

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2021-121 Rule Number He-C 6920

<p>1. Agency Name & Address: Dept. of Health and Human Services Division of Economic and Housing Stability 129 Pleasant St., Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 170-E:7, V</u> 3. Federal Authority: <u>45 CFR § 98.1(a)(1); 45 CFR § 98.43</u> 4. Type of Action: <input type="checkbox"/> Adopt <input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.) <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input checked="" type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Criminal Records and Central Registry Check for License-Exempt Child Care Providers**

6. Contact person for copies and questions:

Name: **Nicole Burke** Title: **Rules Coordinator-
Administrative Rules Unit**
 Address: **Dept. of Health & Human Services
Administrative Rules Unit
129 Pleasant Street, Brown Bldg.
Concord, NH 03301** Phone #: **(603) 271-9640**

7. The rulemaking notice appeared in the Rulemaking Register on September 23, 2021

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number 2021-121

Rule Number He-C 6920

<p>1. Agency Name & Address:</p> <p>Dept. of Health and Human Services Bureau of Child Development and Head Start Collaboration 129 Pleasant Street Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 170-E:7, V</u></p> <p>3. Federal Authority: <u>45 CFR § 98.1(a)(1); 45 CFR § 98.43</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **Criminal Records and Central Registry Check for License-Exempt Child Care Providers**

6. (a) Summary of what the rule says and of any proposed amendments:

He-C 6920 specifies the requirements for the Department of Health and Human Services (DHHS) to conduct and act on criminal records and Central Registry checks for license-exempt child care providers, including requirements for confidentiality of information. The DHHS is proposing to readopt He-C 6920 with amendments to update the background record check requirements to ensure NH is in compliance with federal regulations as the federal Office of Child Care (OCC) indicated that New Hampshire was out of compliance by allowing child care workers/providers who were receiving DHHS reimbursement to work with children prior to receiving the result of background checks.

The DHHS proposes to readopt He-C 6920 to prevent expiration and put forth the following amendments to:

- **Update the applicable Division name, Bureau name, and Bureau mailing address;**
- **Update form names and numbers;**
- **Edit definitions to mimic those listed in other areas of He-C 6900;**
- **Include a provision that notifies licensed-exempt enrollees that a prospective child care worker/provider shall not work with children until the result of the worker/provider’s criminal history fingerprint-based background check is received and reviewed by the Bureau of Child Development and Head Start Collaboration (BCDHSC), and the individual is deemed eligible;**
- **Include a provision that, pending the result of the fingerprint-based criminal record check component, an employee may begin working with children only if the employee is under the supervision of someone deemed eligible as required by RSA 170-E:7 and provided the results of the “New Hampshire Health and Human Services Criminal History Record Information Authorization – License Exempt Child Care Form RSA 170-E:7 II” and/or the results of the NH Child Abuse and Neglect Central Registry Name search do not include any disqualifying information as described in RSA 170-E:7, III and IV; and**
- **Make editorial and minor substantive changes to clarify wording and restructure the format.**

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

License-exempt providers.

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 or Regulations the Rule Implements
He-C 6920.01	RSA 170-E:3-a; RSA 170-E:7
He-C 6920.02	RSA 170-E:3, I (a) – (g)
He-C 6920.03-He-C 6920.10	RSA 170-E:3-a; RSA 170-E:7

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

Name: **Nicole Burke** Title: **Rules Coordinator –
Administrative Rules Unit**

Address: **Dept. of Health and Human Services
Administrative Rules Unit
129 Pleasant Street, 2nd Floor
Concord, NH 03301** Phone #: **(603) 271-9640**
Fax#: **(603) 271-5590**
E-mail: Nicole.V.Burke@dhhs.nh.gov

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

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Wednesday, December 29, 2021**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Tuesday, December 21, 2021 at 10:30 am**
Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

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

FIS # 21:122, dated 11/10/2021

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

There is no difference in cost when comparing the proposed rule to the existing rule.

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

45 CFR 98.43 requires states to have requirements, policies, and procedures to require and conduct criminal background checks for child care staff members. This mandate does not impact state funds as child care providers are currently responsible for all fees associated with the background checks.

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

A. To State general or State special funds:
None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

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

The proposed rule He-C 6920 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.

Readopt with amendment He-C 6920, effective 2/21/12 (Document #10088), to read as follows:

PART He-C 6920 CRIMINAL RECORDS AND CENTRAL REGISTRY CHECK FOR LICENSE-EXEMPT CHILD CARE PROVIDERS

He-C 6920.01 Purpose. The purpose of this part is to describe the procedures and requirements used by the department of health and human services (DHHS), through the division of economic and housing stability (DEHS) and the bureau of child development and head start collaboration (BCDHSC), to conduct and act on criminal records and central registry checks for license-exempt child care providers, pursuant to RSA 170-E:3-a and RSA 170-E:7, and to set forth the requirements for confidentiality of any information obtained during those procedures.

He-C 6920.02 Scope. This part shall apply to the individuals, programs, staff and household members of all license-exempt child care providers listed in RSA 170-E:3, I (a) through (h) who have applied for or are receiving child care reimbursement from the state of New Hampshire.

He-C 6920.03 Definitions.

(a) “Applicant” means an individual or child care provider who applies for authorization to be reimbursed by the state of NH as an enrolled child care provider as described in (j) below and in accordance with He-C 6910.

(b) “Assistance group” mean the individuals who are residing in the same household whose needs and income are considered and combined together when determining eligibility and the amount of assistance for child care.

(c) “Authorized representative” means the person who is designated or authorized by a child care provider to act on behalf of that provider in matters related to billing DHHS for child care services provided and is not the parent of a child in the provider’s care who is receiving child care scholarship.

(d) “Background check” means the process of conducting central registry and criminal records searches pursuant to RSA 170-E:3-a and RSA 170-E:7.

(e) “Caretaker relative” means a relative, who is not the biological parent of a child, but is providing care and supervision of the child in the assistance group.

(f) “Central registry” means the state registry of founded reports of child abuse and neglect as established and defined under RSA 169-C:35.

(g) “Child care” means the act of providing supervision, food, activity, and rest for a child for a period less than 24 hours per day, in order to assist a parent, caretaker relative, or legal guardian in preparing for, securing, or maintaining employment or employment-related education or training apart from the child’s parent, caretaker relative, foster parent, or legal guardian.

(h) “Child care reimbursement” means the receipt of state funds by a provider of child care services on behalf of a family which meets the eligibility criteria of He-C 6910.

(i) “Criminal records” means information relative to conviction for felonies, misdemeanors, or violations maintained by the New Hampshire department of safety, division of state police as provided for

Edit. Move to after "legal guardian" and renumber so that it is in alphabetical order.

under RSA 106-B:14 and information relative to criminal convictions maintained in the Federal Bureau of Investigation fingerprint database.

(j) "Enrollment" means that a child care provider has met the requirements in He-C 6910.20 and is authorized to receive payment for services from DHHS.

(k) "Foster parent" means an individual who has a license or permit for foster family care, pursuant to He-C 6446.

(l) "License-exempt facility-based program" means a license-exempt child care provider pursuant to RSA 170-E:3, I (f) and (g) that is enrolled as a child care provider pursuant to He-C 6914.

(m) "Household member" means any individual, regardless of relationship, who lives with a private home provider.

(n) "Legal guardian" means an individual, who is given legal authority by a court and charged with the duty to provide care, custody, and supervision of a child.

(o) "Parent" means an individual who has a birth, adoptive, or stepparent relationship to a child or children, a foster parent as defined in (k) above, a legal guardian as defined in (n) above, or a caretaker relative as defined in (e) above.

(p) "Present threat" means that, based on the facts revealed in the background check or in the subsequent investigation, a reasonable person might conclude that the safety of children might be at risk.

(q) "License-exempt in-home home provider" means an individual who is:

- (1) Providing child care services in a private home;
- (2) Exempt from licensure pursuant to RSA 170-E:3(h); and
- (3) Either a relative provider or a friend or neighbor provider.

Edit. Move to after "legal guardian" and renumber so that it is in alphabetical order.

(r) "Provider" means an individual or a public or private organization enrolled with the department in accordance with He-C 6910 to provide child care services to a family, which includes license-exempt in-home providers as defined in (q) above.

(s) "Regular contact" means a household member, staff member, or any other individual who might:

- (1) Have access to the premises where child care is being provided; and
- (2) Be present when there are children in child care.

(t) "Staff member" means any individual, whether paid, unpaid, or volunteer who is used to meet staff to child ratios or who will be alone with children and is providing child care for children at a facility-based program or who has regular contact with children in child care at the facility-based program in accordance with RSA 170-E.

(u) "Supporting documentation" means information that is submitted by the applicant, provider, staff member, or household member in order to demonstrate that the individual does not pose a present threat to the safety of children, which may include written and oral statements and interviews that relate to:

- (1) The individual's character;
- (2) The circumstances of the behavior in question; or
- (3) The specific act(s) under scrutiny.

He-C 6920.04 Background Check Requirements.

(a) A background check shall be conducted in accordance with RSA 170-E:3-a and RSA 170-E:7 on any of the following individuals who will have regular contact with or provide care for children in a child care setting in a private home or facility-based program:

- (1) The applicant or in-home provider;
- (2) Each staff member affiliated with the facility-based program; and
- (3) All household members residing with the applicant or in-home provider.

(b) A background check of each individual listed in (a) above who are 18 years of age or older shall be conducted in accordance with RSA 170-E:3-a and RSA 170-E:7 and as described in (c), (d), or (g) below, as follows:

- (1) At the time of an applicant's initial request for enrollment in accordance with He-C 6914;
- (2) For facility-based programs, prior to the first day of employment for any new staff member;
- (3) For in-home providers, prior to the first day that:
 - a. A new household member moves into the home; and
 - b. A previous household member returns to the home;
- (4) For in-home providers, within 30 calendar days that a current household member turns 18 years of age; and
- (5) Once every 5 years for each individual listed in (a) above in order to maintain enrollment.

(c) Form DSSP372 "New Hampshire Health and Human Services Criminal History Record Information Authorization," (October 2016) shall be completed for the release of criminal records, as well as state and national sex offender registry checks, and submitted to DHHS in accordance with RSA 170-E:7 and the department of safety administrative rules Saf-C 5703.10 and Saf-C 5703.11 for individuals listed in (a) above who are 18 years of age or older.

(d) During the initial request for enrollment, a complete set of fingerprints shall be submitted with the authorization for release in (c) above in accordance with RSA 170-E:7, I for individuals in (a) above who are 18 years of age or older.

(e) The form identified in (c) above and the set of fingerprints required by (d) above shall be submitted in accordance with RSA 170-E:7, I, and II to:

NH State Police, Criminal Records Unit
33 Hazen Drive
Concord, NH 03301

(f) Any forms erroneously submitted to the BCDHSC shall be returned to the provider or applicant seeking enrollment.

(g) For any individual in (a) above who is 12 years of age or older, the provider shall complete and submit Form 2503 entitled "NH Child Abuse and Neglect Central Registry Name Search Authorization Lead Agency Child Care Release of Information" (May 2020) for the purpose of submitting the individual's name for a check against the central registry of New Hampshire and any other state the individual has lived in during the previous five years.

Edit. "5"

(h) The form in (g) above shall be submitted to:

Bureau of Child Development and Head Start Collaboration
Attention: Provider Enrollment Specialist
Division of Economic and Housing Stability
129 Pleasant Street
Concord, NH 03301

(i) Any individual who has been separated from employment from a child care provider within the state for a period of 180 consecutive days or more, shall be required to submit a new criminal background check prior to employment or submitting an application seeking enrollment, as described in (b)(5) above pursuant to RSA 170-E:7, II-a, (b).

(j) If the results of the background check are not received by BCDHSC due to the applicant's or provider's failure to complete the process described in He-C 6920.04(a) through (h) above, the application for initial enrollment or renewal of enrollment shall be denied, and the payments to the provider shall be withheld in accordance with He-C 6920.08.

(k) BCDHSC shall make a determination regarding the individual's eligibility in accordance with RSA 170-E:7, III, and IV, and notify the provider and individual within 45 days of submission of all required information.

(l) Individuals required to complete background record checks as specified in (a), (c), (d), and (g) above shall not have access to children or be on the premises of the child care facility, the in-home provider's home, or the child's home, if care is provided there, during the hours of child care until the provider receives notice of eligibility to work pursuant to RSA 170-E:7,III from BCDHSC.

(m) When BCDHSC receives the results of the fingerprint-based background check for a staff member in a facility-based program that does not include any disqualifying information as described in RSA 170-E:7, III, and IV, BCDHSC shall notify the program that the staff member may be present in the program, provided the staff member is never alone with children and always under the direct supervision and observation shall continue until BCDHSC receives all results from the background check required in RSA 170-E:7 and notifies the program and staff member.

He-C 6920.05 Procedure When a Criminal Conviction or Central Registry History Exists.

Unclear. The Notice indicates that DHHS was considered out of compliance with federal regulations because it allowed providers to receive reimbursement for childcare prior to receiving the results of the criminal background check. Here the rule states that individuals shall not have access to children pending the results of the background check. However, the next section He-C 6920.05(c)(2) & (d)(1) appears to allow someone to provide care pending the results of the background check with payment only being withheld during an investigation and the individual being suspended. It is unclear how He-C 6920.05 does not conflict with He-C 6920.04(l) unless it is a situation in which He-C 6920.4(m) applies- the bureau has granted permission. It is unclear whether this practice will be considered compliant with the federal regulations.

(a) BCDHSC shall send written notification in accordance with this section when the results of the background check completed in accordance with He-C 6920.04 show that:

- (1) The individual might pose a present threat to the safety of children due to:
 - a. A conviction that is a felony offense that might be directly or indirectly harmful to children in child care;
 - b. A founded report of abuse or neglect in the central registry; or
 - c. Any conviction listed in RSA 170-E:7 III, or IV; or
- (2) The individual might pose a present threat to the safety of children as a result of a criminal conviction history that includes a violent or sexually related crime against a child or an adult.

(b) When an applicant's background check indicates a conviction or finding as described in (a) above, the applicant shall receive written notification of the following:

- (1) The results of the background check;
- (2) A request that the applicant submit supporting documentation within 10 calendar days of the date of receipt of the notification;
- (3) Information that BCDHSC shall review the supporting documentation submitted and shall conduct an investigation in accordance with He-C 6920.07 in order to make a determination on the application;
- (4) Information that failure to submit supporting documentation as described in (2) above shall result in denial of the application;
- (5) Information that if the investigation indicates that the applicant poses a present threat to the safety of children, then the application shall be denied; and
- (6) Information that the applicant may appeal BCDHSC's decision on the application in accordance with He-C 6920.10.

(c) When an in-home provider's background check indicates a conviction or finding as described in (a) above, the provider shall receive written notification of the following:

- (1) The results of the background check;
- (2) That payments to the in-home provider shall be withheld until an investigation is completed in accordance with He-C 6920.07;
- (3) A request that the in-home provider submit supporting documentation within 10 calendar days of the date of receipt of the notification;
- (4) Information that BCDHSC shall review the supporting documentation submitted and conduct an investigation in order to make a determination as follows:

See the unclear comment on page 4.

- a. That if the individual poses a present threat to the safety of children, then BCDHSC shall revoke their enrollment in accordance with He-C 6920.08; or
- b. That if the individual does not pose a present threat to the safety of children, then BCDHSC shall reinstate payments;

(5) Information that failure to submit supporting documentation as described in (3) above shall result in revocation of the enrollment; and

(6) Information that the in-home provider may appeal the revocation in accordance with He-C 6920.10.

(d) When a facility-based program staff member's background check indicates a conviction or finding as described in (a) above, the staff member, and authorized representative shall receive written notification as follows:

(1) The facility-based program shall be notified that:

- a. The background check reveals a conviction or finding as described in (a) above;
- b. The authorized representative shall submit a corrective action plan in accordance with He-C 6920.06; and
- c. The facility-based program shall temporarily suspend the staff member pending the outcome of the investigation unless a corrective action plan has been approved by BCDHSC in accordance with He-C 6920.06; and

See the unclear comment on page 4.

(2) The staff member shall be notified of the following:

- a. The results of the background check;
- b. That the staff member shall submit supporting documentation within 10 calendar days of the receipt of the notification; and
- c. The facility-based program shall temporarily suspend the staff member pending the outcome of the investigation.

(e) When a background check of a household member who shall be present at the residence while there are children in care indicates a conviction or finding as described in (a) above, written notification shall be sent as follows:

(1) The applicant shall be notified that:

- a. The background check indicates a conviction or finding as described in (a) above;
- b. Supporting documentation showing that the household member does not pose a present threat to the safety of children shall be submitted within 10 calendar days of the date of receipt of the notification by the following:

- 1. The household member, if over the age of 18; or

2. The parent or legal guardian, if the household member is under the age of 18;

c. Failure to submit the supporting documentation in b. above shall result in the denial of application; and

d. The applicant may appeal the decision to deny the application in accordance with He-C 6920.10;

(2) The in-home provider shall be notified that:

a. The background check indicates that the household member has a conviction or finding as described in (a) above;

b. The in-home provider shall submit a corrective action plan as described in He-C 6920.06;

c. Supporting documentation showing that the household member does not pose a present threat to the safety of children shall be submitted within 10 calendar days of the date of receipt of the notification by:

1. The household member, if over the age of 18; or

2. The parent or legal guardian, if the household member is under the age of 18;

d. Payments shall be withheld pending the investigation;

e. Failure to submit a corrective action plan as described in b. above shall result in revocation of the enrollment in accordance with He-C 6920.08;

f. Failure to submit supporting documentation as described in c. above shall result in revocation of the enrollment in accordance with He-C 6920.08; and

g. The in-home provider may appeal the decision to revoke the enrollment in accordance with He-C 6920.10; and

(3) The household member or parent or legal guardian, as applicable, shall be notified:

a. Of the results of the background check; and

b. That the individual shall submit supporting documentation that they do not pose a present threat to the safety of children within 10 calendar days of the notice in (1) or (2) above.

(f) If the staff member or household member does not submit supporting documentation as described in (c), (d), or (e) above, then BCDHSC shall:

(1) Notify the applicant, in-home provider, or facility-based program that the respective staff member or household member is not cooperating with the investigation; and

(2) Notify the in-home home provider and facility-based program that if the supporting documentation is not received within 2 business days of the date of receipt of the notice, then child care payments shall be withheld until the information is received.

(g) If the time limit in (f)(2) for receipt of information has been exhausted, then payment to the in-home provider or facility-based program shall be withheld until one of the following is met:

(1) The supporting documentation requested is submitted, the investigation is completed, and the result of the investigation shows that the staff member or household member does not pose a present threat to the safety of children;

(2) The facility-based program submits supporting documentation that the staff member is no longer affiliated with the facility-based program, such as, but not limited to:

a. Staff records which indicate that the staff member has not been in attendance;

b. A copy of the termination letter from the provider to the staff member;

c. A copy of the resignation letter from the staff member; or

d. A signed and dated statement from the authorized representative that the staff member is no longer affiliated with the facility-based program; or

(3) For in-home providers, a signed and dated statement from the in-home provider that confirms that the household member shall not:

a. Be on the premises when there are children in child care; and

b. Have any contact with the children in child care.

He-C 6920.06 Corrective Action Plans.

(a) A corrective action plan shall be submitted within the following timeframes:

(1) For applicants, the corrective action plan shall be submitted to BCDHSC within 10 days of receipt of notification of the results of an investigation in He-C 6920.07 that finds that a staff member or household member poses a present threat to the safety of the children in child care; or

(2) For in-home providers and facility-based programs, the corrective action plan shall be submitted to BCDHSC within 2 business days of receipt of notification in He-C 6920.05.

(b) Corrective action plans shall meet the following requirements:

(1) For in-home providers, corrective action plans shall indicate that the household member:

a. Shall not be on the premises during the hours that the provider is providing child care; and

b. Shall not have contact with the children in child care;

(2) For facility-based providers, corrective action plans shall:

a. Indicate that the staff member is no longer affiliated with the facility-based program and describe the steps that the applicant or facility-based program intends to take to ensure that the staff member:

1. Shall not be on the premises during the hours of child care; and
2. Shall not have contact with the children in child care; or

b. Include plans for the direct supervision of the staff member and other proposed measures designed to ensure the safety of children; and

(3) For both (1) and (2) above, corrective action plans shall include an immediate implementation date for the actions identified.

(c) The department shall reject a corrective action plan submitted by a provider or applicant when the plan fails to meet the applicable standards established in (b) above.

(d) The applicant, in-home provider or facility-based program shall submit documentation that confirms the corrective action plan described in (b) above has been implemented, including but not limited to:

- (1) Staff records which indicate that the staff member has not been in attendance;
- (2) A copy of the termination letter from the facility-based program to the staff member;
- (3) A copy of the resignation letter from the staff member;
- (4) A signed and dated statement from the facility-based program confirming that the staff member is no longer affiliated with the program;
- (5) A signed and dated statement from the in-home provider or facility-based program that the staff member or household member shall not be on the premises when there are children in child care and shall not have contact with the children in child care; or
- (6) A signed and dated statement from the applicant, in-home provider, or facility-based program that the proposed measures described in the corrective action plan, and as agreed upon with BCDHSC, have been implemented.

(e) An applicant's or provider's failure to submit a corrective action plan or to comply with a corrective action plan shall result in:

- (1) The denial of the application for enrollment as described in He-C 6920.08; or
- (2) The revocation of the provider's enrollment as described in He-C 6920.08.

(a) BCDHSC shall conduct an investigation when the individual has a:

- (1) Finding of abuse, neglect, or exploitation of any person;
- (2) Conviction of child endangerment, fraud, or a felony against a person in this or any other state by a court of law;
- (3) Conviction of any crime as referenced in RSA 170-E:7, III or IV; or
- (4) Complaint of abuse, neglect, or exploitation substantiated by the department or in any other state.

(b) During an investigation, BCDHSC shall conduct the investigation as follows:

- (1) Review any and all information including any supporting documentation gathered during the background check or submitted by the applicant, in-home provider, facility-based program, or individual under investigation in accordance with He-C 6920.05, and this section;
- (2) Interview any person who might have knowledge of the circumstances of the criminal activity or the neglect; and
- (3) Interview any person who can attest to the present character of the individual.

(c) During the course of the investigation, each individual for whom a background check reveals criminal convictions or a history of founded abuse or neglect shall have the opportunity to present supporting documentation in accordance with RSA 170-E:7, IV and as described in (d) below.

(d) The applicant, in-home provider, facility-based program staff member, or household member with the conviction or finding, may submit to BCDHSC any supporting documentation that states how the individual does not pose a present threat to the safety of children from mental health professionals, physicians, law enforcement professionals, or any other professional who can attest as such.

(e) Upon receipt of the supporting documentation described in (d) above, BCDHSC shall conduct an investigation to determine whether the individual poses a present threat to the safety of children in child care by reviewing the following factors:

- (1) The seriousness of the incident(s) or conviction(s) in relation the individual's child care responsibilities;
- (2) The relationship of the criminal act to the provision of child care;
- (3) The number of incidents or convictions;
- (4) The age of the individual at the time of the incident(s) or conviction(s);
- (5) The amount of time since the occurrence of the incident(s) or conviction(s); and
- (6) Any attempts made by the individual to correct the behavior, including but not limited to counseling related to the incident.

(f) If the facts indicate that the individual does not pose a present threat to the safety of the children in child care, then BCDHSC shall:

- (1) Approve the application, if the applicant is otherwise eligible;
- (2) Renew the in-home provider's or facility-based program's enrollment, if the in-home provider or facility-based program is otherwise eligible; or
- (3) Reinstatement the in-home provider's or facility-based program's child care payments if previously withheld.

(g) If the facts indicate that the applicant or in-home provider poses a present threat to the safety of the children in child care, then the application shall be denied and the enrollment shall be revoked.

(h) When the facts indicate that the individual poses a present threat to the safety of the children in child care, the application shall be denied or an enrollment shall be revoked if the applicant, in-home provider or facility-based program does not submit a corrective action plan and:

- (1) The in-home provider does not remove the household member from the home; or
- (2) The facility-based program does not remove the staff member from the program.

(i) The applicant, in-home provider, or facility-based program shall submit proof of the removal of an individual who poses a present threat to the safety of children within 2 business days from the date of the receipt of notification in (k) below, or the application shall be denied or the revocation of the enrollment shall take effect.

(j) The applicant or provider may appeal the denial of the initial or renewal application or the revocation of the enrollment in accordance with He-C 6920.10.

(k) The applicant or provider shall receive written notification of the information contained in (g) and (h) above.

He-C 6920.08 Denial of Application, Non-Renewal of Enrollment, Withholding of Payments, and Revocation of Enrollment.

(a) An application for enrollment shall be denied as a result of a background check when:

- (1) Information regarding the criminal records or central registry history is not received by BCDHSC as required by He-C 6920.04;
- (2) The applicant, staff member, or household member fails to submit supporting documentation within 10 days of the receipt of written notification requesting this information in accordance with He-C 6920.05; or
- (3) The investigation conducted by BCDHSC on the applicant in accordance with He-C 6920.07 reveals that the applicant, staff member, or household member poses a present threat to the safety of children.

(b) A provider's enrollment shall not be renewed as a result of a background check when:

(1) Information regarding the criminal records or central registry history is not received by BCDHSC due to the failure of the provider to submit the information as required by He-C 6920.04;

(2) The provider, staff member, or household member fails to submit supporting documentation within 10 days of the receipt of notification requesting this information in accordance with He-C 6920.05; or

(3) The investigation conducted by BCDHSC in accordance with He-C 6920.07 reveals that the provider, staff member, or household member poses a present threat to the safety of children.

(c) Payments to a provider shall be withheld when:

(1) Information regarding the criminal records or central registry history is not received by BCDHSC due to the failure of the in-home provider, household member, or facility-based program staff member to submit the information as required by He-C 6920.04;

(2) The background check reveals that the in-home provider, a household member, or a facility-based program staff member has a criminal history, or a history of founded abuse or neglect as described in He-C 6920.04; or

(3) An in-home provider, a household member, or a facility-based program staff member fails to submit supporting documentation in accordance with He-C 6920.05.

(d) The withholding of payments shall continue until a decision is reached by BCDHSC after:

(1) The background check for the provider, staff member, or household member is completed in accordance with He-C 6920.04 and if required, supporting documentation is submitted;

(2) The investigation is completed and indicates that the provider, staff member, or household member does not pose a present threat to the safety of children;

(3) The staff member submits supporting documentation as described in He-C 6920.06;

(4) The staff member is no longer employed by the facility-based program; or

(5) The household member, or if the household member is under the age of 18, the parent or legal guardian, provides supporting documentation or no longer resides at the home of the in-home provider.

(e) Revocation of a provider's enrollment shall occur when the results of an investigation find that the provider poses as a present threat to the safety of children in child care, or a staff member or household member has been identified to pose a present threat to the safety of children in child care, and:

(1) The staff member or household member, or parent or legal guardian if the household member is under the age of 18, has failed to submit supporting documentation to BCDHSC within the required timeframes identified in these rules; or

(2) The provider has:

Unclear/Edit. It is unclear whether the "supporting documentation" is the corrective action plan or paper work accompanying it. Also, citation is needed in (5).

a. Not completed the corrective action plan in accordance with the timeframes identified in He-C 6920.06; or

b. Failed to implement or comply with an approved corrective action plan.

(f) The applicant or provider shall be sent written notification by certified mail regarding the denial or revocation of the enrollment or if payment will be withheld.

(g) The notification shall:

- (1) Inform the applicant of the denial of the application;
- (2) Inform the provider that payments shall be withheld or the revocation of enrollment shall be effective 10 business days from the date of the receipt of the notification;
- (3) Include the reason(s) for the denial, revocation, or withheld payments; and
- (4) Include the applicant's or provider's right to appeal in accordance with He-C 6920.10.

(h) Any parent, caretaker relative, or legal guardian eligible under He-C 6910 who is utilizing the child care services of a provider whose enrollment has been revoked or denied due to the results of a background check or an investigation, shall be notified via certified mail of the following:

Edit/Unclear. The wording here isn't clear. It could be that the parent/guardian is being given a list alternative child care providers or they are being told that they need to seek other child care.

- (1) That the provider does not meet the minimum requirements to operate as a license-exempt child care provider;
- (2) That BCDHSC shall deny child care reimbursement to the provider;
- (3) That information obtained by BCDHSC from or about the provider is confidential and cannot be made available for review;
- (4) Information to seek other child care arrangements; and
- (5) Information regarding the New Hampshire Child Care Search portal, found on New Hampshire Connections Information System to assist parents in finding a new child care provider.

He-C 6920.09 Confidentiality of Records and Release of Information. Information submitted by the provider, staff members, or household members during the enrollment process, and all records regarding the facts that have been obtained by BCDHSC during the investigation, shall be kept confidential, except by court order to release the information or for the purpose of conducting an adjudicative proceeding.

He-C 6920.10 Appeals.

(a) An applicant or provider may appeal a decision made by BCDHSC within 10 business days of the receipt of the notification when:

- (1) The application for enrollment has been denied;

- (2) Payments have been withheld; or
 - (3) Enrollment has been revoked or not renewed.
- (b) The request for an appeal shall be made in accordance with He-C 200.

Appendix

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
He-C 6920.01	RSA 170-E:3-a; RSA 170-E:7
He-C 6920.02	RSA 170-E:3, I (a) – (h)
He-C 6920.03-He-C 6920.10	RSA 170-E:3-a; RSA 170-E:7

Note to JLCAR regarding potentially inadequate FIS. The Notice indicates that the agency was told by federal regulators that the state was noncompliant because childcare workers were receiving reimbursement for services provided prior to the results of criminal background checks. The Fiscal Impact Statement says there's no impact to state funds because the childcare providers have been and are responsible for the costs of the background checks. However, the proposal's cost to the providers has not been identified. The providers were previously able to get reimbursement for services provided prior to having the applicant's results in and now they cannot receive reimbursement for any care performed by that individual. While the Department may not know how many providers the new policy will impact or even the exact cost to facilities for retaining individuals prior to their results, not being able to receive reimbursement represents a potential decrease in billing for the impacted providers even if indeterminable. Additionally, facility-based programs now must have a staff member supervise these individuals at all times while waiting for the criminal records check and this represents an additional cost in that the providers now must pay to have the individuals supervised if they were not previously doing so. Presumably the providers can bill for the supervisor's work providing care to children, and that may decrease the cost to the providers.