- (1) All freestanding compressed gas cylinders shall be firmly secured to the adjacent wall or secured in a stand or rack;
- (2) Storage locations shall be outdoors in an enclosure or within an enclosed interior space of noncombustible or limited-combustible construction, with doors, or with gates if outdoors, that can be secured against unauthorized entry;
- (3) Oxidizing gases, such as oxygen and nitrous oxide, shall:
 - a. Not be stored with any flammable gas, liquid, or vapor;

b. Be separated from combustibles or incompatible materials by:

1. A minimum distance of 20 ft (6.1 m);
2. A minimum distance of 5 ft (1.5 m) if the entire storage location is protected by an automatic sprinkler system designed in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems; or
3. An approved, enclosed flammable liquid storage cabinet of noncombustible construction having a minimum fire protection rating of one-half hour for cylinder storage; and

c. Be secured in an upright position, such as with racks or chains;

(4) A precautionary sign, readable from a distance of 5 ft (1.5 m), shall be conspicuously displayed on each door or gate of the storage room or enclosure, and shall include, at a minimum, the following: "CAUTION, OXIDIZING GAS(ES) STORED WITHIN - NO SMOKING"; and

(5) Precautionary signs, readable from a distance of 5 ft (1.5 m), and with language such as "OXYGEN IN USE, NO SMOKING", shall be conspicuously displayed wherever supplemental oxygen is in use and in aisles and walkways leading to the area of use, and shall be attached to adjacent doorways or to building walls or be supported by other appropriate means.

(g) Flammable gases and liquids shall be stored in metal fire retardant cabinets.

(h) Pursuant to RSA 155:68 and 69, if the licensee has chosen to allow smoking, a designated smoking-permitted area shall be provided which has, at a minimum:

- (1) A dedicated ventilation system, so that smoke or odors cannot escape or be detected outside the designated smoking room;
- (2) Walls and furnishings constructed of non-combustible materials; and
- (3) Metal waste receptacles and safe ashtrays.

(i) Each licensee shall develop a written fire safety plan.

(j) A copy of the fire safety plan including fire drill actions shall be made available to and reviewed with the individual, or the individual's guardian or a person with durable power of attorney (DPOA), at the time of admission and a summary of the individual's responsibilities shall be provided to the individual. Each individual shall receive an individual fire drill walk-through within 5 days of admission, as appropriate.

(k) The fire safety plan shall be reviewed and approved as follows:

- (1) A copy of the fire safety plan shall be made available, annually and whenever changes are made, to the local fire chief for review and approval;
- (2) The local fire chief shall give written approval initially to all fire safety plans; and
- (3) If changes are made to the plan, they shall be submitted to the local fire chief for review and approval, as appropriate, prior to the change.

(l) For buildings constructed to the Residential Board and Care Chapter of the NFPA 101, the following shall be required:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) The administration of every residential board and care facility shall have, in effect and available to all supervisory personnel, written copies of a plan for protecting all persons in the event of fire, for keeping persons in place, for evacuating persons to areas of refuge, and for evacuating persons from the building when necessary;
 - (2) Individuals shall be trained to assist each other in case of fire or emergency to the extent that their physical and mental abilities permit them to do so, without additional personal risk;
 - (3) All CR facilities shall conduct fire drills not less than 6 times per year on a bimonthly basis, with not less than 2 drills conducted during the night when individuals are sleeping. Actual exiting from windows shall not be required, however opening the window and signaling for help shall be an acceptable alternative;
 - (4) The drills shall involve the actual evacuation of all individuals to an assembly point, as specified in the emergency plan, and approved by the department and the local fire authority based on construction of the building and shall provide individuals with experience in egressing through all exits and means of escape;
 - (5) Facilities shall complete a written record of fire drills that includes the following:
 - a. The date and time including AM/PM the drill was conducted and if the actual fire alarm system was used;
 - b. The location of exits used;
 - c. The number of people, including individuals, personnel, and visitors, participating at the time of the drill;
 - d. The amount of time taken to completely evacuate the facility;
 - e. The name and title of the person conducting the drill;
 - f. A list of problems and issues encountered during the drill;
 - g. A list of improvements and resolution to the issues encountered during the fire drill; and
 - h. The names of all staff members participating in the drill;
 - (6) At no time shall a staff member who has not participated in a fire drill be the only staff member on duty within the facility;
 - (7) At least annually, the facility shall conduct a resident Fire Safety Evacuation Scoring System (FSES) as listed in NFPA 101A, Alternatives to Life Safety, to determine the individuals needs during a fire drill including, but not limited to, mobility, assistance to evacuate, staff needed, risk of resistance, individuals ability to evacuate on their own and choose an alternate exit; and
 - (8) The fire drills for facilities built to the Residential Board and Care chapter of the NFPA 101, shall be permitted to be announced, in advance, to the individuals just prior to the drill.
- (m) Evacuation drills shall include the transmission of a fire alarm signal and simulation of emergency fire condition.
- (n) All personnel shall participate in at least one drill quarterly.

(o) For personnel who are unable to participate in the scheduled drill described in (n) above, on the day they return to work the administrator or designee shall, if applicable, instruct them as to any changes in the facility's fire and emergency plan and document such instruction in their personnel file.

(p) Personnel who are unable to participate in a drill in accordance with (n) and (o) above shall participate in a drill within the next quarter.

(q) Per-diem or temporary personnel shall not be the only person on duty unless they have:

- (1) Participated in at least 2 actual fire drills in the facility in the past year; and
- (2) Participated in the facility's orientation program pursuant to He-M 1001 or He-M 1002.

Source. #9288, eff 10-3-08, EXPIRED: 10-3-16

New. #12048, INTERIM, eff 11-19-16, EXPIRED: 5-18-17

New. #12374, eff 9-1-17

He-P 814.24 Emergency Preparedness.

(a) Each facility shall have group, known as an emergency management committee, with the authority for developing, implementing, exercising, and evaluating the emergency management program. The committee shall include the facility administrator and others who have knowledge of the facility and the capability to identify resources from key functional areas within the facility and shall solicit applicable external representation, as appropriate.

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

(c) The plan in (b) 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 emergency to include, but not be limited to, missing individuals and bomb threat;
- (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) Provide that all personnel designated or involved in the emergency operations plan of the facility shall be supplied with a means of identification, such as vests, baseball caps, or hard hats, which shall be worn at all times in a visible location during the emergency;
- (7) Develop and implement a strategy to prevent an incident that threatens life, property, and the environment of the facility;
- (8) Develop and implement a mitigation strategy that includes measures to be taken to limit or control the consequences, extent, or severity of an incident that cannot be prevented;

(9) Develop and implement a protection strategy to protect life, property, and the environment from human caused incidents and events and from natural disasters;

(10) For (7)-(9) above, incorporate the findings of a hazard vulnerability assessment, the results of an analysis of impact, program constraints, operational experience, and cost-benefit analysis to provide strategies that can realistically be implemented without requiring undue expenses to the facility;

(11) Conduct a facility-wide inventory and review, to include the property that the facility is located on, to determine the status of hazards that may be incorporated into the prevention, protection, and mitigation strategies and to determine the outcome of prior strategies at least an annually;

(12) 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. Potable water;
- c. Non-potable water;
- d. HVAC;
- e. Fire protection systems;
- f. Fuel required for building operations to include fuel loss, fuel spill, and fuel exposure that creates a hazardous incident;
- g. Fuel for essential transportation to include fuel loss, fuel spill, and fuel exposure that creates a hazardous incident;
- h. Medical gas and vacuum systems, if applicable;
- i. Communications systems; and
- j. Essential services, such as kitchen and laundry services;

(13) Include a plan for alerting and managing staff in a disaster, and accessing Critical Incident Stress Management (CISM), if necessary;

(14) Include the management of individuals, particularly with respect to physical and clinical issues to include:

- a. Relocation of individuals with their medical record including the medicine administration records, if time permits, as detailed in the emergency plan;
- b. Access, as appropriate, to critical materials such as pharmaceuticals, medical supplies, food supplies, linen supplies, and industrial and potable water; and
- c. How to provide security during the disaster;

(15) Identify a designated media spokesperson to issue news releases and an area where the media can be assembled, where they won't interfere with the operations of the facility;

(16) Reflect measures needed to restore operational capability with consideration of fiscal aspects because of restoration costs and possible cash flow losses associated with the disruption;

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

(18) 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.

(d) The facility shall conduct and document with a detailed log, including personnel signatures, 2 drills a year at least one of which shall rehearse mass casualty response for the facility with emergency services, disaster receiving stations, or both, as follows:

(1) Drills and exercises shall be monitored by at least one designated evaluator who has knowledge of the facility's plan and who is not involved in the exercise;

(2) Drills and exercises shall evaluate program plans, procedures, training, and capabilities to identify opportunities for improvement;

(3) The facility shall conduct a debriefing session not more than 72 hours after the conclusion of the drill or exercise. The debriefing shall include all key individuals, including observers, administration, clinical staff, and appropriate support staff; and

(4) Exercises and actual events shall be critiqued to identify areas for improvement. The critique shall identify deficiencies and opportunities for improvement based upon monitoring activities and observations during the exercise. Opportunities for improvement identified in critiques shall be incorporated in the facility's improvement plan.

(e) For the purposes of emergency preparedness, each licensee shall have the following supplies of foods and water maintained on the premises based on the average daily census of individuals and staff:

(1) Enough refrigerated, perishable foods for a 3-day period;

(2) Enough non-perishable foods for a 7-day period; and

(3) Potable water for a 3-day period.

(f) Each licensee shall have, in writing, a plan for the management of emergency food and water supplies required in (e) above. The plan shall include the following:

(1) Assumptions for calculations of food and water supplies including maximum number of staff and individuals, water source of supply (tap or commercial) and expiration (months), tracking of supplies, and rotation of products, contracts and memorandums of understanding with food and water suppliers;

(2) Storage location(s); and

(3) Back-up supplies.

Source. #12374, eff 9-1-17

Appendix A: Incorporation by Reference Information

| Rule | Title | Obtain at: |
|--------------------|--|--|
| He-P 814.08(i)-(k) | Facility Guidelines Institute (FGI) “Guidelines for Design and Construction of Residential Health, Care, and Support Facilities,” Residential Healthcare chapter, 2014 edition | This publication is published and may be obtained by contacting the Facilities Guidelines Institute (formerly the American Institute of Architects) either by phone: 1-800-242-2626; or in writing via www.ashestore.com . This publication is available in multiple formats and at different price points. The standard price of this publication is \$200.00. |
| He-P 814.15(m) | United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007 edition) | Available free of charge from the CDC website at www.cdc.gov . |

Appendix B

| Rule | Specific State or Federal Statutes the Rule Implements |
|---------------------------|---|
| He-P 814.01 – He-P 814.03 | RSA 151:9,I(a)(b) |
| He-P 814.04 – He-P 814.07 | RSA 151:2,I(e); RSA 151:2,II; RSA 151:9,I(a) and (b) |
| He-P 814.08 – He-P 814.09 | RSA 151:9,I(a) |
| He-P 814.10 | RSA 151:9,I(e) |
| He-P 814.11 | RSA 151:9,I(a) |
| He-P 814.12 | RSA 151:9,I(e) |
| He-P 814.13 | RSA 151:9,I(f)(g)(l)(m) |
| He-P 814.14 | RSA 151:9,I(f)(h) |
| He-P 814.15 – He-P 814.16 | RSA 151:9,I(a) |
| He-P 814.18 – He-P 814.22 | RSA 151:9,I(a) |
| He-P 814.23 – He-P 814.24 | RSA 151:9, I(a); RSA 155:68; RSA 155:69; RSA 153:4 and 5 |