

Notice Number 2024-79

Rule Number He-P 810

1. Agency Name & Address:

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

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

3. Federal Authority: _____

4. Type of Action:

Adoption _____

Repeal _____

Readoption _____

Readoption w/amendment X

5. Short Title: **Birth Center Rules**

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 810 sets forth the licensing and operating requirements for birthing centers pursuant to RSA 151:2, I(d).

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-P 810. Amendments to the existing He-P 802, and those sections without amendments, 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;**
- **Making no revisions to He-P 810.01 on the purpose of He-P 810;**
- **Making no revisions to He-P 810.02 on the scope of He-P 810;**
- **Updating He-P 810.03 on definitions by:**
 - **Adding the definitions of “addition”, “advance directive”, “advanced practice registered nurse”, “adverse medication reaction”, “affiliated or related parties”, “agent”, “clinical laboratory improvement amendments (CLIA)”, “contracted employee”, “controlling interest”, “critical access hospital (CAH)”, “critical incident stress management (CISM)”, “days”, “demonstrated competency”, “direct care”, “discharge”, “do not resuscitate order (DNR order)”, “employee”, “enforcement action”, “equipment”, “facility”, “good cause”, “guardian”, “health care services”, “incident command system (ICS)”, “independent contractor”, “in-service”, “informed consent”, “laboratory”, “life safety code”, “material adverse impact”, “medication error”, “modification”, “notice to correct”, “orders”, “over-the-counter medication”, “patient”, “patient record”, “patient rights”, “performance-based design”, “personal representative”, “point of care testing (POCT)”, “point of care devices”, “professional staff”, “protective care”, “qualified personnel”, “reconstruction”, “renovation”, “repair”, “reportable incident”, “retention”, “service area”, “State Building Code”, “State Fire Code”, “state monitoring”, “transfer”, “underwriters laboratories (UL) listed”, and “volunteer”;**
 - **Amending the definitions of “abuse”, “administer”, “administrator”, “admission”, “assessment”, “care plan”, “change or ownership”, “direct care personnel”, “exploitation”, “license”, “licensed or certified practitioner”, “licensed premises”,**

“licensee”, “medical director”, “neglect”, “owner”, “personnel”, “physician”, “pro re nata (PRN) medication”, and “service”; and

- **Deleting the definitions of “client”, “license certificate”, and “reportable incident”;**
- **Adding new section He-P 810.04 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 810 for the first time;**
- **Updating He-P 810.05, formerly He-P 810.04, on license application requirements by incorporating by reference the February 2023 edition of the Department Form “Application for Residential, Health Care License or Special Health Care Services” and adding and updating additional requirements for submission with the application;**
- **Updating He-P 810.06, formerly He-P 810.05, on processing of applications and issuance of licenses by making reference revisions, clarifying the necessary inspection, and adding written notification of denial requirements;**
- **Updating He-P 810.07, formerly He-P 810.06, on license expirations and procedures for renewals by aligning the license expiration with RSA 151:5, updating the requirements of what shall be provided with the renewal application to reflect revisions to RSA 153:5 and Saf-C 6005 of the Department of Safety, and updating what a licensee shall do if they do not submit a complete renewal application prior to expiration and do not intend to cease operation;**
- **Updating He-P 810.08, formerly He-P 810.07, on birthing center construction, modifications, or structural alterations by adding and amending various requirements for clarity;**
- **Updating He-P 810.09, formerly He-P 810.08, on birthing center requirements for organizational or service changes by updating when the Department shall conduct an inspection, amending the requirements on when the licensee shall apply for 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, adding when the Department shall be provided notification if a license ceases operation, and by making other clarifying revisions;**
- **Updating He-P 810.10, formerly He-P 810.09, on inspections by making clarifying revisions;**
- **Updating He-P 810.11, formerly He-P 810.10, on waivers by adding that a waiver request shall include a reasonable explanation on why the rule should be waived, if applicable, and the period of time for which the waiver is sought and making other clarifying revisions;**
- **Updating He-P 810.12, formerly He-P 810.11, on complaints and investigations by adding a warning process for unlicensed facilities and making other clarifying revisions;**
- **Updating He-P 810.13, formerly He-P 810.12, on administrative remedies by clarifying the requirements surrounding plans of correction, adding an informal dispute resolution process and a state monitoring process, and moving the Department’s fines to He-P 810.14;**
- **Updating He-P 810.14, formerly He-P 810.13, on enforcement actions and hearings by adding the Department’s fines previously found in He-P 810.13, adding a 25% reduction of a fine paid within 10 days of written notice and correction of areas of non-compliance, or an**

- accepted and approved POC, and adding a fine for failure to notify the Department prior to a change in the administrator or medical director, and amending the criteria for denial, revocation, or immediate suspension of a license and eligibility for reapplication;
- **Updating He-P 810.15, formerly He-P 810.14, on duties and responsibilities of all licensees by updating and clarifying the duties and obligations of the licensee to include areas of policies and procedures, patient decision making, documentation, investigations, and reporting to the Department;**
 - **Updating He-P 810.16, formerly He-P 810.15, on required services by adding requirements of the administrator, adding the CLIA-waived laboratory testing requirements, and making other clarifying revisions;**
 - **Updating He-P 810.17, formerly He-P 810.16, on patient services by updating the information to be collected when a patient is admitted to a birthing center, adding additional postpartum care services, updating the medications allowed to be provided by a certified nurse midwife, a certified midwife, or another authorized person, adding additional information to be included in the discharge or transfer summary, adding the requirements for an emergency data sheet, moving what shall be included in a patient record to He-P 810.18, and making other clarifying revisions;**
 - **Adding new section He-P 810.18 on patient records which outlines what shall be included in a patient record, the retention, confidentiality, and storage of patient records, to include requirements previously found in He-P 810.17;**
 - **Updating He-P 810.19, formerly He-P 810.17, on medications by adding the requirements for various written policies and systems on medications, adding what shall be included in a medication order, what shall be done if a medication dose is changed, how over the counter medications shall be handled, and making other clarifying revisions;**
 - **Updating He-P 810.20, formerly He-P 810.18, on personnel by adding the requirements that the licensee shall ensure that a sufficient number of qualified personnel are present, specifying that job descriptions shall be developed and what they shall include, updating the requirements for all applicants for employment including volunteers and contractors who provide direct care, adding additional waiver requirements for the results of background checks, updating personnel orientation requirements, adding access to and the documentation of influenza immunization to consenting employees, adding requirements for personnel records, and making other clarifying revisions;**
 - **Updating He-P 810.21, formerly He-P 810.19, on quality improvement by making minor clarifying revisions;**
 - **Updating He-P 810.22, formerly He-P 810.20, on infection control by updating what the infection control education program shall address, adding the requirement of what a birthing center shall do in the event there is an incident of infectious disease reported, and making other clarifying revisions;**
 - **Updating He-P 810.23, formerly He-P 810.21, on sanitation by adding and updating various sanitation provisions;**
 - **Updating He-P 810.24, formerly He-P 810.22, on physical environment by adding that the facility shall be maintained to provide for the health, safety, and well-being of patients and**

personnel, adding a requirement on handwashing facilities, and making other clarifying revisions;

- **Updating He-P 810.25, formerly He-P 810.23, on fire safety by adding that birthing centers shall meet the appropriate chapter of NFPA 101, the State Fire Code, and the State building Code, updating the requirements for the required fire and safety program, adding the requirements for the use and storage of oxygen and other related gases, clarifying the requirements of drills, and making other clarifying revisions; and**
- **Updating He-P 810.26, formerly He-P 810.24, on emergency preparedness by clarifying the requirements of the emergency management committee and program, adding the requirement for a community-based disaster drill, and by making other clarifying revisions.**

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

Groups affected by this rule include owners and operators of birthing centers, providers of birthing centers, and those who receive such services.

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 810.01 - He-P 810.03 | RSA 151:9, I(a) & (b) |
| He-P 810.04 | RSA 151:4-a, II |
| He-P 810.05 - He-P 810.07 | RSA 151:9, I(c); RSA 151:4, II and III-a; RSA 151:5, I(c) |
| He-P 810.08 | RSA 151:9, I(a) & (e); RSA 151:9, III; RSA 151:6, II |
| He-P 810.09 | RSA 151:9, I(a) & (f) |
| He-P 810.10 | RSA 151:9, I(a) & (e); RSA 151:6, III; RSA 151:6-a |
| He-P 810.11 | RSA 151:9, I(a) & (b) |
| He-P 810.12 | RSA 151:9, I(a) & (e); RSA 151:6 |
| He-P 810.13 – He-P 810.14 | RSA 151:9, I(a), (f)-(i), (l) & (m); RSA 151:7; RSA 151:7-a; RSA 151:8 |
| He-P 810.15 – He-P 810.24 | RSA 151:9, I(a); RSA 151:20; RSA 151:21, RSA 151:22; RSA 151:29 |
| He-P 810.25 – He-P 810.26 | RSA 151:9, I(a); RSA 151:9, III |

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: **Thursday, June 6, 2024**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, May 30, 2024 at 11:00 a.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 # 24:071, dated April 17, 2024

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

When compared to the existing rules, the proposed rules will have an indeterminable impact on state general fund revenue and on costs incurred by independently-owned businesses.

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 810.04 is a direct result of RSA 151:4-a, II, which establishes notice requirements for licensure near critical access hospitals. Accordingly, any costs or benefits are attributable to statute and rather than to the rule.

A. To State general or State special funds:

Changes to the schedule of fines will have an indeterminable impact on state general fund revenue. The Department notes that any cost or benefit to the state will only be insofar as licensees are or have been in non-compliance with the relevant rule or law.

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 and benefits 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) Requiring certain independent contractors and volunteers to have a state criminal background check may have an indeterminable cost;
- (2) Granting permanent waivers to licensees may result in a small, indeterminable cost savings;
- (3) If a licensee opts to perform CLIA-waived laboratory testing, there may be an indeterminable cost as a result of complying with additional requirements including infection prevention, protocols, and training;
- (4) Facilities may incur administrative costs as a result of daily operation, recordkeeping, and reporting requirements;

- (5) Changes to the schedule of fines may result in increased or lowered costs to independently-owned businesses. The Department notes that fines are a rare occurrence and can be avoided through compliance with this rule and applicable law; and
- (6) Any training requirements that must be met may have a cost to the facility.

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

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