

Notice Number 2024-78

Rule Number He-P 802

<p>1. Agency Name & Address:</p> <p>Department of Health & Human Services Bureau of Licensing & Certification Health Facilities Administration 129 Pleasant Street, Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 151:2, I(a); RSA 151:9, I(a)-(i), (k)-(m), & (o); RSA 151:9, II-a</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u> X </u></p> <p>Repeal _____</p> <p>Readoption <u> X </u></p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **Rules for Hospitals and Special Health Care Services**

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

He-P 802 sets forth the licensing requirements for all hospitals pursuant to RSA 151:2, I(a) and the special health care services offered by hospitals pursuant to RSA 151:2-e.

The Department of Health and Human Services (Department) is proposing to adopt, readopt, readopt and renumber, readopt with amendment, or readopt with amendment and renumber all of the rules in He-P 802. Changes to He-P 802 include:

- **Updating the rule for better clarity, program integrity, and to be consistent with language used in other licensing rules that have been more recently adopted;**
- **Amending He-P 802.02 on the scope by updating a citation;**
- **Amending He-P 802.03 on definitions by:**
 - **Updating the definitions of “abuse” by amending its subcategories of “emotional abuse” and “sexual abuse”, “chemical restraint”, “commissioner”, “critical incident stress management (CISM)”, “independent contractor”, “informed consent”, “license”, “life safety code”, “owner”, “performance-based design”, “physical restraint”, and “special health care services”;**
 - **Adding the definitions of “acute care hospital”, “controlling interest”, “enforcement action”, “good cause”, “health care services”, “in-service”, “long term care hospitals (LTCH)”, “material adverse impact”, “medication error”, “notice to correct”, “personal representative”, “rehabilitation”, “retention”, “service area”, “State Building Code”, “State Fire Code”, “state monitoring”, and “surgery”; and**
 - **Deleting the definition of “license certificate”;**
- **Adopting new section He-P 802.04 on notice to critical access hospitals to align with RSA 151:4-a, II, pursuant to 2020, 39:64, effective 7-1-20. This statute is being implemented in He-P 812 for the first time;**

- **Amending He-P 802.05, formerly He-P 802.04, on initial license application requirements by incorporating by reference the February 2023 edition of the “Application for Residential Health Care license or Special Health Care Services”, adding and updating additional requirements for submission with the application, and updating citations;**
- **Amending He-P 802.06, formerly He-P 802.05, on processing of applications and issuance of licenses by updating citations and making other minor revisions;**
- **Amending He-P 802.07, formerly He-P 802.06, on license expirations and procedures for renewals by aligning the license expiration with RSA 151:5 and updating the requirements of what shall be provided with the renewal application to reflect revisions to RSA 153:5 and Saf-C 6005 of the Department of Safety;**
- **Amending He-P 802.08, formerly He-P 802.07, on hospital construction, modifications, or structural alterations by adding and amending various requirements for clarity;**
- **Amending He-P 802.09, formerly He-P 802.08, on requirements for organizational changes by updating the requirements on when the licensee should obtain a new or revised license from the Department, what documentation that the licensee shall provide to the Department when there is a change in administrator or medical director, and by making other substantive revisions for clarity;**
- **Amending He-P 802.10, formerly He-P 802.09, on inspections by making clarifying revisions;**
- **Amending He-P 802.12, formerly He-P 802.11, on complaints by making a citation revision;**
- **Amending He-P 802.13, formerly He-P 802.12, on administrative remedies by adding “imposing fines” as a type of administrative remedy and updating the requirements surrounding plans of correction;**
- **Amending He-P 802.14, formerly He-P 802.13, on enforcement actions and hearings by making minor yet substantive clarifying revisions, adding a fine for failure to notify the Department prior to a change in the administrator or medical director, and clarifying that RSA 541 shall govern further appeals of Department decisions;**
- **Amending He-P 802.15, formerly He-P 802.14, on duties and responsibilities of all licensees by adding that the licensee shall have a personnel policy establishing the procedures for the prevention, detention, and resolution of substance abuse, misuse, and diversion and making other minor substantive clarifying revisions;**
- **Amending He-P 802.17, formerly He-P 802.16, on organization and administration by making minor editorial and substantive revisions;**
- **Amending He-P 802.18, formerly He-P 802.17, on personnel by updating the criminal background check requirements and making other citation and editorial revisions;**
- **Amending He-P 802.19, formerly He-P 802.18, on required services by updating a citation;**
- **Amending He-P 802.24, formerly He-P 802.23, on quality assurance and performance improvement by making citation revisions;**

- Amending He-P 802.26, formerly He-P 802.25, on sanitation by updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Hospitals” and the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference;
- Amending He-P 802.27, formerly He-P 802.26, on physical environment by clarifying the language surrounding the State Fire Code;
- Amending He-P 802.28, formerly He-P 802.27, on patient care units and patient rooms by updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Hospitals” and the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference;
- Amending He-P 802.29, formerly He-P 802.28, on life safety and fire safety procedures by adding that all hospital’s shall meet the appropriate chapter of NFPA 101, and the appropriate chapters of the State Fire Code and the State Building Code;
- Amending He-P 802.30, formerly He-P 802.29, on emergency preparedness by making minor clarifying revisions;
- Amending He-P 802.31, formerly He-P 802.30, on psychiatric units by making citation revisions;
- Amending He-P 802.34, formerly He-P 802.33, on surgical services by updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Hospitals” and the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference;
- Amending He-P 802.36, formerly He-P 802.35, on a critical access hospital by making citation revisions and adding the exemption for a critical access hospital to have a full-time medical director;
- Amending He-P 802.37, formerly He-P 802.36, on a psychiatric hospital by making citation revisions;
- Amending He-P 802.38, formerly He-P 802.37, on a rehabilitation hospital by making citation revisions and updating the revision date from 2018 to 2022 of the “Guidelines for Design and Construction of Hospitals” and the “Guidelines for Design and Construction of Outpatient Facilities” incorporated by reference;
- Amending He-P 802.39, formerly He-P 802.38, on a freestanding hospital emergency facility by making citation revisions; and
- Adopting new section He-P 802.43 on long term care hospitals.

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

Groups affected by this rule include owners and operators of hospitals, hospital employees, volunteers, and independent contractors, and residents who receive hospital services and their families.

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

Rule	Specific State or Federal Statutes the Rule Implements
He-P 802.01 – He-P 802.03	RSA 151:9, I(a) and (b)
He-P 802.04	RSA 151:4-a, II
He-P 802.05 – He-P 802.08	RSA 151:2, I and II and RSA 151:9, I
He-P 802.09	RSA 151:9, I(a)
He-P 802.10	RSA 151:9, I(e) and RSA 151:6-a
He-P 802.11	RSA 151:9, I(a) and (b)
He-P 802.12	RSA 151:9, I(e) and RSA 151:6
He-P 802.13	RSA 151:9, I(f), (g), (l), and (m)
He-P 802.14	RSA 151:9, I(f), (h), and (l)
He-P 802.15 – He-P 802.43	RSA 151:9, I(a)

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

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

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

The proposed rules may be viewed and downloaded at:

<https://www.dhhs.nh.gov/doing-business-dhhs/legal-services/administrative-rules/nh-administrative-rules-public-comment>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, June 11, 2024**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, June 4, 2024 at 1:00 p.m.**

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

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

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

FIS # 24:063, dated April 10, 2024

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

Not applicable with respect to He-P 802.04 or He-P 802.43, as these are new rules. The remaining proposed rules, when compared to the existing rules, may increase costs to independently-owned businesses by an indeterminable amount.

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

No federal mandate, no impact on state funds.

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

The Department of Health and Human Services states that He-P 802.04 is a direct result of RSA 151:4-a, II, which establishes notice requirements for licensure near critical access hospitals. Accordingly, any costs or benefits are attributable to statute and rather than to the rule. With respect to He-P 802.43, which is also a new rule, the Department states that hospitals that choose to operate a long-term care hospital (LTCH) unit may incur indeterminable costs in the areas of daily operation and staffing.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

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

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

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

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

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