

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

PART He-P 803 NEW HAMPSHIRE NURSING HOME RULES

He-P 803.01 Purpose. The purpose of this part is to set forth the classification of and licensing requirements for nursing home facilities pursuant to RSA 151:2, I(e)(2) and as described in RSA 151:9, VII(a)(3).

Source. #2191, eff 11-25-82; amd by #2640, eff 3-7-84; ss by #3193, eff 1-28-86; amd by #4232, eff 2-23-87; amd by #4349, eff 12-28-87; amd by #4517, eff 10-28-88; ss by #5317, EMERGENCY, eff 1-29-92, EXPIRED: 5-28-92

New. #5644, eff 6-23-93; ss by #7020, INTERIM, eff 6-23-99, EXPIRED: 10-21-99

New. #9856-A, eff 1-26-11

He-P 803.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association or other legal entity operating a nursing home, 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. #9856-A, eff 1-26-11

He-P 803.03 Definitions.

- (a) “Abuse” means any one of the following:
 - (1) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of residents;
 - (2) “Physical abuse” means the misuse of physical force which results or could result in physical injury to residents; or
 - (3) “Sexual abuse” means contact or interaction of a sexual nature involving residents without his or her informed consent.
- (b) “Administer” means an act whereby one or more doses of a medication is instilled into the body, applied to the body of, or otherwise given to a person for immediate consumption or use by an individual authorized by law, including RSA 318-B and RSA 326-B.
- (c) “Administrator” means the nursing home administrator licensed under the laws of the State of New Hampshire pursuant to RSA 151-A:2 and appointed by the licensee to be responsible for all aspects of the daily operation of the nursing home.
- (d) “Admission” means accepted by a licensee for the provision of services to a resident.
- (e) “Advance directive” means a directive, pursuant to RSA 137-J, allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she should lose the capacity to make health care decisions. The term “advance directive” includes, but is not limited to, living wills and durable powers of attorney for health care.

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(f) “Affiliated or related parties” means companies or individuals that serve as operators, landlords, management companies or advisors, real estate or consulting companies, members of limited liability companies, administrative services companies, lenders and companies providing financial guarantees, captive or affiliated insurance companies or other companies as the commissioner shall decide that have an ownership interest in the nursing home.

(g) “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.

(h) “Applicant” means an individual, agency, partnership, corporation, federal state, county or local government entity, association, or other legal entity seeking a license pursuant to RSA 151.

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

(j) “Business day” means a 24-hour period, Monday through Friday, except for NH state holidays.

(k) “Care plan” means a documented guide developed, as a result of the assessment process, for the provision of care and services to a resident.

(l) “Certified nursing home” means a nursing home accredited by the organizations deemed by the Centers for Medicare and Medicaid Services (CMS) as accrediting organizations.

(m) “Change of ownership” means the transfer of a controlling interest in a sole proprietorship, joint venture, partnership, corporation, limited liability company or any other kind of entity to another sole proprietor, joint venture, partnership, corporation, limited liability company or any other kind of entity.

(n) “Chemical restraint” means any drug or medication prescribed to control a resident’s behavior or emotional state without a supporting diagnosis, or without the presence of a hospice plan of care, or for the convenience of program personnel.

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

(p) “Core services” means those services provided by the licensee that are included in the basic rate.

(q) “Days” means calendar days, unless otherwise specified.

(r) “Deficiency” means any action, failure to act or other set of circumstances that cause a licensee to be out of compliance with RSA 151, He-P 803, or other federal and state requirements.

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

(t) “Direct care personnel” means any person providing hands-on care to a resident.

(u) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the licensee must take to correct identified deficiencies.

(v) “Do not resuscitate order (DNR order)”, also known as “Do not attempt resuscitation order (DNAR order)”, means an order, signed by a licensed practitioner, that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the

resident will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

(w) “Emergency” means an unexpected occurrence or set of circumstances, which require immediate remedial attention.

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

(y) “Employee” means anyone employed by the nursing home and for whom the facility has direct supervisory authority.

(z) “Exploitation” means the illegal use of a resident’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from a resident through the use of undue influence, harassment, duress, deception, or fraud.

(aa) “Governing body” means the persons designated by the owner(s) of a nursing home to ensure compliance with all applicable rules and provide for the fiscal and physical management of the facility.

(ab) “Guardian” means a person appointed in accordance with RSA 463 for a minor, RSA 464-A for an incapacitated adult, or the laws of another state, to make informed decisions over the resident’s person and/or estate.

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

(ad) “Informed consent” means the decision by a resident or his or her guardian or agent to agree to a proposed course of treatment, after the resident, guardian or agent has received full disclosure of the facts, including information about risks and benefits of the treatment and available alternatives, needed to make the decision intelligently.

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

(af) “Inspection” means the process used by the department to determine a licensee’s compliance with RSA 151, He-P 803, and all other federal and state requirements, or to respond to allegations of non-compliance with RSA 151 and He-P 803.

(ag) “License” means the document issued by the department to an applicant authorizing operation in accordance with RSA 151 and He-P 803 and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and the license number.

(ah) “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 that the hospital is licensed for.

(ai) “Licensed practitioner” means:

- (1) Medical doctor;
- (2) Physician’s assistant;
- (3) Advanced practice registered nurse;
- (4) Doctor of osteopathy;

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(5) Doctor of naturopathic medicine; or

(6) Anyone else with diagnostic and prescriptive powers licensed by the appropriate New Hampshire licensing board.

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

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

(al) “Mechanical restraint” means a device designed to prohibit a resident’s free movement, including full bed rails, gates that prohibit a resident’s free movement throughout the living areas of a unit, half doors that prohibit a residents free movement throughout the living areas of a unit, geri chairs, when used in a manner that prevents or restricts a resident from getting out of the chair at will, wrist or ankle restraints, vests or pelvic restraints, or other similar devices that prevent a resident’s free movement.

(am) “Medical director” means a physician licensed in New Hampshire in accordance with RSA 329 who is responsible for overseeing the quality of medical care and services in a nursing home.

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

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

(ap) “Nurse” means a person licensed in accordance with RSA 326-B.

(aq) “Nursing home(s)” means “nursing home or facility” as defined by RSA 151-C:2, XXVI.

(ar) “Nutritional requirements” means the necessary food and liquid intake required to maintain acceptable parameters of nutritional status.

(as) “Orders” means prescriptions, instructions for administering or discontinuing treatments, special diets or therapies given by a licensed practitioner, or other health professional according to their legally authorized scope of practice.

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

(au) “Owner” means a person or organization who has controlling interest in the nursing home.

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

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

(ax) “Personnel” means individual(s), either paid or volunteer, including independent contractors, who provide direct or indirect care or services or both to a resident(s).

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

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

(ba) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct identified deficiencies.

(bb) “Pro re nata (PRN) medication” means medication taken as circumstances may require.

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

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

(1) Reasonable knowledge of resident whereabouts; and

(2) Minimizing the likelihood of accident or injury.

(be) “Resident” means any individual residing in and receiving care from a nursing home licensed in accordance with RSA 151 and all other federal and state licensing requirements.

(bf) “Resident record” means documents maintained for each resident receiving care and services, which includes all documentation required by RSA 151, He-P 803 and all documentation compiled relative to the resident as required by other federal and state requirements.

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

(bh) “Significant change” means a decline or improvement in a resident’s status that:

(1) Will not normally resolve itself without further intervention by personnel or by implementing standard disease-related clinical interventions;

(2) Impacts more than one area of the resident’s health status; and

(3) Requires interdisciplinary review and/or revision of the care plan.

(bi) “Therapeutic diet” means a diet ordered by a licensed practitioner as part of the treatment for disease or clinical conditions.

(bj) “Unexplained absence” means an incident involving a resident leaving the premises of the nursing home without the knowledge of the nursing home personnel.

(bk) “Unusual incident” means an occurrence of any of the following while the resident is either in the nursing home or in the care of nursing home personnel:

(1) The unanticipated death of a resident that is not related to their diagnosis or underlying condition;

(2) An unexplained accident or other circumstance that has resulted in an injury that requires treatment in an emergency room by a licensed practitioner; or

(3) An elopement from the nursing home or other circumstances that resulted in the notification and/or involvement of law enforcement or safety officials.

Source. #9856-A, eff 1-26-11

He-P 803.04 Initial License Application Requirements.

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

(1) A completed application form entitled “Application for Residential or Health Care License” (February 12, 2010), signed by the applicant or 2 of the corporate officers, affirming to the following:

“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.”;

(2) A floor plan of the prospective nursing home;

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

- a. “Certificate of Authority,” if a corporation;
- b. “Certificate of Formation,” if a limited liability corporation; or
- c. “Certificate of Trade Name,” where applicable;

(4) List of affiliated or related parties;

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

(6) Copies of licenses for the nursing home administrator;

(7) Written local approvals as follows:

a. For an existing building, the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials or if there is no such official(s), from the board of selectmen or mayor:

- 1. The health officer verifying that the applicant complies with all applicable local health requirements and drinking water and wastewater requirements;
- 2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
- 3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
- 4. The fire chief verifying that the applicant complies with the state fire code, including the health care chapter of NFPA 101 as adopted by the department of safety, and local fire ordinances applicable for a health care facility; and

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

(8) If required under RSA 151-C, a copy of a valid certificate of need issued by the health services planning and review board or a written notice from the health services planning and review board that a certificate of need is not required;

(9) If the nursing home uses a private water supply, documentation that the water supply has been tested in accordance with RSA 485 and Env-Dw 700, or, if a public water supply is used, a copy of a water bill; and

(10) The results of a criminal records check from the NH department of safety for the applicant and the administrator, as applicable.

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

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

Source. #9856-B, eff 1-26-11

He-P 803.05 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 803.04(a) have been received.

(b) If an application does not contain all of the items required by He-P 803.04(a), the department shall notify the applicant in writing of the items required before the application can be processed.

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

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

(e) Following an 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 803.

(f) The department shall deny a licensing request after reviewing the information in He-P 803.04(a)(10) above if it determines that the applicant, proposed licensee or administrator:

(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, 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, abuse, neglect or exploitation of any person; or

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

Source. #9856-A, eff 1-26-11

He-P 803.06 License Expirations and Procedures for Renewals.

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

(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 803.04(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 803.04(a)(1) and (5);
- (2) The current license number;
- (3) A request for renewal of any existing waivers previously granted by the department, in accordance with He-P 803.10(f), if applicable; and
- (4) 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 for bacteria and Env-Dw 704 for nitrates.

(e) Following an inspection, as described in He-P 803.09, 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;
- (2) Has submitted a POC that has been accepted by the department and implemented by the licensee if deficiencies were cited at the last licensing inspection or investigation; and
- (3) Is found to be in compliance with RSA 151 and He-P 803 at the renewal inspection.

Source. #9856-A, eff 1-26-11

He-P 803.07 Nursing Home Construction, Alterations or Renovations.

(a) Sixty days prior to initiating construction, the nursing home shall provide to the department notice and written plans drawn to scale for construction, renovation or structural alterations for the following:

- (1) A new building;
- (2) Structural alterations to any resident area;
- (3) Alterations that require approval from local or state authorities; and
- (4) Alterations that might affect compliance with the health and safety, fire or building codes, including but not limited to, fire suppression, detection systems and means of egress.

(b) The department shall review plans for construction, renovation or structural alterations of a nursing home for compliance with all applicable sections of RSA 151 and He-P 803 and notify the applicant or licensee as to whether the proposed changes comply with these requirements.

(c) Department approval shall not be required prior to initiating construction, renovations or structural alterations, however an applicant or licensee who proceeds prior to receiving approval shall do so at their own risk.

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(d) The nursing home shall comply with all applicable licensing rules when doing construction, renovations or structural alterations.

(e) A licensee or applicant constructing, renovating, or structurally altering a building shall comply with the following:

(1) The state fire code, Saf-C 6000, including, but not limited to, NFPA 1 and NFPA 101 as adopted by the commissioner of the department of safety under RSA 153; 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.

(f) All nursing homes newly constructed after the 2010 effective date of He-P 803 shall comply with the American Institute of Architects (AIA) "Guidelines for Design and Construction of Health Care Facilities," Nursing Facilities chapter, 2006 edition.

(g) Where renovation or structural alteration work is done within an existing facility, all such work shall comply, insofar as practical, with applicable sections of the AIA "Guidelines for Design and Construction of Health Care Facilities," Nursing Facilities chapter, 2006 edition.

(h) Per the AIA "Guidelines for Design and Construction of Health Care Facilities," Nursing Facilities chapter, 2006 edition, and notwithstanding (g) 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.

(i) The department's health facilities administration shall be the authority having jurisdiction for the application of the AIA "Guidelines for Design and Construction of Health Care Facilities," Nursing Facilities chapter, 2006 edition, and shall negotiate compliance and grant waivers in accordance with He-P 803.10 as appropriate.

(j) Waivers granted by the department for construction or renovation purposes shall not require annual renewal.

(k) The completed building shall be subject to an inspection pursuant to He-P 803.09 prior to its use.

Source. #9856-A, eff 1-26-11

He-P 803.08 Nursing Home Requirements for Organizational Changes.

(a) The nursing home 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;

(5) Capacity; or

(6) Affiliated parties or related parties.

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

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(c) The nursing home 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 residents beyond what is authorized under the current license.

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

(e) The nursing home shall inform the department in writing as soon as possible prior to a change in administrator and provide the department with the following:

- (1) The information specified in He-P 803.04(a)(10) if not currently employed by the facility; and
- (2) Copies of applicable licenses for the new administrator.

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

- (1) Ownership, unless the current licensee has no outstanding administrative actions in process and there will be no changes made by the new owner in the scope of services provided;
- (2) The physical location; or
- (3) An increase in the number of residents beyond what is authorized under the current license.

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

(h) A revised license and license certificate shall be issued for changes in the nursing home's name.

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

- (1) A change of administrator;
- (2) A change in the number of residents from what is authorized under the current license; or
- (3) When a waiver has been granted.

(j) Licenses issued under (f)(1) above shall expire on the date the license issued to the previous owner would have expired.

(k) The licensee shall return the previous license to the division within 10 days of the nursing home changing its ownership, physical location, address or name.

Source. #9856-A, eff 1-26-11

He-P 803.09 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 803, 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:

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- (1) The licensed premises;
- (2) All programs and services provided by the nursing home; and
- (3) Any records required by RSA 151 and He-P 803.

(b) The department shall conduct an inspection to determine full compliance with RSA 151 and He-P 803, to include a clinical and a life safety inspection, prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership, except as allowed by He-P 803.08(f)(1);
- (3) A change in the licensee's physical location;
- (4) A relocation within the facility or an increase in the number of beds beyond what is authorized under the current license;
- (5) Occupation of space after construction, renovations or structural alterations; or
- (6) The renewal of a license for non-certified nursing homes.

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

Source. #9856-A, eff 1-26-11

He-P 803.10 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 803 shall submit a written request for a waiver to the commissioner that includes:

- (1) The specific reference to the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary;
- (3) A full explanation of alternatives proposed by the applicant or license holder, which shall be equally as protective of public health and residents as the rule from which a waiver is sought; and
- (4) The period of time for which the waiver is sought.

(b) Waivers shall not exceed 12 months, or the current license expiration date, except as allowed by He-P 803.18(f) and He-P 803.07(j).

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

- (1) Meets the objective or intent of the rule;
- (2) Does not have the potential to negatively impact the health or safety of the residents; and
- (3) Does not negatively affect the quality of resident services.

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

(e) Waivers shall not be transferable.

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(f) When a licensee wishes to renew the waiver beyond the approved period of time, the licensee shall apply for a new waiver by submitting the information required by (a) above:

- (1) When the licensee submits its application for license renewal pursuant to He-P 803.06(c); or
- (2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the licensing certificate.

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

Source. #9856-A, eff 1-26-11

He-P 803.11 Complaints.

(a) The department shall investigate complaints that allege:

- (1) A violation of RSA 151 or He-P 803;
- (2) That an individual or entity is operating as a nursing home without being licensed; or
- (3) That an individual or entity is advertising or otherwise representing the nursing home as having or performing services for which they are 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 nursing home, or the alleged unlicensed individual or entity;
- (2) The name, address and telephone number of the complainant; and
- (3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151 or He-P 803.

(c) For the nursing home, the department shall:

- (1) Provide written notification of the results of the investigation to the licensee along with an inspection report if deficiencies were found as a result of the investigation; and
- (2) Notify any other federal, state or local agencies of alleged violations of their statutes or rules based on the results of the investigation, as appropriate.

(d) If the department determines that the complaint is unfounded or that the alleged act does not violate any statutes or rules, the department shall so notify the unlicensed individual or licensee and take no further action.

(e) If the investigation results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 803.12(c).

(f) For the unlicensed individual or entity the department shall provide written notification to the owner or person responsible that includes:

- (1) The date of inspection;
- (2) The reasons for the inspection; and

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(3) Whether or not the inspection resulted in a determination that the services being provided require licensing under RSA 151:2, I(f).

(g) The owner or person responsible shall be allowed 7 days from the date of receipt of the notice required by (f) above to respond to a finding that they are operating without a license or submit a completed application for a license in accordance with RSA 151:7-a, II.

(h) If the owner of an unlicensed nursing home does not comply with (g) above, or if the department does not agree with the owner's response, the department shall:

- (1) Issue a written warning to immediately comply with RSA 151 and He-P 803; and
- (2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.

(i) Any person or entity who fails to comply after receiving a warning, as described in (h) above, shall be subject to an action by the department for injunctive relief under RSA 151:17.

(j) The fact that the department takes action for injunctive relief under RSA 151:17 shall not preclude the department from taking other action under RSA 151, He-P 803 or other applicable laws.

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

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

Source. #9856-A, eff 1-26-11

He-P 803.12 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 803 or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC;
- (2) Imposing a directed POC upon a licensee;
- (3) Imposing fines upon an unlicensed individual, applicant or licensee;
- (4) Suspension of a license; or
- (5) Revocation of a license.

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

- (1) Identifies each deficiency;
- (2) Identifies the specific remedy(s) that has been proposed; and
- (3) Provides the licensee with the following information:

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- a. The right to a hearing in accordance with RSA 541-A and He-C 200 prior to the fine becoming final; and
 - b. The automatic reduction of a fine by 25% if the licensee waives the right to a hearing, the fine is paid within 10 days of the date on the written notice from the department and the deficiency has been corrected, or a POC has been accepted and approved by the department.
- (c) A POC shall be developed and enforced in the following manner:
- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a POC detailing:
 - a. How the licensee intends to correct each deficiency;
 - b. What measures will be put in place, or what system changes will be made to ensure that the deficiency does not recur; and
 - c. The date by which each deficiency shall be corrected;
 - (2) The licensee shall submit a POC to the department within 21 calendar days of the date on the letter that transmitted the inspection report 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 calendar day period but has been unable to do so; and
 - b. The department determines that the health, safety or well-being of a resident will not be jeopardized as a result of granting the extension;
 - (3) The department shall review and accept each POC that:
 - a. Achieves compliance with RSA 151 and He-P 803;
 - b. Addresses all deficiencies and deficient practices as cited in the inspection report;
 - c. Prevents a new violation of RSA 151 or He-P 803 as a result of the implementation of the POC; and
 - d. Specifies the date upon which the deficiencies 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, either 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

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2. The department determines that the health, safety or well being of a resident will not be jeopardized as a result of granting the waiver;
 - c. The revised POC shall comply with (1) above and be reviewed in accordance with (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, 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 a 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 He-P 803.12(b); and
 - b. Issued a directed POC in accordance with (d) below and shall be subject to a fine in accordance with (f)(12) below.
- (d) The department shall develop and impose a directed POC that specifies corrective actions for the licensee to implement when:
- (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the residents and employees;
 - (2) A revised POC is not submitted within 14 days of the written notification from the department; or
 - (3) A revised POC submitted by the licensee or administrator has not been accepted.
- (e) If at the time of the next inspection the directed POC referenced in (d) above has not been implemented by the completion date stated in the directed POC the department shall, as appropriate:
- (1) Issue a warning that enforcement action will be taken if the POC is not implemented;
 - (2) Impose a fine;
 - (3) Deny the application for a renewal of a license; or
 - (4) Revoke or suspend the license in accordance with He-P 803.13.
- (f) The department shall impose fines as follows:

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- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2 the fine shall be \$2000.00 for an applicant or unlicensed provider;
- (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2 and RSA 541-A:30, the fine for an applicant, unlicensed provider or a licensee shall be \$2000.00;
- (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III, the fine for an applicant, licensee or unlicensed provider shall be \$500.00;
- (4) For a failure to comply with the directives of a warning issued by the department in violation of RSA 151:7-a and He-P 803.11(h), the fine shall be \$500.00;
- (5) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 803.06(b), the fine shall be \$100.00;
- (6) For a failure to notify the department prior to a change of ownership, in violation of He-P 803.08(a)(1), the fine shall be \$500.00;
- (7) For a failure to notify the department prior to a change in the physical location, in violation of He-P 803.08(a)(2), the fine shall be \$500.00;
- (8) For a refusal to allow access by the department to the nursing home's premises, programs, services or records, in violation of He-P 803.09(a), the fine for an applicant, individual or licensee shall be \$2000.00;
- (9) For refusal to cooperate with the inspection or investigation conducted by the department the fine shall be \$ 2000.00;
- (10) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 803.12(c)(2) or (5)(b), the fine for a licensee shall be \$100.00 unless an extension has been granted by the department;
- (11) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 803.12(c)(8), the fine for a licensee shall be \$1000.00;
- (12) For a failure to establish, implement or comply with licensee policies, after being notified in writing by the department of the need to establish, implement or comply with licensee policies, as required by He-P 803.14(c), the fine for a licensee shall be \$500.00;
- (13) For a failure to provide services or programs required by the licensing classification and specified by He-P 803.14(b), the fine for a licensee shall be \$500.00;
- (14) For exceeding the maximum number of residents, in violation of He-P 803.14(k), the fine for a licensee shall be \$500.00;
- (15) For moving a current resident to an unlicensed space prior to approval from the department, the fine for a licensee shall be \$500.00;
- (16) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 803.14(f), the fine shall be \$500.00 per offense;

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(17) For a failure to meet the needs of the resident, in violation of He-P 803.14(i)(1), the fine for a licensee shall be \$500.00;

(18) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 803.17(b)(1) and 803.18(d)(3), the fine for a licensee shall be \$500.00;

(19) For failure to report an unusual incident as required by He-P 803.14(t), the fine for a licensee shall be \$500.00 per occurrence;

(20) When an inspection determines that a violation of RSA 151 or He-P 803 has the potential to jeopardize the health, safety or well-being of a resident, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:

a. If the same deficiency is cited within 2 years of the original deficiency, the fine for a licensee shall be double the initial fine, but not to exceed \$2000.00; and

b. If the same deficiency is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be triple the fine, but not to exceed \$2000.00;

(21) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 803 shall constitute a separate violation and shall be fined in accordance with He-P 803.12(f); and

(22) If the applicant or licensee is making good faith efforts to comply with (4) or (18) above, the department shall not issue a daily fine.

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

(1) Payment shall be made in the form of check or money order made payable to the "Treasurer, State of New Hampshire" or cash in the exact amount due; and

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

Source. #9856-A, eff 1-26-11

He-P 803.13 Enforcement Actions and Hearings.

(a) At the time of imposing a fine, or denying, revoking or suspending a license, 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; and

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

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

(1) An applicant or a licensee has violated provisions of RSA 151 or He-P 803, which violations have the potential to harm a resident's health, safety or well-being;

(2) An applicant or a licensee has failed to pay a fine imposed under administrative remedies;

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- (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 803.04;
- (5) An applicant, licensee or any representative or employee of the applicant or licensee:
 - a. Provides false or misleading information to the department;
 - b. Prevents or interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
 - c. Fails to provide requested files or documents to the department;
- (6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 803.12(c), (d) and (e);
- (7) The licensee is cited a third time under RSA 151 or He-P 803 for the same violations within the last 5 inspections;
- (8) A licensee, including corporation officers or board members, has had a license revoked and submits an application during the 5-year prohibition period specified in (h) below;
- (9) Upon inspection, the applicant's premises is not in compliance with RSA 151 or He-P 803;
- (10) The department makes a determination that one or more of the factors in He-P 803.05(f) is true; or
- (11) The applicant or licensee fails to employ a qualified administrator.

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

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

(e) The department shall order the immediate suspension of a license, the cessation of operations, and the transfer of care of residents when it finds that the health, safety or welfare of residents is in jeopardy and requires emergency action in accordance with RSA 541-A:30, III.

(f) 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 803 is achieved.

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

(h) When a nursing home's license has been denied or revoked, the applicant or licensee shall not be eligible to reapply for a license for 5 years, and the action shall be reported to the New Hampshire nursing home administrator licensing board for investigation and review of the administrator's role if any.

(i) The 5 year period referenced in (h) above shall begin on:

- (1) The date of the department's decision to revoke or deny the license, if no request for an administrative hearing is requested; or

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(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.

(j) Notwithstanding (h) 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 803.

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

(l) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A:30, III, or He-P 803.

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

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

(o) The department shall review the evidence presented and provide a written notice to the applicant or licensee of its decision.

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

Source. #9856-A, eff 1-26-11

He-P 803.14 Duties and Responsibilities of All Licensees.

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

(b) The licensee shall define, in writing, the scope and type of services to be provided by the nursing home, which shall include, at a minimum, the core services listed in He-P 803.15(d).

(c) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the nursing home.

(d) All policies and procedures shall be reviewed per licensee policy.

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

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

(g) The licensee shall not:

(1) Advertise or otherwise represent itself as operating a nursing home, 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.

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(i) Licensees shall:

- (1) Meet the needs of the residents during those hours that the residents are in the care of the nursing home;
- (2) Initiate action to maintain the nursing home 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 nursing home;
- (4) Appoint an administrator;
- (5) Appoint a medical director who shall meet the requirements of He-P 803.17(a);
- (6) Verify the qualifications of all personnel;
- (7) Provide sufficient numbers of personnel who are present in the nursing home and are qualified to meet the needs of residents during all hours of operation;
- (8) Provide the nursing home with sufficient supplies, equipment and lighting to meet the needs of the residents;
- (9) Implement any POC that has been accepted by the department; and
- (10) Comply with all conditions of warnings and administrative remedies issued by the department and all court orders.

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

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

(k) The licensee shall not exceed the number of occupants authorized by NFPA 101, as adopted by the commissioner of the department of safety under Saf-C 6000, and identified on the licensing certificate.

(l) If the licensee accepts a resident who is known to have a disease reportable under He-P 301 or an infectious disease, which is any disease caused by the growth of microorganisms in the body which might or might not be contagious, the licensee shall follow the required procedures for the care of the residents, 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).

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

(n) The licensee shall implement measures to ensure the safety of residents who are assessed as an elopement risk or danger to self or others.

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

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- (1) The current license certificate issued in accordance with RSA 151:2;
 - (2) All inspection reports issued in accordance with He-P 803.09(b), for the previous 12 months;
 - (3) A copy of the patients' bill of rights;
 - (4) A copy of the licensee's policies and procedures relative to the implementation of patient rights and responsibilities as required by RSA 151:20;
 - (5) A copy of the licensee's complaint procedure, including the address and phone number of the department to which complaints may also be made, which shall also be posted on the nursing home website if available; and
 - (6) The licensee's floor plan for fire safety, evacuation and emergencies identifying the location of, and access to all fire exits.
- (p) 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.
- (q) A licensee shall, upon request, provide a resident or the resident's guardian or agent, if any, with a copy of his or her resident record pursuant to the provisions of RSA 151:21, X.
- (r) Any licensee that maintains electronic records shall develop written policies and procedures designed to protect the privacy of residents 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 residents and personnel; and
 - (3) Systems to prevent tampering with information pertaining to residents and personnel.
- (s) Accidents, injuries, and unusual incidents shall be documented, including:
- (1) The date and time of the occurrence;
 - (2) A description of the occurrence, including identification of injuries, if applicable;
 - (3) The actions taken;
 - (4) The signature of the person documenting the occurrence; and
 - (5) If medical intervention was required, the date and time that the emergency contact person and guardian or agent, if any, and the licensed practitioner were notified.
- (t) Licensees shall:
- (1) Contact the department within one business day by telephone, fax or e-mail, and in writing within 72 hours if the initial notice was made by telephone or if additional information is available, to report an unusual incident and provide the following information:
 - a. The nursing home name;
 - b. A description of the incident, including identification of injuries, if applicable;
 - c. The name of the licensee(s) or personnel involved in, witnessing or responding to the unusual incident;

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- d. The name of resident(s) involved in or witnessing the unusual incident;
- e. The date and time of the unusual incident;
- f. The action taken in direct response to the unusual incident, including any follow-up;
- g. If medical intervention was required, by whom and the date and time;
- h. Whether the resident's guardian or agent, if any, or personal representative was notified;
- i. The signature of the person reporting the unusual incident; and
- j. The date and time the resident's licensed practitioner was notified;

(2) For incidents where abuse, neglect, mistreatment or misappropriation of property are suspected, the licensee shall meet the requirement of (1) above by faxing the information required by (1)(a)-(j) above to the office of the long-term care ombudsman at (603) 271-5574;

(3) Immediately notify the local police department, the department, guardian, agent or personal representative, if any, when a resident, who has been assessed or is known as being a danger to self or others, has an unexplained absence after the licensee has searched the building and the grounds of the nursing home; and

(4) Submit additional information if required by the department.

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

(v) The building housing the nursing home shall comply with all state and local:

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

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

(x) If the licensee holds or manages a resident'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 or other residents.

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

(z) The licensee shall give a resident 30 days written notice for an increase in the cost or fees for any nursing home services.

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(aa) Except as required to protect the health, safety, and well-being of the resident or other residents, prior to a resident room or bed location change, the facility shall:

(1) Provide written notice to the resident and/or the resident's guardian or agent, as applicable, including:

- a. The reason for the change;
- b. The effective date of the change; and
- c. The location to which the resident is being moved;

(2) Provide verbal notice to the resident and/or the resident's guardian or agent, as applicable, including performing the following:

- a. Learning the resident's preferences and taking them into account when discussing changes of rooms or roommates and the timing of such changes;
- b. Explaining to the resident the reason for the move; and
- c. Providing the opportunity to see the new location, meet the new roommate, and ask questions about the move; and

(3) For a resident who is receiving a new roommate, give that resident as much notice and information about the new person as possible, while maintaining confidentiality regarding medical information.

(ab) The licensee shall develop and follow policies and procedures regarding resident room or bed location changes.

(ac) Following the death of a roommate, the facility shall facilitate the provision of social services for the resident as needed.

Source. #9856-A, eff 1-26-11

He-P 803.15 Required Services.

(a) The licensee shall provide administrative services that include the appointment of a full-time, on-site administrator who:

- (1) Is responsible for the day-to-day operations of the nursing home;
- (2) Meets the requirements of He-P 803.17(b)(1); and
- (3) Designates, in writing, an alternate administrator who shall assume the responsibilities of the administrator in his or her absence.

(b) Prior to or upon the time of admission, the licensee shall provide the resident a written copy of the admission agreement, except in the case of an emergency admission where the written agreement shall be given as soon as practicable.

(c) In addition to (b) above, at the time of admission, the licensee shall provide a written copy to the resident and the guardian or agent, if any, or personal representative, and receive written verification of receipt for the following:

- (1) An admissions packet including the following information:

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- a. The basic daily, weekly or monthly rate;
 - b. A list of the core services required by He-P 803.14(b);
 - c. Information regarding the timing and frequency of cost of care increases;
 - d. The nursing home's house rules;
 - e. The grounds for transfer or discharge and termination of the agreement, pursuant to RSA 151:21, V;
 - f. The nursing home's policy for resident discharge planning;
 - g. Information regarding nursing, other health care services, or supplies not provided in the core services, to include:
 - 1. The availability of services;
 - 2. The nursing home's responsibility for arranging services; and
 - 3. The fee and payment for services, if known; and
 - h. Information regarding:
 - 1. Arranging for the provision of transportation;
 - 2. Arranging for the provision of third party services, such as a hairdresser or cable television;
 - 3. Acting as a billing agent for third party services;
 - 4. Monitoring third party services contracted directly by the resident and provided on the nursing home premises;
 - 5. Handling of resident funds pursuant to RSA 151:24 and He-P 803.14(y);
 - 6. Bed hold, in compliance with RSA 151:25;
 - 7. Storage and loss of the resident's personal property;
 - 8. Smoking;
 - 9. Room-mates; and
 - 10. The facility's policy regarding the use of restraints;
- (2) A copy of the patients' bill of rights under RSA 151:21 and the nursing home's policy and procedure for implementing the bill of rights pursuant to RSA 151:20, II;
- (3) A copy of the resident's right to appeal an involuntary transfer or discharge under RSA 151:26, II(5);
- (4) The nursing home's policy and procedure for handling reports of abuse, neglect or exploitation, which shall be in accordance with RSA 161-F:46 and RSA 169-C:29;
- (5) Information on accessing the long-term care ombudsman; and

- (6) Information on advanced directives.
- (d) The licensee shall provide the following core services:
 - (1) Services of a licensed nurse provided 24 hours a day;
 - (2) Emergency response and crisis intervention;
 - (3) Medication services in accordance with He-P 803.16;
 - (4) Food services in accordance with He-P 803.20;
 - (5) Housekeeping, laundry and maintenance services;
 - (6) On-site activities and/or access to community activities designed to meet the individual interests of residents to sustain and promote physical, intellectual, social and spiritual well-being of all residents; and
 - (7) Assistance in arranging medical and dental appointments, including arranging transportation to and from such appointments and reminding the residents of the appointments.
- (e) The licensee shall:
 - (1) Make available basic supplies necessary for residents to maintain grooming and personal hygiene, such as soap, shampoo, toothpaste, toothbrush and toilet paper;
 - (2) Identify in the admission packet the cost, if any, of basic supplies for which there will be a charge; and
 - (3) Not be required to pay for a specific brand of the supplies referenced in (1) above.
- (f) At the time of a resident's admission, the licensee shall obtain orders from a licensed practitioner for medications, prescriptions, and diet.
- (g) The licensee shall have each resident obtain a health examination by a licensed practitioner within 30 days prior to or 48 hours after admission to the nursing home and every 90 days thereafter.
- (h) The health examination referenced in (g) above shall include:
 - (1) Diagnoses, if any;
 - (2) Medical history;
 - (3) Medical findings, including the presence or absence of communicable disease;
 - (4) Vital signs;
 - (5) Prescribed and over-the-counter medications;
 - (6) Allergies; and
 - (7) Dietary needs.
- (i) Assessments utilizing the 3.0 version of the Centers for Medicare and Medicaid Services Resident Assessment Instrument (RAI) including the minimum data set (MDS) with care area assessment (CAA) shall be completed on each resident as follows:

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- (1) A comprehensive MDS shall be completed within 14 days after admission;
- (2) A comprehensive MDS shall be repeated annually or after any significant change, as defined in He-P 803.03(bh); and
- (3) A quarterly MDS shall be completed at least every 3 months.

(j) The care plan portion of the RAI shall be developed within 14 days of the MDS and revised based on needs identified by the MDS.

(k) An initial nursing care plan shall be initiated upon admission and completed within 24 hours of the resident's admission.

(l) The nursing care plan shall:

- (1) Be updated following the completion of each future assessment in (i) above;
- (2) Be made available to personnel who assist residents in the implementation of the plan; and
- (3) Address the needs identified by (h) and (i) above.

(m) Nursing notes shall be written as per facility policy.

(n) Pursuant to RSA 151:21, IX, residents shall be free from chemical and physical restraints except when they are authorized in writing by a licensed practitioner for a specific and limited time necessary to protect the resident or others from injury, or as permitted by the CMS conditions of participation, or as allowed by (o) below and He-P 803.21(d).

(o) Pursuant to RSA 151:21, IX, in an emergency, physical restraints may be authorized by the personnel designated in (p)(3) below in order to protect the resident or others from injury, and such action shall be promptly reported to the resident's physician and documented in the resident's clinical record.

(p) The nursing home shall have written policies and procedures for implementing physical, chemical and mechanical restraints, including:

- (1) What type of emergency restraints may be used;
- (2) When restraints may be used;
- (3) What professional personnel may authorize the use of restraints;
- (4) The documentation of their use in the resident record including the physician order as applicable;
- (5) How the facility plans for reduction of restraint use for any resident requiring restraints;
- (6) Initial personnel training and subsequent education and training required to demonstrate competence related to the use of physical, chemical and mechanical restraints;
- (7) The least restrictive to the most restrictive method to be utilized to control a resident's behavior; and
- (8) That the training shall be conducted by individuals who are qualified by education, training, and experience.

(q) A resident may refuse all care and services.

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(r) When a resident refuses care or services that could result in a threat to their health, safety or well-being, or that of others, the licensee or their designee shall:

- (1) Inform the resident and guardian of the potential results of their refusal;
- (2) Notify the licensed practitioner of the resident's refusal of care;
- (3) Notify the agent, as applicable, unless the resident objects; and
- (4) Document in the resident's record the refusal of care and the resident's reason for the refusal, if known.

(s) The licensee shall provide the following information to emergency medical personnel in the event of an emergency transfer to another medical facility.

- (1) Full name and the name the resident prefers, if different;
- (2) Name, address and telephone number of the resident's next of kin, guardian or agent, if any;
- (3) Diagnosis, as applicable;
- (4) Medications, as applicable, including last dose taken and when the next dose is due;
- (5) Allergies;
- (6) Functional limitations;
- (7) Date of birth;
- (8) Insurance information;
- (9) Advanced directives; and
- (10) Any other pertinent information not specified in (1)-(9) above.

Source. #9856-A, eff 1-26-11

He-P 803.16 Medication Services.

(a) All medications shall be administered in accordance with the orders of the licensed practitioner.

(b) Medications, treatments and diets ordered by the licensed practitioner shall be made available to the resident within 24 hours of the order, or in accordance with the licensed practitioner's direction.

(c) The licensee shall have a written policy and system in place instructing how to:

- (1) Obtain any medication ordered for immediate use at the nursing home;
- (2) Reorder medications for use at the nursing home; and
- (3) Receive and record new medication orders.

(d) For each prescription medication being taken by a resident, the licensee shall maintain one of the following:

- (1) The original written order in the resident's record, signed by a licensed practitioner or other professional with prescriptive powers; or

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(2) A copy of the original written order in the resident's record, signed by a licensed practitioner or other professional with prescriptive powers.

(e) Each medication order shall legibly display the following information unless it is an emergency medication as allowed by (aa) below:

- (1) The resident's name;
- (2) The medication name, strength, and prescribed dose and route, if different than by mouth;
- (3) The frequency of administration;
- (4) The indications for usage for all medications that are used PRN; and
- (5) The dated signature of the ordering practitioner.

(f) Pharmaceutical samples shall be used in accordance with the licensed practitioner's written order and labeled with the resident's name by the licensed practitioner, the administrator, or authorized personnel.

(g) The label of all medication containers maintained in the nursing home shall match the current written orders of the licensed practitioner and include the expiration date of the medication unless authorized by (aa) below.

(h) Except as allowed by (f) above and (i) below, only a pharmacist shall make changes to prescription medication container labels.

(i) When the licensed practitioner changes the dose of a medication and personnel of the nursing home are unable to obtain a new prescription label:

- (1) The original container shall be clearly and distinctly marked, for example, with a colored sticker that does not cover the pharmacy label, in a manner consistent with the nursing home's written procedure, indicating that there has been a change in the medication order;
- (2) Personnel shall cross out the previous order on the daily medication record, indicating that the dose has been changed, and write the new order in the next space available on the medication record; and
- (3) The change in dosage, without a change in prescription label as described in (1) and (2) above, shall be allowed for a maximum of 90 days from the date of the new medication order or until the medications in the marked container are exhausted or, in the case of PRN medications, until the expiration date on the container, whichever occurs first.

(j) Any change or discontinuation of medications taken at the nursing home shall be pursuant to a written order from a licensed practitioner or other professional with prescriptive powers.

(k) The licensee shall require that all telephone orders for medications, treatments, and diets are immediately transcribed and signed by the individual receiving the order.

(l) The transcribed order in (k) above shall be counter-signed by the authorized provider within 30 days of receipt.

(m) The licensee shall obtain written approval from the resident's licensed practitioner for all over-the-counter medications.

(n) The medication storage area shall be:

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- (1) Locked and accessible only to authorized personnel;
 - (2) Clean and organized with adequate lighting to ensure correct identification of each resident's medication(s); and
 - (3) Equipped to maintain medication at the proper temperature.
- (o) All medication at the nursing home shall be kept in the original containers and properly closed after each use.
- (p) Topical liquids, ointments, patches, creams, or powder forms of products shall be stored in such a manner that cross contamination with oral, optic, ophthalmic and parenteral products shall not occur.
- (q) If controlled substances, as defined by RSA 318-B, are stored in a central storage area in the nursing home, they shall be kept in a separately locked compartment within the locked medication storage area accessible only to authorized personnel.
- (r) The licensee shall develop and implement written policies and procedures regarding a system for maintaining counts of controlled drugs.
- (s) All contaminated, expired or discontinued medication shall be destroyed within 90 days of the expiration date, the end date of a licensed practitioner's orders or the date the medication becomes contaminated, whichever occurs first.
- (t) Controlled drugs shall be destroyed only in accordance with state law.
- (u) Medication(s) may be returned to pharmacies for credit only as allowed by the law.
- (v) If a resident is going to be absent from the nursing home at the time medication is scheduled to be taken and the resident is not capable of self-administering, the medication shall be given to the person responsible for the resident while the resident is away from the nursing home.
- (w) Upon discharge or transfer, the licensee may make the resident's current medications available to the resident and the guardian or agent, if any.
- (x) A written order from a licensed practitioner shall be required annually for any resident who is authorized to carry emergency medications, including but not limited to nitroglycerine and inhalers.
- (y) The licensee shall maintain a written record for each medication taken by the resident at the nursing home that contains the following information:
- (1) Any allergies or allergic reactions to medications;
 - (2) The medication name, strength, dose, frequency and route of administration;
 - (3) The date and the time the medication was taken;
 - (4) The signature, identifiable initials and job title of the person who administers, supervises or assists the resident taking medication;
 - (5) For PRN medications, the reason the resident required the medication and the effect of the PRN medication; and
 - (6) Documented reason for any medication refusal or omission.

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(z) Non-prescription stock medications shall only be accessed and administered by the licensed nurse or medication nurse assistant on duty.

(aa) A nursing home shall use emergency drug kits only in accordance with board of pharmacy rule Ph 705.03 under circumstances where the nursing home:

(1) Has a director of nursing who is a registered nurse (RN) licensed in accordance with RSA 326-B; and

(2) Has a contractual agreement with a medical director who is licensed in accordance with RSA 329 and a consultant pharmacist who is licensed in accordance with RSA 318.

(ab) The licensee shall develop and implement a system for reporting within 24 hours any observed adverse reactions to medication and side effects, or medication errors such as incorrect medications.

(ac) The written documentation of the report in (ab) above shall be maintained in the resident's record.

Source. #9856-A, eff 1-26-11

He-P 803.17 Organization and Administration.

(a) Each nursing home shall have a medical director who is a licensed physician in the state of New Hampshire.

(b) Each nursing home shall have a full time administrator who:

(1) Is licensed pursuant to RSA 151-A:2; and

(2) Shall be responsible for the daily management and operation of the nursing home including:

a. Management and fiscal matters;

b. The employment and termination of managers and personnel necessary for the efficient operation of the nursing home;

c. The designation of an alternate, in writing, who shall be responsible for the daily management and operation of the nursing home in the absence of the administrator;

d. Ensuring development and implementation of nursing home policies and procedures on:

1. Patient's rights as required by RSA 151:20;

2. Advanced directives and DNR orders as required by RSA 137-J;

3. Discharge planning as required by RSA 151:26; and

4. Unusual incident reporting;

e. Monitoring and evaluating the quality of resident care and resident care services in the nursing home pursuant to He-P 803.24; and

f. Identifying and making available education programs designed to maintain the personnel's expertise in areas related to the services provided in the nursing home.

(c) There shall be a full time director of nursing services who is currently licensed in the state of New Hampshire pursuant to RSA 326-B, or licensed pursuant to the multi-state compact, and who is an RN with at least 2 years relevant experience in resident care.

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- (d) The director of nursing services shall be responsible for:
- (1) Establishment of standards of nursing practice used in the nursing home;
 - (2) Ensuring that the admission process and resident assessment process coordinates resident requirements for nursing care with available nursing resources;
 - (3) Participating with the administrator and personnel to improve the quality of nursing care at the nursing home;
 - (4) Nursing care as authorized by the nurse practice act and according to RSA 326;
 - (5) The overall health and safety of residents; and
 - (6) Maintaining written personnel schedules, which shall be retained on-site for a period of at least 90 days and which include:
 - a. At least one licensed nurse in the facility 24 hours a day;
 - b. At least one registered nurse, for 8 consecutive hours a day 7 days a week; and
 - c. Licensed nursing assistants who have been verified in accordance with the New Hampshire board of registration in nursing.

Source. #9856-A, eff 1-26-11

He-P 803.18 Personnel.

- (a) The licensee shall develop a job description for each position at the nursing home containing:
- (1) Duties of the position;
 - (2) Physical requirements of the position; and
 - (3) Education and experience requirements of the position.
- (b) All direct care personnel shall be at least 18 years of age unless they are:
- (1) A student in a New Hampshire board of nursing approved licensed nursing assistant program; or
 - (2) A licensed nursing assistant working under the supervision of a nurse in accordance with Nur 700; or
 - (3) Part of an established educational program working under the supervision of a nurse.
- (c) For all new hires, the licensee shall:
- (1) Obtain and review a criminal records check from the New Hampshire department of safety in accordance with RSA 151:2-d;
 - (2) Verify the qualifications and licenses, as applicable, of all applicants prior to employment; and
 - (3) Verify that the applicant is not on the List of Excluded Individuals and Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General per 42 USC

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1320-a7 or on the BEAS Registry maintained by the department's bureau of elderly and adult services per RSA 161-F:49.

(d) Unless a waiver is granted in accordance with He-P 803.10 and (e) below, the licensee shall not make a final offer of employment for any position if the individual:

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

(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 threat to the health, safety or well-being of residents.

(f) The waiver in (e) above shall be permanent unless additional convictions or findings under (d) above occur.

(g) The department shall review the information in (d) above and notify the licensee that the individual can no longer be employed if, after investigation, it determines that the individual poses a threat to the health, safety or well-being of a resident.

(h) All employees shall:

- (1) Meet the educational and physical qualifications of the position as listed in their job description;
- (2) Not be permitted to maintain their employment if they have been convicted of a felony, sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation of any person in this or any other state by a court of law or had a complaint investigation for abuse, neglect, or exploitation adjudicated and founded by the department unless a waiver has been granted by the department;
- (3) Be licensed, registered or certified as required by state statute and as applicable;
- (4) Receive an orientation within the first 3 days of work or prior to the assumption of duties that includes:
 - a. The nursing home's policies on patient rights and responsibilities and complaint procedures as required by RSA 151:20;
 - b. The duties and responsibilities, policies procedures and guidelines, of the position they were hired for;
 - c. The nursing home's infection control program;
 - d. The nursing home's fire, evacuation and emergency plans which outline the responsibilities of personnel in an emergency; and
 - e. Mandatory reporting requirements for abuse or neglect such as those found in RSA 161-F and RSA 169-C:29; and

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- (5) Complete a mandatory annual in-service education, which includes a review of the nursing home's:
 - a. Policies and procedures on patient rights and responsibilities and abuse or neglect;
 - b. Infection control; and
 - c. Education program on fire and emergency procedures.
- (i) Prior to having contact with residents, employees shall:
 - (1) Submit to the licensee the results of a physical examination or a health screening performed by a licensed nurse or a licensed practitioner and the results of a 2-step tuberculosis (TB) test, Mantoux method or other method approved by the Centers for Disease Control, conducted not more than 12 months prior to employment;
 - (2) Be allowed to work while waiting for the results of the second step of the TB test when the results of the first step are negative for TB; and
 - (3) Comply with the requirements of the Centers for Disease Control "Guidelines for Preventing the Transmission of Tuberculosis in Health Facilities Settings" (2005 edition) if the person has either a positive TB test, or has had direct contact or potential for occupational exposure to *Mycobacterium tuberculosis* through shared air space with persons with infectious tuberculosis.
- (j) All licensees using the services of independent contractors as direct care personnel shall ensure and document that the independent clinical contractors have:
 - (1) Been oriented in accordance with (h)(4) above;
 - (2) Documented results of tuberculosis testing, either Mantoux method or blood assay, as required by (i)(1) above;
 - (3) Licenses that are current and valid; and
 - (4) A written agreement that describes the services that will be provided.
- (k) Current, separate and complete employee files shall be maintained and stored in a secure and confidential manner at the nursing home.
 - (l) The employee file shall include the following:
 - (1) A completed application for employment or a resume, including:
 - a. Identification data; and
 - b. The education and work experience of the employee;
 - (2) A signed statement acknowledging the receipt of the nursing home's policy setting forth the patient's rights and responsibilities, and acknowledging training and implementation of the policy as required by RSA 151:20;
 - (3) A job description signed by the individual that identifies the:
 - a. Position title;
 - b. Qualifications and experience; and

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c. Duties required by the position;

- (4) A record of satisfactory completion of the orientation program required by (h)(4) above and any required annual continuing education, if any;
- (5) Verification of current New Hampshire license, registration or certification in health care field and CPR certification, if applicable;
- (6) Documentation that the required physical examination, or health screening, and TB test results or radiology reports of chest x-rays, if required, have been completed by the appropriate health professionals;
- (7) Documentation of annual in-service education as required by (h)(5) above;
- (8) A statement, which shall be signed at the time the initial offer of employment is made and then annually thereafter, stating that he or she:
 - a. Does not have a felony conviction in this or any other state;
 - b. Has not been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation or pose a threat to the health, safety or well-being of a resident; and
 - c. Has not had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person;
- (9) Documentation of the criminal records check, except for persons licensed by the NH board of nursing pursuant to RSA 326-B as allowed by RSA 151:2-d, VI; and
- (10) Documentation that the individual or entity is not on the List of Excluded Individuals and Entities, maintained by the U.S. Department of Health and Human Services Office of Inspector General per 42 USC 1320-a7 or on the BEAS registry maintained by the department's bureau of elderly and adult services per RSA 161-F:49.

(m) An individual need not re-disclose any of the matters in (l)(8) and (l)(9) above if the documentation is available and the department has previously reviewed the material and granted a waiver so that the individual can continue employment.

Source. #9856-A, eff 1-26-11

He-P 803.19 Resident Records.

- (a) The licensee shall maintain a legible, current and accurate record for each resident based on services provided at the nursing home.
- (b) At a minimum, resident records shall contain the following:
 - (1) A copy of the resident's admission agreement and all documents required by He-P 803.15(c);
 - (2) Identification data, including:
 - a. Vital information including the resident's name, date of birth, and marital status;
 - b. Resident's religious preference, if known;
 - c. Resident's veteran status if known; and

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- d. Name, address and telephone number of an emergency contact person;
 - (3) The name and telephone number of the resident's licensed practitioner(s);
 - (4) Resident's health insurance information;
 - (5) Copies of any executed legal orders and directives, such as guardianship orders issued under RSA 464-A, a durable power of attorney for healthcare, or a living will;
 - (6) A record of the health examination(s) in accordance with He-P 803.15(h);
 - (7) Written, dated and signed orders for the following:
 - a. All medications, treatments and special diets; and
 - b. Laboratory services and consultations;
 - (8) Results of any laboratory tests, or consultations;
 - (9) All assessments and care plans, and documentation that the resident and the guardian or agent, if any, has participated in the development of the care plan;
 - (10) Documentation of informed consent;
 - (11) All admission and progress notes;
 - (12) Documentation of any alteration in the resident's daily functioning such as:
 - a. Signs and symptoms of illness; and
 - b. Any action that was taken including practitioner notification;
 - (13) Documentation of any medical or specialized care;
 - (14) Documentation of unusual incidents;
 - (15) The consent for release of information signed by the resident, guardian or agent, if any;
 - (16) Discharge planning and referrals as applicable;
 - (17) Transfer or discharge documentation, including notification to the resident, guardian or agent, if any, of transfer or discharge;
 - (18) Room change documentation, including notification to the resident, guardian or agent, if any, and if applicable;
 - (19) The medication record as required by He-P 803.16(y) and (ac); and
 - (20) Documentation of a resident's refusal of any care or services.
- (c) Resident records and resident information shall be kept confidential and only provided in accordance with law.
- (d) The licensee shall develop and implement a written policy and procedure document that specifies the method by which release of information from a resident's record shall occur.
- (e) Resident records shall be available to health care workers and any other person authorized by law or rule to review such records

(f) When not being used by authorized personnel, resident records shall be safeguarded against loss or unauthorized use or access.

(g) Records shall be retained for 4 years after discharge, except for records of Medicaid residents, which shall be retained for 6 years from the date of service or until the resolution of any legal action(s) commenced during the 6-year period, whichever is longer.

(h) The licensee shall arrange for storage of, and access to, resident records as required by (g) above in the event the nursing home ceases operation.

Source. #9856-A, eff 1-26-11

He-P 803.20 Food Services.

(a) The licensee shall provide food services that:

(1) Meet the U.S. Department of Agriculture recommended dietary allowance as specified in the “2005 Dietary Guidelines for Americans”;

(2) Provide the nutritional needs of each resident;

(3) Meet the special dietary needs associated with health or medical conditions for each resident as identified by the health examination required by He-P 803.15(h);

(4) Include provision of a food service manager who shall;

a. Be responsible for the day to day operation of the kitchen; and

b. Have knowledge of the nutritional requirements for residents and of the planning and preparation of prescribed diets;

(5) Include facilities and equipment for meal delivery and assisted feeding, as applicable; and

(6) Include dining facilities that have eating areas sufficient in size to provide seating for at least 50% of the licensed capacity.

(b) Each resident shall be offered at least 3 meals in each 24-hour period when the resident is in the licensed premises unless contraindicated by the resident’s care plan.

(c) Snacks shall be available between meals and at bedtime if not contraindicated by the resident’s care plan.

(d) If a resident refuses the item(s) on the menu, a substitute shall be offered.

(e) Menus, including beverages for regular and therapeutic diets, shall be planned and written for at least 2 weeks in advance of serving.

(f) Each day’s menu shall be posted in a place accessible to food service personnel and residents.

(g) A listing of the diet orders and allowed foods for each resident shall be available to personnel.

(h) A dated record of menus as served shall be maintained for at least 3 months.

(i) The licensee shall provide therapeutic diets to residents only as directed by a licensed practitioner or other professional with prescriptive authority.

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(j) Residents requiring therapeutic diets shall have an assessment of nutritional status by a qualified dietitian or dietary technician at least quarterly.

(k) If a resident has a pattern of refusing to follow a prescribed diet, personnel shall document the reason for the refusal in the resident's medical record and notify the resident's licensed practitioner.

(l) For the purposes of emergency preparedness, each licensee shall have the following supplies of foods maintained on the premises for the average daily census:

- (1) Enough refrigerated, perishable foods for a 3-day period;
- (2) Enough non-perishable foods for a 7-day period; and
- (3) Enough drinking water for a 3-day period.

(m) All food and drink provided to the residents shall be:

- (1) Safe for human consumption and free of spoilage or other contamination;
- (2) Stored, prepared and served in a manner consistent with safe food handling practices for the prevention of food borne illnesses, including those set forth in He-P 2300;
- (3) Served at the proper temperatures;
- (4) Labeled, dated and stored at proper temperatures; and
- (5) Stored so as to protect it from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.

(n) The use of outdated, unlabeled food or canned goods that have damage to their hermetic seal shall be prohibited and such goods shall be immediately discarded or distinctly segregated from the usable food.

(o) All food not in the original package shall be stored in labeled and dated containers designed for food storage.

(p) All work surfaces shall be cleaned and sanitized after each use.

(q) All dishes, utensils and glassware shall be in good repair, cleaned and sanitized after each use and properly stored.

(r) All food service equipment shall be kept clean and maintained according to manufacturer's guidelines.

(s) If soiled linen is transported through food service areas, the linen shall be in an impervious container.

(t) Garbage or trash in the kitchen area shall be placed in lined containers with covers.

(u) All nursing home personnel involved in the preparing and serving of food shall wash their hands and exposed portions of their arms with liquid soap and running water before handling or serving food.

(v) Regularly scheduled training programs including sanitation and safety shall be made available to personnel. Information as to the content and length of this training shall be documented and kept in employee records.

Source. #9856-A, eff 1-26-11

He-P 803.21 Restraints.

(a) For CMS certified nursing homes, the use of restraints shall be permitted as allowed by 42 CFR 483.13(a).

(b) For all other facilities, the requirements in (c) through (g) shall apply.

(c) When physical restraints are used, the following requirements shall be met:

(1) Physical restraints shall be used only after less restrictive measures have been found to be ineffective to protect the resident or others from harm;

(2) Except as allowed in (d) below, physical restraints shall be ordered for a specified and limited time by a licensed practitioner; and

(3) The order for the physical restraints in (2) above may be verbal and shall:

a. Be obtained by a licensed nurse before the physical restraint is administered; and

b. Be followed with the licensed practitioner's signature within 14 days.

(d) In an emergency situation, physical restraints may be authorized by a professional staff member designated by the facility in accordance with established policy and procedure under He-P 803.15(p)(3) as follows:

(1) The designated staff member shall promptly report the restraint use and the resident's behavior to the resident's licensed practitioner; and

(2) The designated staff member shall document the use of restraints in the resident's clinical record, in accordance with (g) below.

(e) When chemical restraints are used, the following requirements shall be met:

(1) Chemical restraints shall be used only after less restrictive measures have been found to be ineffective to protect the resident or others from harm;

(2) Chemical restraints shall be ordered for a specified and limited time by a licensed practitioner;

(3) The order for the chemical restraints can be verbal and shall:

a. Be obtained by a licensed nurse before the chemical restraint is administered; and

b. Be followed with the licensed practitioner's signature within 14 days;

(4) Medication used as a chemical restraint may only be administered by a licensed nurse or licensed practitioner;

(5) Standing orders for medications utilized as chemical restraints shall be prohibited; and

(6) It shall be the responsibility of the licensed nurse or licensed practitioner administering the chemical restraint to document the administration of the medication as specified in He-P 803.16(y) and (ac).

(f) When mechanical restraints are used, the following requirements shall be met:

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- (1) Mechanical restraints shall be used only when less restrictive measures have been found to be ineffective in protecting the resident or others from harm;
- (2) Mechanical restraints shall be ordered for a specific and limited time by a licensed practitioner and the order shall include:
 - a. The type of restraint to be used;
 - b. The reason for the restraint; and
 - c. The time intervals at which facility personnel shall check the resident's well-being and the placement and position of the restraint;
- (3) Standing orders for the use of mechanical restraints shall be prohibited;
- (4) Mechanical restraints shall not be applied in a manner that impedes circulation; and
- (5) Locked, secured or alarmed doors or elevators, or units within a nursing home, anklets, bracelets and similar devices that cause a door to automatically lock when approached, thereby preventing a resident from freely exiting the nursing home or unit within shall not be considered restraints provided they meet the requirements of the applicable building and fire safety codes and are documented in the care plan.

(g) The use of all restraints shall be documented in the resident's clinical record according to facility policy, including:

- (1) The behavior and actions of the resident that necessitated the use of a restraint;
- (2) The authorization given to restrain the resident;
- (3) The type of restraint used;
- (4) The length of time the resident was restrained;
- (5) The effects of the restraint on the resident;
- (6) The report to the resident's licensed practitioner and all actions taken; and
- (7) Any orders from the resident's licensed practitioner.

Source. #9856-A, eff 1-26-11

He-P 803.22 Resident Transfer or Discharge. Transfers and discharges shall be done in accordance with RSA 151:26.

Source. #9856-A, eff 1-26-11

He-P 803.23 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 documented procedures for:

- (1) Proper hand washing techniques;

- (2) The utilization of standard precautions, as specified by the United States Centers for Disease Control and Prevention “2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings” (June 2007);
 - (3) The management of residents with infectious or contagious diseases or illnesses;
 - (4) The handling, transport and disposal of those items identified as infectious waste in Env-Sw 103.28;
 - (5) Reporting of infectious and communicable diseases as required by He-P 301; and
 - (6) Maintenance of a sanitary physical environment.
- (c) The infection control education program shall:
- (1) Be completed by all new and current employees of the facility on an annual basis; and
 - (2) Address the:
 - a. Cause of infections;
 - b. Effect of infections;
 - c. Transmission of infections; and
 - d. Prevention and containment of infections.
- (d) Direct care personnel or employees infected with a disease or illness transmissible through food, saliva, fomites or droplets, shall not work in food service or provide direct care without personal protection equipment to prevent disease transmission until they are no longer contagious.
- (e) Direct care personnel or employees infected with scabies or lice shall not provide direct care to residents or work in food services until such time as they are no longer infected.
- (f) Pursuant to RSA 141-C:1, employees with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the employee is receiving tuberculosis treatment and has been determined to be noninfectious by a licensed practitioner.
- (g) Employees 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 bandage.
- (h) The licensee shall immunize all consenting residents for influenza and pneumococcal disease and all consenting personnel for influenza in accordance with RSA 151:9-b and report immunization data to the department’s immunization program.

Source. #9856-A, eff 1-26-11

He-P 803.24 Quality Improvement.

- (a) The nursing home shall establish an interdisciplinary quality improvement committee which:
- (1) Shall have a minimum of 3 members, including the medical director, an individual representing nursing and an individual representing administration;
 - (2) Shall meet at least quarterly to evaluate quality improvement activities; and

- (3) Shall make recommendations to the administrator to improve the quality of care.
- (b) The quality improvement committee shall be responsible for:
 - (1) Identifying whether actual or potential quality deficiencies are present that require action;
 - (2) Developing plans of action to correct the deficiencies identified in (1) above; and
 - (3) Monitoring the effect of the corrections to assure that they remediate the deficiencies identified in (1) above.

Source. #9856-A, eff 1-26-11

He-P 803.25 Sanitation.

- (a) The licensee shall maintain a clean, safe and sanitary environment throughout the licensed nursing home premises.
- (b) The furniture, floors, ceilings, walls, and fixtures shall be clean, sanitary and in good repair.
- (c) A supply of potable water shall be available for human consumption 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 residents.
- (e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations, as required in the AIA "Guidelines for Design and Construction of Health Care Facilities," Nursing Facilities chapter, 2006 edition, and summarized as follows:
 - (1) 105-120 degrees Fahrenheit for clinical areas, representing the minimum and maximum allowable temperatures;
 - (2) 120 degrees Fahrenheit for dietary areas, except that provisions shall be made to provide 180 degrees Fahrenheit rinse water at the warewasher, which may be by separate booster, unless a chemical rinse is provided; and
 - (3) 160 degrees Fahrenheit for laundry by steam jet or separate booster heater, unless a process which allows cleaning and disinfection of linen with decreased water temperatures is used which meets the designed water temperatures as specified by the manufacturer.
- (f) All resident bathing and toileting facilities shall be cleaned and disinfected to prevent illness or contamination.
- (g) Cleaning solutions, compounds and substances considered hazardous or toxic materials, as defined in RSA 147-A:2, VII, shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place separate from food, medications and program supplies.
- (h) Toxic materials shall not be used in a way that contaminates food, equipment or utensils or in any way other than in full compliance with the manufacturer's labeling.
- (i) Only individuals 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 it inaccessible to insects, rodents, outdoor animals and nursing home 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 times.

(m) The following requirements shall be met for laundry services:

(1) Dirty laundry shall not be permitted to contaminate 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 that are contaminated with infectious waste under Env-Sw 103.28 shall be handled as infectious waste.

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

(o) Cleaning supplies shall be stored in dust-free and moisture-free storage areas.

(p) Any nursing home that has its own water supply and whose water has been tested and has failed to meet the acceptable levels identified in this section, or as required by the department of environmental services, shall notify the department upon receipt of notice of a failed water test.

Source. #9856-A, eff 1-26-11

He-P 803.26 Physical Environment.

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

(b) Equipment providing heat within a nursing home including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood furnace or boiler or pellet furnace or boiler shall:

(1) Maintain a temperature of at least 70 degrees Fahrenheit during the day if residents are present and 65 degrees Fahrenheit at night; 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.

(c) Electric heating systems shall be exempt from (b)(2) above.

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

(1) Such devices are used only in employee areas where personnel are present and awake at all times; and

(2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.

(e) Any heating device other than a central plant shall be designed and installed so that:

(1) Combustible material cannot be ignited by the device or its appurtenances;

(2) If fuel-fired, such heating devices comply with the following:

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- a. They shall be chimney or vent connected;
- b. They shall take air for combustion directly from outside; and
- c. They shall be designed and installed to provide for complete separation of the combustion system from the atmosphere of the occupied area; and

(3) The heating device has safety features to immediately stop the flow of fuel and shut down the equipment in case of either excessive temperatures or ignition failure.

(f) Unvented fuel-fired heaters shall not be used in any nursing home.

(g) Plumbing shall be sized, installed, and maintained in accordance with the provisions of the International Plumbing Code, as specified in the State Building Code under RSA 155-A:1, IV, as amended by the Building Code Review Board pursuant to RSA 155-A:10, V.

(h) Screens shall be provided for doors and windows that are left open to the outside.

(i) Doors that are self-closing and remain closed when not in use are exempt from the requirement in (h) above.

(j) The nursing home shall have a telephone to which the residents have access.

(k) The number of sinks and toilets shall be in a ratio of one for every 6 individuals, unless personnel have separate bathroom facilities not used by residents.

(l) Each bathroom shall be equipped with:

- (1) Soap dispenser;
- (2) Paper towels or a hand-drying device providing heated air;
- (3) Hot and cold running water; and
- (4) A door that either slides or swings, not a folding door or curtain.

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

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

(o) Each resident bedroom shall have natural lighting provided by at least one operable window with a screen to the outside, which is of a size equivalent to or greater than 8% of the room's gross square footage.

(p) There shall be at least 100 square feet in each private-bedroom and at least 80 square feet for each resident in a semi-private bedroom, exclusive of space required for closets, wardrobes and toilet facilities.

(q) Each bedroom shall:

- (1) Contain no more than 2 beds if constructed after the 2011 adoption of these rules;
- (2) Have its own separate entry to permit the resident to reach his/her bedroom without passing through the room of another resident;

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- (3) Have a side hinge door and not a folding or sliding door or a curtain unless it meets specific exceptions allowed by the codes referenced in He-P 803.07(e);
 - (4) Not be used simultaneously for other purposes; and
 - (5) Be separated from halls, corridors and other rooms by floor to ceiling walls.
- (r) The licensee shall provide the following for the residents' use, as needed:
- (1) A bed appropriate to the needs of the resident;
 - (2) A mattress that complies with Saf-C 6000;
 - (3) Clean linens, blankets and a pillow;
 - (4) A bureau;
 - (5) A mirror;
 - (6) A bedside table;
 - (7) A lamp;
 - (8) A chair;
 - (9) A closet or storage space for personal belongings; and
 - (10) Window blinds, shades or curtains that provide privacy.
- (s) A resident may refuse any of the items in (r) above with appropriate documentation.
- (t) The resident may use his or her own personal possessions provided they do not pose a risk to the resident or others.
- (u) The licensee shall provide the following rooms to meet the needs of residents:
- (1) One or more living rooms or multi-purpose rooms; and
 - (2) Dining facilities with a seating capacity capable of seating at least 50% of the residents.
- (v) Each licensee shall have a communication system in place so that all residents can effectively contact personnel when they need assistance with care or in an emergency.
- (w) Lighting shall be available to allow residents to participate in activities such as reading, needlework or handicrafts.
- (x) If the nursing home admits residents under the age of 18, each age group shall have separate and distinct units.
- (y) If the nursing home admits residents between the age of 10 and 17 years, each gender shall have separate and distinct units.
- (z) The nursing home shall comply with all state and local codes and ordinances for:
- (1) Zoning;
 - (2) Building;

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- (3) Health;
- (4) Fire;
- (5) Waste disposal; and
- (6) Water.

(aa) The nursing home shall be accessible at all times of the year.

(ab) The nursing home shall provide housekeeping and maintenance adequate to protect residents, personnel and the public.

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

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

(ae) There shall be a secondary power source to provide emergency power pursuant to the Electrical Systems chapter of NFPA 99, Health Care Facilities Code, and The Standard for Emergency and Standby Power Systems, NFPA 110, as adopted by the commissioner of the department of safety in Saf-C 6000.

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

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

(ah) Any locked door providing egress from a resident room and/or means of egress within a nursing home shall meet the requirements of the Health Care Occupancy chapter of NFPA 101, Life Safety Code, as adopted by the commissioner of the department of safety in Saf-C 6000.

(ai) Delayed egress doors on locked units shall be equipped with signage and locking devices, which shall:

- (1) Unlock upon actuation of the automatic fire detection and sprinkler system;
- (2) Unlock upon loss of power; and
- (3) No more than one such device may be located in any egress path.

(aj) Sterile supplies and equipment shall not be mixed with unsterile supplies.

Source. #9856-A, eff 1-26-11

He-P 803.27 Emergency and Fire Safety.

(a) An emergency and fire safety program shall be developed and implemented to provide for the safety of residents and personnel covering all matters of safety and fire protection and an emergency response plan, including:

- (1) The emergency procedures required by the emergency response plan shall include, but are not limited to, evacuation routes, emergency notification numbers, and emergency instructions and shall be posted in locations accessible to personnel and visitors;

- (2) The nursing home fire safety plan shall provide for the following:
 - a. Use of alarms;
 - b. Transmission of alarm to fire department;
 - c. Emergency phone call to fire department;
 - d. Response to alarms;
 - e. Isolation of fire;
 - f. Evacuation of immediate area;
 - g. Evacuation of smoke compartment;
 - h. Preparation of floors and building for evacuation; and
 - i. Extinguishment of the fire;
 - (3) Ensuring that the fire safety and evacuation plans are available to all supervisory personnel;
 - (4) Ensuring that all employees receive in-service annual training to clarify their responsibilities in carrying out the emergency plan;
 - (5) The required plan shall be readily available at all times;
 - (6) Conducting fire drills, including the transmission of a fire alarm signal and simulation of emergency fire situation, as follows:
 - a. Infirm, bedridden, or cognitively impaired residents shall not be required to be moved during drills to safety areas or to the exterior of the building;
 - b. Drills shall be conducted quarterly on each shift to familiarize nursing home personnel with the signals and emergency action required under varied conditions; and
 - c. When drills are conducted between 9:00 p.m./2100 hours and 6:00 A.M./0600 hours, a coded announcement may be used instead of audible alarms; and
 - (7) Documenting emergency and fire drills shall include:
 - a. The names of the personnel involved;
 - b. The time, date, month, and year the drill was conducted;
 - c. The exits utilized;
 - d. The total time required to evacuate the building or the time needed to complete the emergency or fire drill or both; and
 - e. Any problems encountered and corrective actions taken to rectify problems.
- (b) All nursing homes shall meet the health care chapter of NFPA 101 as adopted by the commissioner of the department of safety in Saf-C 6000.
- (c) Extension cords shall be prohibited except as allowed in accordance with Saf-C 6000.

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(d) Licensees shall notify the department by phone, fax or e-mail within one business day and in writing within 72 hours, of any fire, activation of the emergency response plan or environmental incident, excluding a false alarm, which requires either an emergency response to the licensed premises by the local emergency services, or the evacuation of the licensed premises.

(e) The written notification in (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 damage;
- (3) A description of events preceding and following the incident;
- (4) The name of any employee or resident who was evacuated as a result of the incident, if applicable;
- (5) The name of any employee or resident who required medical treatment as a result of the incident, if applicable; and
- (6) The name of the individual the licensee wishes the department to contact if additional information is required.

(f) Oxygen shall be stored in the following manner:

- (1) Oxygen tanks shall be separated from combustibles or incompatible materials by either:
 - a. A minimum distance of 20 feet; or
 - b. A minimum distance of 5 feet if the entire building is equipped with an automatic sprinkler system installed in accordance with Saf-C 6000;
- (2) Oxygen tanks shall be secured in a manner that prevents damage to the valves and cylinder;
- (3) Portable liquid oxygen shall be used and stored in accordance with Compressed Gas Association's "Guide for the Safe Storage, Handling, and Use of Small Portable Liquid Oxygen Systems in Health Care Facilities," CGA P-2.7, edition 3 (4/9/08); and
- (4) Any area where oxygen is stored or is in use shall have signage indicating that oxygen is in use or being stored.

(g) If the licensee has chosen to allow smoking under He-P 803.14(w), an outside location or a room used only for smoking shall be provided which:

- (1) Has a dedicated ventilation system, so that smoke or odors cannot escape or be detected outside the designated smoking room;
- (2) Has walls and furnishings constructed of non-combustible materials;
- (3) Has metal waste receptacles and safe ashtrays; and
- (4) Is in compliance with the requirements of RSA 155:64-77, the Indoor Smoking Act and He-P 1900.

(h) Each licensee shall:

- (1) Annually review, and revise, as needed, its emergency plan;

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(2) Submit its emergency plan to the local emergency management director for review and approval:

- a. When initially written; and
- b. Whenever the plan is revised;

(3) Maintain documentation on-site which establishes that the emergency plan has been approved as required under (2) above; and

(4) Document in each employee’s personnel record, that the employee attended an annual in-service education program on the licensee’s emergency plan.

(i) Non-ambulatory persons shall not be housed above the first floor unless the building has an automatic sprinkler system or is of type I or type II (222) construction as referenced in NFPA 101 as adopted by the commissioner of the department of safety in Saf-C 6008.03(a).

Source. #9856-A, eff 1-26-11

APPENDIX

Rule	Specific State or Federal Statutes the Rule Implements
He-P 803.01 – He-P 803.03	RSA 151:9,I(a)(b)
He-P 803.04 – He-P 803.07	RSA 151:2,I and II and RSA 151:9,I
He-P 803.08	RSA 151:9,I(a)
He-P 803.09	RSA 151:9,I(e) and RSA 151:6-a
He-P 803.10	RSA 151:9,I(a) and (b)
He-P 803.11	RSA 151:9,I(e) and RSA 151:6
He-P 803.12	RSA 151:9,I(f)(g)(l)(m)
He-P 803.13	RSA 151:9,I(f)(h)(l)
He-P 803.14 –He-P 803.27	RSA 151:9,I(a)

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